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**ENFORCEMENT ACTION AGAINST ARXA INTERNATIONAL ENERGY, INC. (OPERATOR # 033833) FOR VIOLATIONS OF STATEWIDE RULES ON THE COOKE, C.N. (01588) LEASE, WELL NOS. 1 & 4, LONDON GIN FIELD, NUECES COUNTY, TEXAS**

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**APPEARANCES:**

**FOR MOVANT:**

Scott Holter, Staff Attorney

Enforcement Section of the Railroad Commission

**FOR RESPONDENT:**

Lynn Craig Ford

Former Officer of ARXA, representing himself in an individual capacity

Unrepresented

ARXA International Energy, Inc.

**PROCEDURAL HISTORY**

**Original Complaint Served:**

September 11, 2001

**First Amended Complaint Served:**

November 2, 2001

**Hearing Held:**

January 31, 2002

**Heard By:**

Scott Petry

**Record Closed:**

January 31, 2002

**PFD Circulation Date:**

October 4, 2002

**STATEMENT OF THE CASE**

This was a Commission-called hearing on the recommendation of the District Office to determine the following:

1. Whether the respondent should be required to plug or otherwise place in compliance with Statewide Rule 8 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8] and Statewide Rule 14 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14], the Cooke, C.N. (01588) Lease, Well Nos. 1 & 4, London Gin Field, in Nueces County, Texas;
2. Whether the respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to comply with said statutes and Statewide Rules 8 and 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding the lease and wells;
4. Whether any violations of Statewide Rules 8 and 14 by the respondent should be referred to the Office of the Attorney General for further civil action pursuant to §81.0534 (Vernon 2001); and
5. Whether other orders should be entered as permitted by law.

The respondent, ARXA International Energy, Inc. (hereinafter "Arxa"), was originally notified of the enforcement action by a "Notice of Opportunity For Hearing" dated September 11, 2001. This Notice of Opportunity for Hearing, along with its attached Original Complaint, was mailed to Arxa at its P-5 addresses in Houston, Texas, and Gulfport, Mississippi, as well as to its president, Lynn Craig Ford, and to two of Arxa's vice-presidents, William Bippus and Dennis McGrath. Responses were filed on behalf of two of Arxa's officers, Mr. Bippus and Mr. Ford, in which both disclaimed responsibility. Additionally, the certified mailing of the Original Complaint sent to the address in Gulfport, Mississippi, was signed for and the "green card" indicating acceptance was returned to the Commission.

Given that responses were filed by the former officers, however, Enforcement mailed a First Amended Complaint on November 2, 2001. The hearing was set for January 17, 2002, and a Notice of Intent to Appear was filed on November 8, 2001 by Michael D. Jones. In his Notice of Intent to Appear, Mr. Jones purported to represent Arxa International Energy, Inc. Additionally, a motion for continuance was filed by Mr. Jones on behalf of Arxa on January 16, 2002, and the hearing was continued to January 31, 2002.

On January 31, 2002, Lynn Craig Ford ("Ford") appeared at the hearing and asserted that he was appearing in his personal capacity and not as a representative of Arxa. Additionally, Ford asserted that Jones was *his* personal attorney and not a representative of Arxa. Scott Holter, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section, and admitted its hearing file into evidence.

In its First Amended Complaint, Enforcement recommends that the respondent be ordered to place the subject lease and wells in compliance with Commission rules and to pay an administrative penalty of \$5,000.00 [\$2,000.00 each for two continuing violations of Statewide Rule 14(b)(2) and \$1,000.00 for one continuing violation of Statewide Rule 8(d)(1)]. The examiner concurs with the Enforcement attorney's recommendation regarding penalty assessment.

### **BACKGROUND**

Unplugged and unmonitored well bores constitute a potential danger to public health and safety and must be plugged when mandated by Commission rules. Rule 14 provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with all applicable Commission rules and regulations.

Rule 8 provides that persons disposing of oil and gas wastes by any method must have a permit to do so unless authorized by subsections (d)(3) or (e) of Rule 8, or under Rules 9, 46, or 98. These wastes are defined to include materials to be disposed of or reclaimed, which have been generated in connection with activities associated with the exploration, development, and production of oil or gas.

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 per day for each violation. In determining the amount of the penalty, the Commission is required to consider the respondent's previous history of violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent, pursuant to Tex. Nat. Res. Code Ann. § 81.0531.

### **DISCUSSION OF THE EVIDENCE**

Arxa designated itself operator of the Cooke, C.N. (01588) Lease, Well Nos. 1 & 4, London Gin Field, in Nueces County, Texas, by filing a Commission Form P-4 with an effective date of July 1, 1998 and an approval date of August 28, 1998. Arxa's Form P-5 Organization Report is currently delinquent. Arxa last filed a Form P-5 Organization Report on July 31, 1998.

Arxa's P-5 Organization Report lists Lynn Craig Ford as president/C.E.O. and resident agent, William John Bippus as vice-president of development, and Dennis McGrath as vice-president/comptroller.

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

In Enforcement's case in chief, the Staff Attorney offered into evidence the hearing file and copies of related records. With regard to the asserted Rule 8(d)(1) violation, Enforcement offered into evidence inspection reports documenting an unauthorized discharge on the Cooke, C.N. (01588) lease on or before February 9, 2001. Inspection reports for February 9, 2001 and March 1, 2001 showed that oil had been discharged into the interior firewall area and "was floating on water inside the firewall." An additional report dated September 18, 2001 stated that the oil had flowed out of the firewall and contaminated an area measuring approximately 10' x 20'. Enforcement asserts that the violation is serious and a hazard to the public, as the discharge may contaminate the surface and surface or subsurface waters and may affect the health of humans and animals.

Enforcement also submitted Commission inspection reports dated February 9, 2001, March 1, 2001, and September 18, 2001 to show that the Cooke, C.N. (01588) lease, Well Nos. 1 & 4, have been inactive for greater than one year and are in violation of Statewide Rule 14(b)(2). With regard

to Well No. 1 on the Cooke, C.N. (01588) lease, Commission records reflect that the well was permitted as a disposal well on December 9, 1997, but that no disposal activity has been reported to the Commission since at least February 28, 1998. With regard to Well No. 4 on the Cooke, C.N. (01588) lease, Commission records reflect that the well was an oil well, but that it had not produced since at least January 31, 1999.

Additionally, Enforcement asserted that no workovers, re-entries, or subsequent operations have taken place on any of the subject wells within the twelve months prior to the mailing of the complaint. The Commission staff estimates that the total cost to plug both subject wells is \$12,600.00.

## **II. Arxa's Position & Evidence**

Despite the fact that Arxa was named and properly served with notice at its last P-5 Organization Report address, a representative for the corporation did not appear at the hearing.

Lynn Craig Ford testified that an address listed on Arxa's Organization Report is the same as that for the parent company that acquired Arxa<sup>1</sup>. The parent company for Arxa is now Gulfport Oil & Gas. Mr. Ford further asserted that the motion for continuance and notice of intent to appear (filed by Michael Jones) was actually for Ford's personal benefit and that Mr. Jones was *not* a representative of Arxa.

## **III. Interested Party's Position & Evidence**

As an interested party, Lynn Craig Ford attempted to show that he is not a current officer of Arxa and that he is not responsible for the subject wells. Mr. Ford asserted that he was president and C.E.O. of Arxa until May 7, 1999, when Gulfport Oil & Gas bought a majority of Arxa's shares. Mr. Ford further testified that the entire board of Arxa resigned soon after the buyout and that the old board was replaced by the new majority shareholders. According to Mr. Ford, the new majority shareholders, e.g. Gulfport Oil & Gas, are responsible for the subject wells.

To support his assertion, Mr. Ford submitted a copy of Arxa's Form 8-K filed with the Securities and Exchange Commission by its new majority shareholders. The form states that prior

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<sup>1</sup> This assertion by Mr. Ford is only partially correct. The address on Arxa's actual Form P-5 is: 110 Cypress Station Dr., Ste. 280, Houston, TX 77090. The Commission's records indicate, however, that a forwarding order was put into effect by the U.S. Postal Service and that the forwarding address is 2301 14<sup>th</sup> Street, Ste. 404, Gulfport, MS 39501-2090. Mr. Ford testified that this address is the same as the address for Gulfport Oil & Gas.

officers of Arxa, including Mr. Ford, had resigned and that Arxa's new officers were Norris R. Harris (Chairman of the Board), Jack Durland, Jonathan Harris, James David Risk and James Jeffrey Risk. The Form 8-K noted that Norris Harris, Jack Durland, and Jonathan Harris are also officers of Gulfport.

Finally, Mr. Ford submitted both a press release and a Securities and Exchange Commission Form 10-QSB/A to show that ARXA International Energy, Inc. has changed its name to King Resources, Inc. as of December 1, 2000.<sup>2</sup>

### EXAMINER'S OPINION

While Mr. Ford's evidence and testimony may be pertinent to the makeup of the current board of directors for Arxa (a.k.a. King Resources), it does not address the immediate violations in this docket. The Cooke, C.N. (01588) lease has been out of compliance with Rule 8(d)(1) since on or before February 9, 2001, Well No. 1 has been out of compliance with Rule 14(b)(2) since at least February 28, 1999, and Well No. 4 has been out of compliance with Rule 14(b)(2) since at least January 31, 2000.

According to Mr. Ford, he is no longer responsible for these wells because he resigned from the company on May 7, 1999, but at least one of the three alleged violations occurred while he, Mr. Bippus, and Mr. McGrath were still officers of Arxa. The Rule 8(d)(1) violation and the Rule 14(b)(2) violation for Well No. 4 occurred after the date the board of the directors was replaced by the new majority interest shareholders. In any case, Mr. Ford's responsibility is not at issue here because Enforcement's pleadings do not seek to hold him individually liable for any of the alleged violations.

Arxa is the entity responsible for the violations and it has acted in bad faith in failing to comply with Commission rules and regulations. These violations have not been remediated for an extended period of time and the respondent has failed to comply with Commission rules and regulations in a timely manner. Arxa's failure to carry out its obligations in a timely fashion caused a potentially hazardous situation due to the increased probability of pollution due to unplugged wellbores serving as conduits for oil, gas, saltwater and other substances from one stratum to another.

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<sup>2</sup> This Form 10-QSB/A is for the quarter ending July 31, 2001. On Page 7 of this form, it is stated that the company had "...an accumulated (deficit) of \$(17,092,745) at that date, which raises substantial doubt about its ability to continue as a going concern." It was the testimony of Mr. Ford, however, that, to the best of his knowledge, the company was still a going concern.

Finally, the wells should be ordered plugged. One of the wells has been out of compliance with Statewide Rule 14(b)(2) for over two years and the other well has been out of compliance for over three years. The company does not have an active P-5 Organization Report and it is unlikely that it has a continuing good faith claim to the subject lease.

Therefore, 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. ARXA International Energy ("Arxa") was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to their most recent Form P-5 (Organization Report) address. Arxa did not appear at the scheduled time and place for the hearing and did not respond to the certified and first class mailings.
2. Arxa designated itself to the Commission as the operator of the Cooke, C.N. (01588) Lease ("subject lease"), Well Nos. 1 and 4 ("subject wells"), London Gin Field, Nueces County, Texas, by filing two Forms P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, with effective dates of July 1, 1998 and approval dates of August 28, 1998.
3. Arxa's Form P-5 Organization Report is currently delinquent. The respondent's most recent Form P-5 was filed on July 31, 1998.
4. The most recent Form P-5 Organization Report filed by Arxa reports it to be a corporation and lists Lynn Craig Ford as president/C.E.O. and resident agent, William John Bippus as vice-president of development, and Dennis McGrath as vice-president/comptroller. These officers resigned on or soon after May 7, 1999.
5. The officers listed for Arxa on its Securities and Exchange Commission Form 8-K, dated May 7, 1999, include Norris R. Harris (Chairman), Jack Durland, Jr., Jonathan G. Harris, James David Risk, and James Jeffrey Risk.
6. The subject wells have not been properly plugged, or otherwise placed in compliance, with Statewide Rule 14. Well No. 1 has not had any disposal activity since on or before February 28, 1998 and Well No. 4 has not had any production activity since on or before January 31, 1999.
7. The Commission has not granted an extension to Statewide Rule 14(b)(2) that is currently in

effect for the subject wells.

8. Arxa allowed an unauthorized discharge of oil to occur on the subject lease on or before February 9, 2001. Between February 9, 2001 and March 1, 2001, the oil from this discharge flowed into the interior firewall area and was floating on water inside the firewall. At some time between March 1, 2001 and September 18, 2001, the oil flowed out of the firewall and contaminated an area measuring approximately 10' x 20'.
9. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil or gas wastes from the subject wells. Unplugged well bores constitute a cognizable threat to the public health and safety because of the probability of pollution.
10. An unauthorized discharge or disposal of oil, saltwater, basic sediment or other oil and gas waste is a potential source of pollution to surface and subsurface waters if not remediated to prevent seepage and run-off.
11. The record does not reflect any previous violations by Arxa of Commission rules.
12. The estimated cost to the State of plugging the subject wells is \$12,600.00.

#### CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to 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 or have occurred.
3. Arxa is the operator of the subject wells, as defined by Commission Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 Tex. Admin. Code § 3.14(b)(2)] and Section 89.002 of the Texas Natural Resources Code and is a person as defined by Commission Statewide Rule 79 [Tex. R.R. Comm'n, 16 Tex. Admin. Code § 3.69] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Arxa has the primary responsibility for complying with Statewide Rules 8 and 14 (Tex. R.R. Comm'n, 16 Tex. Admin. Code §§ 3.8 & 3.14, respectively) and with Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject wells.



5. The subject wells are not properly plugged or otherwise in compliance with Statewide Rule 14 (Tex. R.R. Comm'n, 16 Tex. Admin. Code § 3.14), or Chapters 85, 89 and 91 of the Texas Natural Resources Code. Well No. 1 on the subject lease has been out of compliance since at least February 28, 1999 and Well No. 4 has been out of compliance since at least January 31, 2000.
6. The subject lease has not been maintained in compliance with Statewide Rule 8 (Tex. R.R. Comm'n, 16 Tex. Admin. Code § 3.8), or Chapters 85, 89 and 91 of the Texas Natural Resources Code since at least February 9, 2001.
7. The documented violations committed by Arxa constitute acts deemed serious, hazards to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. § 81.0531(c) (Vernon 2001).

#### RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring the operator, ARXA International Energy, Inc. (a.k.a. King Resources), within 30 days from the day immediately following the date this order becomes final, to plug the subject wells in compliance with Commission rules and to pay an administrative penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), consisting of \$4,000.00 for two continuing violations of Statewide Rule 14(b)(2) and \$1,000.00 for one continuing violation of Statewide Rule 8(d)(1).

Respectfully submitted,

Scott Petry  
Hearings Examiner