

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

OIL AND GAS DOCKET NO. 03-0261074

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY POWDER RIVER BASIN GAS CORP. (673698), KIRBY LUMBER "A" (19842) LEASE, WELL NO. 1, WEST SEGNO FIELD, POLK COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on May 21, 2009, and that the respondent, Powder River Basin Gas Corp. (573698), failed to appear or respond to the Notice of Opportunity for 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. Powder River Basin Gas Corp. (673698), ("Respondent"), was given Notice of Opportunity for Hearing by certified mail, addressed to the most recent Form P-5 (Organization Report) address, which was tracked and has a confirmed date of delivery on April 13, 2009, with no response.
2. The returned certified receipt containing the Original Complaint and the Notice of Opportunity for Hearing, was delivered by the Post Office on April 13, 2009, with no return receipt to the Commission.
3. The returned certified receipt containing the Original Complaint and the Notice of Opportunity for Hearing sent to the President, Brian Fox, was signed and returned to the Commission on April 9, 2009, and has been on file with the Commission for 15 days, exclusive of the day of the receipt and day of issuance.
4. On March 18, 2008, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Brian Fox; President.

5. Brian Fox 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.
6. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
7. Respondent designated itself to the Commission as the operator of Well No. 1 on the Kirby Lumber "A" (19842) 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, 2006.
8. At the time of the hearing Respondent's P-5 (Organization Report) became delinquent on January 1, 2009. Respondent had \$50,000.00 cash as its financial assurance at the time of its last P-5 renewal.
9. Injection into the subject well ceased on or before February 28, 2007.
10. The Statewide 14(b)(2) plugging extension for the subject well was denied on May 22, 2008, due to a late H5 test.
11. The subject well has not been properly plugged in accordance with, and is not otherwise in compliance with Statewide Rule 14.
12. Usable quality groundwater 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 potential for pollution.
13. The estimated cost to the State of plugging the subject well is \$44,517.00.
14. Commission records indicate the Kirby Lumber "A" (19842) Lease was permitted as a secondary recovery well on June 19, 1991 (Permit No. 12903). A review of Commission records for the Kirby Lumber "A" (19842) Lease indicated the Commission Form H-10 (Annual Injection Well Monitoring Report) has not been filed for the 2007-2008 cycle.
15. Commission records indicate that the Kirby Lumber "A" (19842) Lease was permitted as a secondary recovery well on June 19, 1991 (Permit No. 12903). According to the terms of Permit No. 12903, a Commission Form H-5 pressure test must be performed annually on the subject well. Commission records indicate the most recent pressure test was performed on December 5, 2005.
16. Injection wells must pass a pressure test once every five years or with the frequency required by the wells permit to show that the well is not leaking, that waste is being confined to the permitted injection interval, and that useable quality water zones are properly isolated. Any injection of fluid down a wellbore could be a potential source of pollution. Without testing and supporting documentation, the Commission cannot determine if a well poses a threat to natural resources.

17. The Respondent has not demonstrated good faith since it failed to timely plug or otherwise 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.

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), 46(i) and 46(j).
4. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 46(i), which requires that the results of the monitoring shall be reported annually to the Commission on the prescribed form.
5. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 46(j), which requires that the mechanical integrity of an injection well shall be evaluated by conducting pressure tests to determine whether the well tubing, packer, or casing have sufficient mechanical integrity to meet performance standards.
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(c).
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, Brian Fox, 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. Powder River Basin Gas Corp. (673698), shall plug or otherwise place the Kirby Lumber "A" (19842) Lease, Well No. 1, West Segno Field, Polk County, Texas in compliance with applicable Commission rules and regulations; and
2. Powder River Basin Gas Corp. (673698), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00)**.

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 30th day of June 2009.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated June 30, 2009)

JD/sa