

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

OIL AND GAS DOCKET NO. 7B-0268988

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY BURNING DAYLIGHT, INC. (110504), AS TO THE DAVIS, EDGAR -A- (11449) LEASE, WELL NO. A1, AND THE DAVIS ESTATE "C" (11697) LEASE, WELL NO. 1, EDGAR (FRY UPPER) FIELD, TAYLOR COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on May 19, 2011 and that the respondent, Burning Daylight, Inc. (110504), 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. Burning Daylight, Inc. (110504), ("Respondent") was given Notice of Opportunity for Hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report.
2. The returned certified receipt containing the Original Complaint and the Notice of Opportunity for Hearing was mailed to Respondent's most recent P-5 address, was signed and returned to the Commission on March 15, 2011. The returned certified receipt attached to the Original Complaint and the Notice of Opportunity for Hearing mailed to the Respondent's President, Charles Holden, was received and signed on March 3, 2011. The confirmation and electronic receipt has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On October 21, 2009, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Charles Holden; President.
4. Charles Holden, was 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. A1 on the Davis, Edgar -A- (11449) Lease and Well No. 1 on the Davis Estate "C" (11697) Lease ("subject wells"/"subject leases") by filing a Form P-4 (Producers Transportation Authority and Certificate of Compliance) with the Commission on April 1, 2007 for both of the leases.
7. Commission records indicate that Respondent's Form P-5 (Organization Report) became delinquent on November 1, 2010. Respondent had a \$25,000.00 Bond as its financial assurance at the time of its last P-5 renewal.
8. Well No. A1 on the Davis, Edgar -A- (11449) Lease ceased production in October 2001.
9. Well No. 1 on the Davis Estate "C" (11697) Lease ceased production in December 2000.
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 extension for Well No. A1 on the Davis, Edgar -A- (11449) Lease was denied in January 2002 for failure to file and H-15.
12. The Statewide 14b2 plugging extension for Well No. 1 on the Davis Estate "C" (11697) Lease was denied on March 18, 2009 for failure to file an H-15.
13. 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.
14. The estimated cost to the State of plugging Well No. A1 on the Davis, Edgar -A- (11449) Lease is \$7,500.00.
15. The estimated cost to the State of plugging Well No. 1 on the Davis Estate "C" (11697) Lease is \$7,500.00.
16. According to Commission records Well No. A1 on the Davis, Edgar -A- (11449) Lease was completed in February 1971 and Well No. 1 on the Davis Estate "C" (11697) Lease was completed in February 1972. The wells are more than 25 years old, inactive, unplugged and subject to testing requirements. Commission records further indicate the subject wells were due for fluid level of hydraulic pressure tests in February 2009. Respondent has failed to successfully test the well and file an approved Commission Form H-15 (Test On An Inactive Well More Than 25 years Old).

17. The Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject leases 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 potential threat of harm to natural resources, including surface and subsurface water, oil and gas.
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.
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, Charles Holden 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. Burning Daylight, Inc. (110504), shall plug the Davis, Edgar -A- (11449) Lease, Well No. A1, and the Davis Estate "C" (11697) Lease, Well No. 1, Edgar (Fry Upper) Field, Taylor County, Texas in compliance with applicable Commission rules and regulations;
2. Burning Daylight, Inc. (110504), shall be assessed by the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **EIGHT THOUSAND DOLLARS (\$8,000.00)**.

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 11th day of October 2011.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated October 11, 2011)

JMD/sa