

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

**OIL AND GAS DOCKET NO. 03-0259768**

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**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY NXL OIL, LLC (616960), AS TO THE MASTERSON IRR CO. FARM -B- (01105) LEASE, WELL NOS. 30, 32, 37, 38, 41 AND 42, DAMON MOUND FIELD, BRAZORIA 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 December 17, 2009 and that the respondent, NXL Oil, LLC (616960), 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. NXL Oil, LLC (616960), ("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 signed and returned to the Commission.
2. The returned certified receipt (green card) that was attached to the Original Complaint and the Notice of Hearing mailed to Respondent's most recent P-5 address, was signed and returned to the Commission on March 11, 2009. 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 December 14, 2007, Respondent filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Nicholas R. Lempke; Manager.
4. Nicholas R. Lempke, 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 Nos. 30, 32, 37, 38, 41 and 42 on the Masterson IRR Co. Farm -B- (01105) Lease ("subject wells"/"subject lease") by filing a Form P-4 (Producers Transportation Authority and Certificate of Compliance) with the Commission effective on September 5, 2007.
7. According to Commission records the Respondent's Form P-5 (Organization Report) became delinquent on January 15, 2009. Respondent had a \$25,000.00 cash deposit as its financial assurance at the time of its last P-5 renewal.
8. Well No. 30 on the Masterson IRR Co. Farm -B- (01105) Lease ceased production on or before March 2008.
9. Well Nos. 32, 37, 38, 41 and 42 ceased production on or before May 1999.
10. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with Statewide Rule 14.
11. 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.
12. The estimated cost to the State of plugging the subject wells is \$77,204.00.
13. The Statewide Rule 14(b)(2) plugging extension for Well No. 30 was denied on September 6, 2007 for an H-15 problem.
14. The Statewide Rule 14(b)(2) plugging extensions for Well Nos. 32, 37, 38, 41 and 42 were denied on September 6, 2007 for failure to file H-15 tests and Legal Enforcement plug orders.
15. Commission records indicate that no Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been approved for the Masterson IRR Co. Farm -B- (01105) Lease, Well Nos. 30, 32, 37, 38, 41 and 42. Commission records indicate a Form H-15 Fluid Level Test was performed on Well Nos. 30, 32, 37, 38 and 42 on February 3, 2009, but the test was not approved. Commission records indicate Well No. 41 has a historic well date of January 28, 1975, an H-15 test was due in May 2006 and the test has not been performed. Commission records further show that Masterson IRR Co. Farm -B- (01105) Lease, Well No. 30 has a historic well date of November 4, 1979; Well No. 37 has a historic well date of October 11, 1968; Well No. 38 has a historic well date of May 4, 1971; and Well No. 42 has a historic well date of April 15, 1975.

16. Commission records for Well No. 32 indicate that the well is at least 25 years old and requires an H-15 test.
17. Commission records indicate failed H-15 tests on Well Nos. 30, 32, 37, 38 and 42 and the wells have not been plugged. An H-15 test has not been performed on Well No. 41, and the well has not been plugged.
18. The Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject lease and 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 14(b)(2) and 14(b)(3).
4. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 14(b)(3), which requires the operator of any well more than 25 years old that becomes inactive shall plug the well or successfully conduct a fluid level or hydraulic pressure test establishing that the well does not pose a threat of harm to natural resources, including surface and subsurface water, oil and gas. .
5. Respondent is responsible for maintaining the subject lease and subject wells 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.
6. 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).

7. 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, Nicholas R. Lempke, 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. NXL Oil, LLC (616960), shall plug or otherwise place Well No. 30, Masterson IRR Co. Farm -B- (01105) Lease, Damon Mound Field, Brazoria County, Texas in compliance with applicable Commission rules and regulations;
2. NXL Oil, LLC (616960), shall plug Well Nos. 32, 37, 38, 41 and 42, Masterson IRR. Co. Farm -B- (01105) Lease, Damon Mound Field, Brazoria County, Texas in compliance with applicable Commission rules and regulations;
3. NXL Oil, LLC (616960), shall pay the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWENTY TWO THOUSAND DOLLARS (\$22,000.00)**.

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. GOVT. 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 18th day of May 2010.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order dated May 18, 2010)

MH/sa