

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

OIL AND GAS DOCKET NO. 03-0260381

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY E.M. & CHARLOTTE ANN DEFRIEND (210115), AS TO THE ALLENSON LEASE, DOMESTIC USE WELL NO. 6 (075140), NORTH LOUISE (SWANSON 2900) FIELD, ALLENSON LEASE, DOMESTIC USE WELL NO. 9 (112102), NORTH LOUISE (ALLENSON A 4040) FIELD, AND DEFRIEND LEASE, DOMESTIC USE WELL NO. 1 (153160), RAINOSHEK (ANOMALINA SAND) FIELD, WHARTON COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on July 23, 2009, and that the respondent, E.M. & Charlotte Ann DeFriend (210115), 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. E.M. & Charlotte Ann DeFriend (210115), ("Respondent") was given Notice of Hearing by certified mail, addressed to the most recent P-5 address on file with 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 February 23, 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 the most recent P-5 (Organization Report) filed with the Commission it was reported that its Joint Venturer consisted of the following individual(s): Mark E. DeFriend.
4. Mark E. DeFriend, 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 Domestic Use Well Nos. 6 (075140) and 9 (112102) on the Allenson Lease ("subject wells"/"subject leases") by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective on September 10, 1985.
7. Respondent designated itself to the Commission as the operator of Domestic Use Well No. 1 (153160) on the DeFriend Lease ("subject well"/"subject lease") by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective on January 1, 1995.
8. Commission District inspections were conducted on January 4, 2007, May 16, 2008, October 21, 2008 and January 20, 2009 for the Allenson Lease, Domestic Use Well No. 6 (075140). The sign or identification required to be posted at the lease entrance was illegible and the sign or identification required to be posted at the well was missing.
9. Commission District inspections were conducted on January 4, 2007, May 16, 2008, October 21, 2008 and January 20, 2009 for the Allenson Lease, Domestic Use Well No. 9 (112102). The sign or identification required to be posted at the well was missing.
10. Commission District inspections were conducted on January 4, 2007, May 16, 2008, October 21, 2008 and January 20, 2009 for the DeFriend Lease, Domestic Use Well No. 1 (153160). The signs or identification required to be posted at the lease entrance and the tank were missing and the sign or identification required to be posted at the well was illegible.
11. Failure to properly identify wells or a tank battery by the posting of the signs 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.
12. Production from Domestic Use Well Nos. 6 (075140) and 9 (112102) on the Allenson Lease ceased on or before January 4, 2007.
13. Production from Domestic Use Well No. 1 (153160) on the DeFriend Lease ceased on or before January 4, 2007.
14. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with Statewide Rule 14.
15. 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.
16. The estimated cost to the State of plugging the subject wells is \$25,607.00 for Domestic Use Well No. 6 (075140) on the Allenson Lease, \$33,858.00 for Domestic Use Well No. 9 (112102) on the Allenson Lease and \$35,747.00 for Domestic Use Well No. 1 (153160). On the DeFriend Lease.

17. The Respondent did not demonstrate good faith since it failed to timely 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 and 14(b)(2).
4. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 3, 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 leases 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, Mark E. DeFriend, 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. E.M. & Charlotte Ann DeFriend (210115), shall plug the Allenson Lease, Domestic Use Well No. 6 (075140), North Louise (SW Anson 2900) Field, Allenson Lease, Domestic Use Well No. 9 (112102), North Louise (Allenson A 4040) Field, and the Defriend Lease, Domestic Use Well No. 1 (153160), Rainoshek (Anomalina Sand) Field, Wharton County, Texas in compliance with applicable Commission rules and regulations.

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 18st day of August 2009.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated August 18, 2009)

JD/sa