

**RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
HEARINGS SECTION**

OIL AND GAS DOCKET NO. 01-0278295

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY DISCOVERY PETROLEUM, L.L.C. (220861), AS TO THE THEO "C" ROGERS (14015) LEASE, WELL NO. 5 AND TANK BATTERY, KYOTE FIELD, ATASCOSA COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on April 4, 2013, and that the respondent, Discovery Petroleum, L.L.C. (220861), failed to appear or respond to the Notice of Hearing. Pursuant to § 1.49 of the Commission's General Rules of Practice and Procedure [Tex. R. R. Comm'n, 16 TEX. ADMIN. CODE § 1.49] and after being duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Discovery Petroleum, L.L.C. (220861) ("Respondent") was given Notice of Hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report, which was returned to the Commission marked "unclaimed."
2. The returned certified receipt attached to Amended Original Complaint and the Notice of Hearing mailed to Respondents, most recent P-5 address, was returned to the Commission on March 22, 2013, marked "unclaimed." The certified receipt has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On July 24, 2012, Respondent, filed an Organization Report (Form P-5) with the Commission reporting that its members consisted of the following individual(s): Noel Joseph Singer, Member.
4. Noel Joseph Singer, was a person in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violations of Commission rules committed by respondent.
5. The violations of Commission rules committed by respondent are related to safety and the control of pollution.

6. Respondent designated itself to the Commission as the operator of Well No. 5 and Tank Battery on the Theo "C" Rogers (14015) Lease ("subject well"/"subject lease") by filing a Form P-4 (Producers Transportation Authority and Certificate of Compliance) with the Commission on June 1, 2009.
7. According to Commission records the Respondent's Form P-5 (Organization Report) is active. Respondent has \$50,000.00 cash as its financial assurance.
8. Commission District inspections were conducted on May 7, 2012, April 20, 2012 and April 18, 2012 for the Theo "C" Rogers (14015) Lease. Well No. 5 indicated that Respondent caused or allowed an unauthorized discharge of oil of an undetermined amount to leak inside the firewall. Furthermore, Commission District inspections conducted between December 9, 2009 and March 31, 2011 indicated that the subject well has a history of unauthorized discharges of oil.
9. No permit has been issued to Respondent for the discharge of oil and gas wastes on or from the subject lease.
10. The unpermitted discharges of oil and gas wastes or other substances or materials on the subject lease constitute a hazard to public health and safety because of leaks and spills of oil and produced waters onto soils can migrate into surface water bodies causing contamination or can leach into the ground and percolate through soils into groundwater supplies.
11. Commission District inspections were conducted on May 7, 2012, April 20, 2012 and April 18, 2012 for the Theo "C" Rogers (14015) Lease, Well No. 5. Respondent was using and maintaining an unauthorized pit measuring approximately 15' x 10' x 8'.
12. Unfilled pits constitute a hazard to public health and safety because of the potential for illegal dumping in the pits and the potential for surface run-off to collect in the pit and seep into subsurface waters.
13. The subject well ceased production on or before June 2010.
14. The subject well has not been properly plugged in accordance with, and is not otherwise in compliance with, Statewide Rule 14.
15. The Statewide 14b2 plugging extension for Well No. 5 on the Theo "C" Rogers (14015) Lease was denied on April 30, 2013 for failure to file an H-15 test.
16. Usable quality groundwater in the area is likely to be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
17. The total estimated cost to the State of plugging the subject well is \$31,100.96.

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18. The Respondent has not demonstrated good faith since it failed to plug or timely place the subject lease and subject well in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.
19. Respondent is the person responsible for cleaning up the discharges on the subject lease under TEX. NAT. RES. CODE ANN. §91.113(b), and the Commission may recover from Respondent all costs incurred in cleaning up the subject lease pursuant to TEX. NAT. RES. CODE ANN. §91.113(f).
20. The Respondent has a prior history of Commission rule violations including the following docket(s):

Docket No. 02-0260214; Agreed Order signed: November 24, 2009; and
Docket No. 02-0264458; Agreed Order signed: March 22, 2011.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Railroad Commission to respondent and to all other 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. Respondent is in violation of Commission Statewide Rules 8(d)(1), 8(d)(2) and 14(b)(2).
4. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 8(d)(1), which prohibits the discharge of oil and gas wastes without a permit.
5. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 8(d)(2), which prohibits a person from maintaining or using any pit for storage of oilfield fluids without a permit.
6. Respondent is responsible for maintaining the subject lease and subject well in compliance with all applicable Commission rules according to Statewide Rules 14, 58, and 79 and Chapters 89 and 91 of the Texas Natural Resources Code.
7. The documented violations committed by the respondent constitute acts deemed serious, a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531.

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8. As a person in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, Noel Joseph Singer, and any other organization in which he may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resource Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or until the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed, whichever is earlier.

IT IS ORDERED THAT within 30 days from the day immediately following the date this order becomes final:

1. Discovery Petroleum, L.L.C. (220861), shall plug or otherwise place the Theo "C" Rogers (14015) Lease, Well No. 5 and Tank Battery, Kyote Field, Fisher County, Texas in compliance with applicable Commission rules and regulations; and
2. Discovery Petroleum, L.L.C. (220861), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TEN THOUSAND SEVEN HUNDRED TWENTY THREE DOLLARS (\$10,723.00)** and **REIMBURSE** State funds in the amount of **THREE THOUSAND NINE HUNDRED NINETY ONE DOLLARS and FORTY TWO CENTS (\$3,991.42)**.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

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Noncompliance with the provisions of this order is subject to enforcement by the Attorney General and subject to civil penalties of up to \$10,000.00 per day per violation.

Done this 10th day of September 2013.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated September 10, 2013)

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