

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

**OIL AND GAS DOCKET NO. 03-0238498**

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**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY BRICE E. POMYKAL D/B/A CO-KAL OIL CO. (167000), AS TO THE TINA SCHAWWE (06339) LEASE, WELL NOS. 1, 2, 3, 4, 7, 9, 10, 13, 15, 21, 22, 23 AND 24, AND THE A.B. CONKLIN (07662) LEASE, WELL NOS. 1, 2, 5, 6, 8 AND 13, BRENHAM FIELD, AUSTIN 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 January 20, 2005, and that the respondent, Brice E. Pomykal d/b/a Co-Kal Oil Co. (167000), 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. Brice E. Pomykal d/b/a Co-Kal Oil Co. (167000), ("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 "undeliverable as addressed, no forward order."
2. The returned certified receipt containing the Original Complaint and the Notice of Hearing mailed to Respondent's most recent P-5 address was returned to the Commission marked "undeliverable as addressed, no forward order" on July 19, 2001. The certified receipt has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. Brice E. Pomykal, as sole proprietor, 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.

4. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
5. Respondent designated itself to the Commission as the operator of Well Nos. 1, 2, 3, 4, 7, 9, 10, 13, 15, 21, 22, 23 and 24 on the Tina Schawe (06339) and Well Nos. 1, 2, 5, 6, 8 and 13 on the A.B. Conklin (07662) Lease ("subject wells"/"subject leases") by filing P-4 Forms (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective on July 1, 1969 for both of the subject leases and subject wells.
6. A trial amendment was granted to delete from the complaint the allegations that Well No. 30 on the Tina Schawe (06339) Lease was in violation of Statewide Rule 14(b)(2), because the well is not identified on the Commission's proration schedule and its physical location could not be verified by Commission inspectors.
7. According to Commission records the Respondent's Form P-5 (Organization Report) became delinquent on March 1, 2002. Respondent paid a fee of \$100.00 as its financial assurance at the time of its last P-5 renewal.
8. Well Nos. 1, 2, 3, 4, 7, 9, 10, 13, 15, 21, 22, 23 and 24 on the Tina Schawe (06339) Lease ceased production on or before March 31, 2003. Well Nos. 1, 2, 5, 6, 8 and 13 on the A.B. Conklin (07662) Lease ceased production on or before March 31, 2003.
9. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with, Statewide Rule 14.
10. 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.
11. The estimated cost to the State of plugging the subject wells is \$28,000.00 for Well Nos. 1, 2, 3, 4, 7, 9, 10, 13, 15, 21, 22, 23 and 24 on the Tina Schawe (06339) Lease and \$7,270.40 for Well Nos. 1, 2, 5, 6, 8 and 13 on the A.B. Conklin (07662) Lease.
12. Commission district office inspections were conducted on July 19, 2002, October 14, 2003, February 26, 2004 and June 21, 2004 for the Tina Schawe (06339) Lease. The signs or identification required to be posted at Well Nos. 4, 9, 13, 23 and 24 were missing.
13. Commission district office inspections were conducted on July 23, 2002, October 14, 2003, February 26, 2004 and June 21, 2004 for the A.B. Conklin (07662) Lease. The signs or identification required to be posted at Well No. 13 was missing.
14. Failure to properly identify a lease and wells by the posting of the sign required by Statewide Rule 3 has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.
15. Commission district office inspections were conducted on July 23, 2002, October 14, 2003

and June 21, 2004 for the A.B. Conklin (07662) Lease. Respondent had caused or allowed an unauthorized discharge of oil, affecting an area measuring 18' x 39' x 1" between Well No. 2 and the separator, and caused or allowed oil saturated soil to remain, affecting an unmeasured area at Well Nos. 1, 2, 5, 6 and 13.

16. No permit has been issued to Respondent for the discharge of oil and gas wastes on or from the subject lease.
17. The unpermitted discharge 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 or can leach into the ground and percolate through soils into groundwater supplies.
18. Commission district office inspections were conducted on July 23, 2002, October 14, 2003 and June 21, 2004 for the A.B. Conklin (07662) Lease. Respondent had caused or allowed the disrepair and or disintegration of the firewall for a storage tank located within 8' of a public road.
19. The Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject leases and 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.

#### **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 leases in compliance with Statewide 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 fire walls must be erected and kept around all permanent oil tanks, or battery of tanks, that are within 500' of any highway or public road.
7. Respondent is responsible for maintaining the subject lease 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.
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).

9. 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, Brice E. Pomykal, 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. Brice E. Pomykal d/b/a Co-Kal Oil Co. (167000), shall plug or otherwise place the Tina Schawe (06339) Lease, Well Nos. 1, 2, 3, 4, 7, 9, 10, 13, 15, 21, 22, 23 and 24 and the A.B. Conklin (07662) Lease, Well Nos. 1, 2, 5, 6, 8 and 13, Brenham Field, Austin County, Texas in compliance with applicable Commission rules and regulations; and
2. Brice E. Pomykal d/b/a Co-Kal Oil Co. (167000), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FORTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$42,500.00)**.

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 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.

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 24th day of January 2006.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order dated January 24, 2006)

MH/sa