

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

OIL AND GAS DOCKET NO. 6E-0280729

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY TXX OPERATING, LLC (875372), AS TO THE 1ST. ST. BK. OF OVERTON (06944) LEASE, WELL NO. 12, AND THE JOHNSON, H. ETAL (07881) LEASE, WELL NOS. 8, 9 AND 10, EAST TEXAS FIELD, RUSK COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on June 20, 2013, and that the respondent, TXX Operating, LLC (875372), 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. TXX Operating, LLC (875372), ("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.
2. The certified receipt containing the Original Complaint and the Notice of Opportunity for Hearing, was signed on June 18, 2013. The electronic certified receipt is included in the file and has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On March 21, 2013, Respondent, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): James Douglas Eger; Member.
4. James Douglas Eger, 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. 12 on the 1st St. Bk. of Overton (069440 Lease and Well Nos. 8, 9 and 10 on the Johnson, H. Etal (07881) Lease ("subject wells"/"subject lease") by filing a P-4 Form (Producers Transportation Authority and Certificate of Compliance) with the Commission effective on April 1, 2011 for both of the leases.
7. Respondent's P-5 (Organization Report) became delinquent on March 1, 2013. Respondent had \$50,000 cash as its financial assurance at the time of its last P-5 renewal.
8. Production from Well No. 12 on the 1st St. Bk. Of Overton (06944) Lease ceased in July 2011.
9. Production from Well Nos. 8, 9, and 10 on the Johnson, H. Etal (07881) Lease ceased in August 2011.
10. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with, Statewide Rule 14.
11. The Statewide 14b2 plugging extensions for Well No. 12 on the 1st St. Bk. of Overton (06944) Lease was denied on August 29, 2005 for failure to file an H-15.
12. The Statewide 14b2 plugging extensions for Well Nos. 8 and 9 on the Johnson, H. Etal (07881) Lease were denied on July 28, 2010 for failure to file H-15's.
13. The Statewide 14b2 plugging extensions for Well No. 10 on the Johnson, H. Etal (07881) Lease was denied on July 21, 2009 for an H-15 problem.
14. 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.
15. The total estimated cost to the State of plugging Well No. 12 on the 1st St. Bk. Of Overton (06944) Lease is \$34,700.00.
16. The total estimated cost to the State of plugging Well Nos. 8, 9 and 10 on the Johnson, H. Etal (07881) Lease is \$104,100.00.
17. Commission District inspections were conducted on January 10, 2012, March 27, 2012, May 29, 2012 and September 24, 2012 for the Johnson, H. Etal (07881) Lease. The signs or identification required to be posted at the lease entrance and tank battery were missing.

18. 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.
19. A Commission District inspection was conducted on March 27, 2012 for the Johnson, H. Etal (07881) Lease. There was oil and oily dirt around Well No. 9 measuring approximately 5' x 20'. Follow up inspections were conducted on May 29, 2012 and September 24, 2012 show the affected area around Well No. 9 has not been cleaned and that a leak from a stock tank is affecting an area approximately 10' x 10'.
20. No permit has been issued to Respondent for the discharge of oil and gas wastes on or from the subject lease.
21. The unpermitted discharges 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.
22. Commission District inspections were conducted on March 27, 2012, May 29, 2012 and September 24, 2012 for the Johnson, H. Etal (07881) Lease. Well No. 10 is open to the atmosphere.
23. Maintenance of surface control by wellhead assemblies is necessary to prevent the discharge of oil and gas wastes on the subject lease constituting a hazard to public health and safety because the discharges of oil and gas wastes onto land surface can migrate into surface or subsurface waters.
24. According to Commission records, Well No. 12 of the 1st St. Bk of Overton (06944) Lease was completed prior to 1984, is more than 25 years old, inactive, unplugged and subject to 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 timely test the well and failed to timely file an approved Commission Form H-15. Commission records indicate a successful H-15 test was conducted on March 23, 2013.
25. The Respondent has not demonstrated 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, 8(d)(1), 13(b)(1)(B), 14(b)(2) and 14(b)(3).
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 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 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 Statewide Rule 13(b)(1)(B), which requires that surface control of all wells be maintained with wellhead assemblies.
7. 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.
8. 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.
9. 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.
10. 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, James Douglas Eger, 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. TXX Operating, LLC (875372), shall plug or otherwise place the 1st St. Bk. of Overton (06944) Lease, Well No. 12, and the Johnson, H. Etal (07881) Lease, Well Nos. 8, 9, and 10, East Texas Field, Rusk County, Texas in compliance with applicable Commission rules and regulations; and
2. TXX Operating, LLC (875372), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **THIRTY THOUSAND TWO HUNDRED AND SIX DOLLARS (\$30,206.00)**.

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 4th day of February 2014.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated February 4, 2014)

MRC/sa