

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

**OIL AND GAS DOCKET NO. 7B-0275481**

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**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY XOPHI ENERGY, LLC (945927), AS TO THE WHALEN B (18969) LEASE, WELL NO. 1, SAGERTON, SOUTH FIELD, AND THE WHALEN A (19536) LEASE, WELL NO. 1 B, SAGERTON, SOUTH (KING SAND) FIELD, HASKELL COUNTY, TEXAS**

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**FINAL ORDER**

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on July 12, 2012 and that the respondent, Xophi Energy, LLC (945927), 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. Xophi Energy, LLC (945927), ("Respondent") was given a 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 attached to the Original Complaint and the Notice of Opportunity for Hearing mailed to Respondent's most recent P-5 address, was returned to the Commission marked "return to sender, unable to forward" on June 5, 2012. The certified electronic verification has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On March 23, 2010, Respondent, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Richard Ashton, III; President.
4. Richard Ashton, III, 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. 1 on the Whalen B (18969) Lease and Well No. 1 B on the Whalen A (19536) Lease ("subject wells"/"subject leases") by filing P-4 Forms (Producer's Transportation Authority and Certificate of Authority) effective on December 1, 2006 for both of the wells and leases.

7. Commission records indicate that Respondent's Form P-5 (Organization Report) became delinquent on February 1, 2011. Respondent had a \$50,000.00 Bond as its financial assurance at the time of its last P-5 renewal.
8. Production from Well No. 1 on the Whalen B (18969) Lease ceased in December 2005.
9. Production from Well No. 1 B on the Whalen A (19536) Lease ceased in August 2003.
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 Rule 14b2 extension for Well No. 1 on the Whalen B (18969) Lease was denied on December 3, 2008 for failure to file an H15 and an inactive P-5.
12. The Statewide Rule 14b2 extension for Well No. 1 B on the Whalen A (19536) Lease was denied on December 3, 2008 for failure to file an H15 and an inactive P-5.
13. Usable quality groundwater in the area could have been 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.
14. The estimated cost to the State of plugging Well No. 1 on the Whalen B (18969) Lease is \$9,600.00.
15. The estimated cost to the State of plugging Well No. 1 B on the Whalen A (19536) Lease is \$9,600.00.
16. Commission District inspections were conducted on July 19, 2010, October 28, 2010 and June 8, 2012 for the Whalen B (18969) Lease. The sign or identification required to be posted at Well No. 1 was missing.
17. 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.
18. The Respondent did not demonstrate 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.
19. Respondent has a prior history of Commission rule violations including the following docket(s):  
  
Docket No. 01-0261382; Final Order Served: December 15, 2009; and  
Docket No. 7C-0260958; Final Order Served: January 13, 2011.

### **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 responsible for maintaining the subject lease in compliance with Statewide Rules 3 and 14(b)(2).

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 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.
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, Richard Ashton, III, 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. Xophi Energy, LLC (945927), shall plug the Whalen B (18969) Lease, Well No. 1, Sagerton, South Field, and the Whalen A (19536) Lease, Well No. 1 B, Sagerton, South (King Sand) Field, Haskell County, Texas in compliance with applicable Commission rules and regulations;
2. Xophi Energy, LLC (945927), shall pay the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$6,250.00)**.

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 7<sup>th</sup> day of August 2012.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order dated August 7, 2012)

TJJ/sa