

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

OIL AND GAS DOCKET NO. 03-0269924

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY EMBRY SOLUTIONS, INC. (250920), AS TO THE FLOYD, T.H. (11436) LEASE, WELL NO. 1, HALLIDAY, SE (LEWISVILLE 8700) FIELD, MADISON COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on September 13, 2012, and that the respondent, Embry Solutions, Inc. (250920), 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. Embry Solutions, Inc. (250920) ("Respondent"), was given Notice of Opportunity for Hearing by certified mail, addressed to the most recent Form P-5 (Organization Report) address, which was signed and returned to the Commission.
2. The returned certified receipt containing the Original Complaint and the Notice of Opportunity for Hearing, was signed and returned to the Commission on August 2, 2012. 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 November 23, 2011, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Mark Embry; President.
4. Mark Embry, 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 No. 1 on the Floyd, T.H. (11436) Lease ("subject well"/"subject lease") by filing a Form P-4 (Producers Transportation Authority and Certificate of Compliance), effective June 18, 2010.

7. Respondent's P-5 (Organization Report) became delinquent on May 1, 2012. Respondent had a \$25,000 Bond as its financial assurance at the time of its last P-5 renewal.
8. Production from Well No. 1 on the Floyd, T.H. (11436) Lease ceased in November 2009.
9. The Statewide Rule 14(b)(2) plugging extension for Well No. 1 on the Floyd, T.H. (11436) Lease was denied for a non active P-5 (Organization Report).
10. The subject well has not been properly plugged in accordance with, and is not otherwise in compliance with Statewide Rule 14.
11. 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.
12. The estimated cost to the State for plugging Well No. 1 on the Floyd, T.H. (11436) Lease is \$111,330.00.
13. Commission District inspections were conducted on August 13, 2010, September 22, 2010, October 21, 2010, November 3, 2010, November 29, 2010, December 28, 2010, February 9, 2011 and June 8, 2012 for the Floyd, T.H. (11436) Lease. The sign or identification required to be posted at the lease entrance was missing and the sign or identification at the well displayed incorrect information.
14. Failure to properly identify a well 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. According to Commission records, Well No. 1 of the Floyd, T.H. Lease was completed on March 28, 1977, is more than 25 years old, inactive, unplugged and subject to the testing requirements. Commission records further indicate the subject well was due for a fluid level or hydraulic pressure test in June 2010. Respondent failed to test the well and file an approved Commission Form H-15 (Test On An Inactive Well More Than 25 Years Old).
16. Commission District inspections were conducted on August 13, 2010, September 22, 2010, October 21, 2010, November 3, 2010, November 29, 2010, December 28, 2010, February 9, 2011 and June 8, 2012 for the Floyd, T.H. (11436) Lease. There were two 55 gallon unmarked drums near the wellhead of Well No. 1. Respondent has failed to identify the drums and determine whether they contain hazardous oil and gas wastes.
17. The Respondent has not demonstrated good faith since it failed to timely plug or otherwise place all of the subject leases 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.
18. The Respondent has a history of Commission rule violations including the following docket(s):

Docket No. 03-0271502; Final Order Served: April 11, 2012.

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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, 14(b)(2), 14(b)(3) and 98(e)(1).
4. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 3, which requires that each property that produces oil, gas or geothermal resources and each well 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 Statewide Rule 14(b)(3), which requires that the owner, or operator of an oil, gas or geothermal resource well, must within thirty days after the completion of such well, or the plugging of such well, if the well is a dry hole, shall file with the Commission the appropriate completion or plugging report.
6. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 98(e)(1), which requires the operator of a facility where waste is generated shall determine if such waste is hazardous oil and gas waste.
7. 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.
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©.
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, Mark Embry, 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. Embry Solutions, Inc. (250920), shall plug or otherwise place the Floyd, T.H. (11436) Lease, Well No. 1, Halliday, SE (Lewisville 8700) Field, Madison County, Texas in compliance with applicable Commission rules and regulations; and

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2. Embry Solutions, Inc. (250920), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00)**.

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 12th day of February 2013.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated February 12, 2013)

MFE/sa