

**RAILROAD COMMISSION OF TEXAS  
OFFICE OF GENERAL COUNSEL  
OIL AND GAS SECTION**

**OIL AND GAS DOCKET NO. 02-0233602**

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**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY CARY GLENN CARMACK D/B/A ISLAND EXPLORATION (426963), AS TO THE FEHRENKAMP, F. (02632) LEASE, WELL NOS. 1 AND 2, EL TORO SOUTH (5600) FIELD, JACKSON COUNTY, TEXAS**

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**FINAL ORDER**

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on April 28, 2003, and that the respondent, Cary Glenn Carmack d/b/a Island Exploration (426963), failed to appear or respond to the notice. 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. Cary Glenn Carmack d/b/a Island Exploration (426963), ("Respondent") was given Notice of Opportunity for 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 containing the Original Complaint and the Notice of Opportunity for Hearing was returned to the Commission marked "unclaimed" on April 24, 2003. The receipt has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. Respondent designated itself to the Commission as the operator of Well Nos. 1 and 2 on the Fehrenkamp, F. (02632) Lease ("subject wells"/"subject lease") by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective on March 1, 2000.
4. According to Commission records the Respondent's Form P-5 (Organization Report) became delinquent on February 1, 2002. Respondent paid a fee of \$100.00 as financial assurance at the time of its last Form P-5 renewal.
5. Well No. 1 ceased production on or before June 30, 1994 and Well No. 2 ceased injection on or before April 1994.

6. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with, Statewide Rule 14.
7. 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 wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
8. The estimated cost to the State of plugging the subject wells is \$21,500.00.
9. Commission district office inspections were conducted on October 4, 2002, November 5, 2002 and February 20, 2003 for the Fehrenkamp, F. (02632) Lease. The sign or identification required to be posted at the lease entrance and Well Nos. 1 and 2 did not reflect the current operator.
10. Commission district office inspections were conducted on October 4, 2002 and November 5, 2002 for the Fehrenkamp, F. (02632) Lease. Respondent had caused or allowed the discharge of oil and gas wastes in the firewall resulting in several oil-saturated areas. A district office inspection was conducted on January 27, 2003 and resulted in an emergency cleanup to pick up water and oil which had overflowed the firewall into the adjacent property measuring approximately 30' x 5'. It was also noted that the 50' x 75' firewall area was ½ full containing 6" of fluid with 35% oil cut (sic). An area 30' x 5' outside the firewall was oil saturated covered with rainwater with an oil sheen.
11. No permit has been issued to the Respondent for the discharge of oil and gas wastes on or from the subject lease.
12. 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 leaks and spills of oil and produced waters onto soils can migrate into surface water bodies causing contamination, leaching into the ground, and percolation through soils into groundwater supplies.
13. Commission district inspections were conducted on October 4, 2002 and November 5, 2002 for the Fehrenkamp, F. (02632) Lease. The tank battery firewall was eroding and in need of reconstruction. A Commission district inspection was conducted on January 27, 2003, indicating that Respondent had caused or allowed the firewall to overflow affecting an area measuring 30' x 5'.
14. The Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject lease and the subject wells in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.
15. Respondent has a prior history of Commission rule violations including the following docket(s):

Docket No. 03-0231632; Final Order Served: December 20, 2002.

## 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 3(a), 8(d)(1), 14(b)(2) and 21(j).
4. Respondent is responsible for maintaining the subject lease in compliance with Rule 3(a), which requires that each property that produces oil, gas or geothermal resources and each oil, gas, or geothermal resource well and tank, or other approved crude oil measuring facility shall post signs or identification.
5. Respondent is responsible for maintaining the subject lease in compliance with Rule 8(d)(1), which prohibits the discharge of oil and gas wastes without a permit.
6. Respondent is responsible for maintaining the subject lease in compliance with Rule 21(j), which requires that firewalls must be erected and kept around all permanent oil tanks, or battery of tanks, that are within 500 feet of a highway.
7. Respondent is responsible for maintaining the subject lease in compliance with all applicable Commission rules and for properly plugging the subject wells according to Statewide Rules 14, 58, and 79 and Chapters 89 and 91 of the Texas Natural Resources Code.
8. 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(c) (Vernon 2001).

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

1. Cary Glenn Carmack d/b/a Island Exploration (426963), shall plug the Fehrenkamp, F. (02632) Lease, Well Nos. 1 and 2, El Toro, South (5600) Field, Jackson County, Texas in compliance with applicable Commission rules and regulations; and
2. Cary Glenn Carmack d/b/a Island Exploration (426963), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **SIX THOUSAND THREE HUNDRED FIFTY DOLLARS (\$6,350.00)**.

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 order is served on the parties.

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.

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 22nd day of July 2003.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order  
dated July 22, 2003)

JD/sa