

**RAILROAD COMMISSION OF TEXAS  
OFFICE OF GENERAL COUNSEL  
OIL AND GAS SECTION**

**OIL AND GAS DOCKET NO. 09-0232917**

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**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY B.W. OIL & GAS, INC. (042179), AS TO THE ABERCROMBIE (12059) LEASE, WELL NOS. 2, 3, 4 AND 5, ARCHER COUNTY REGULAR FIELD, ARCHER 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 March 6, 2003, and that the respondent, B.W. Oil & Gas, Inc. (042179), failed to appear or respond to the notice. 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. B.W. Oil & Gas, Inc. (042179), ("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, which was returned to the Commission marked "unclaimed."
2. The returned certified receipt containing the Original Complaint and the Notice of Hearing was returned to the Commission marked "unclaimed" on February 13, 2003. The returned certified receipt (green card) that was attached to the Notice of Hearing, sent to the Resident Agent at Townes & Hageman Inc., was signed and returned to the Commission on January 24, 2003. The receipts have been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On July 6, 2000, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Janice G. Bowerman; President.
4. Respondent designated itself to the Commission as the operator of Well Nos. 2, 3, 4 and 5 on the Abercrombie (12059) Lease ("subject wells"/"subject lease") by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective on July 1, 2000.
5. According to Commission records the Respondent's Form P-5 (Organization Report) became delinquent on July 1, 2001. Respondent paid a fee of \$750.00 as financial assurance at the time of its last Form P-5 renewal.

6. The subject wells ceased production on or before November 30, 2001.
7. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with, Statewide Rule 14.
8. 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.
9. The estimated cost to the State of plugging the subject wells is \$7,200.00.
10. Commission district office inspections were conducted on October 4, 1999, May 31, 2000, August 7, 2000, November 20, 2000, January 18, 2002, February 12, 2002, March 12, 2002, March 21, 2002, May 1, 2002 and September 4, 2002 for the Abercrombie (12059) Lease. The sign and/or identification required to be posted at the lease entrance displayed incorrect information and the signs and/or identification required to be posted at each well site were missing.
11. Commission district office inspections were conducted on January 18, 2002, February 12, 2002, February 26, 2002, March 12, 2002, March 21, 2002, May 1, 2002 and September 4, 2002 for the Abercrombie (12059) Lease. Respondent had caused or allowed the discharge of oil at the base of Well No. 5 affecting areas measuring 1' x 2' x 2-3" and oil-saturated soil measuring 4' x 20' x 6'. A 9' x 21' pit also contained 2' of oil and water.
12. No permit has been issued to the Respondent for the discharge of oil and gas wastes on or from the subject lease.
13. 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, leaching into the ground, and percolation through soils into groundwater supplies.
14. Commission district office inspections were conducted on October 4, 1999, May 31, 2000, August 7, 2000, November 20, 2000, January 18, 2002, February 12, 2002, March 12, 2002, March 21, 2002, May 1, 2002 and September 4, 2002 for the Abercrombie (12059) Lease. Respondent had failed to empty and backfill a basic sediment pit within 120 days of its use.
15. Unfilled pits constitute a hazard to public health and safety because of the potential for illegal dumping in the pits and the potential for surface run-off to collect in the pit and seep into subsurface waters.
16. Commission district office inspections were conducted on October 4, 1999, May 31, 2000, August 7, 2000, November 20, 2000, January 18, 2002, February 12, 2002, March 12, 2002, March 21, 2002, May 1, 2002 and September 4, 2002 for the Abercrombie (12059) Lease. Well No. 5 did not have a wellhead assembly and had casing open to the atmosphere.
17. Maintenance of surface control by wellhead assembly 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.

18. The Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject lease and the 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(a), 8(d)(1), 8(d)(4)(G)(i)(IV), 13(b)(1)(B) and 14(b)(2).
4. Respondent is responsible for maintaining the subject lease in compliance with Rule 3(a), 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 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 Rule 8(d)(4)(G)(i)(IV), which requires basic sediment pits, flare pits, fresh mining water pits, and water condensate pits to be dewatered, backfilled and compacted within 120 days of final cessation of use of the pits.
7. Respondent is responsible for maintaining the subject lease in compliance with all applicable Commission rules and for properly plugging the subject wells 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(c) (Vernon 2001).

**IT IS ORDERED THAT** within 30 days from the day immediately following the date this order becomes final:

1. B.W. Oil & Gas, Inc. (042179), shall plug or otherwise place the Abercrombie (12059) Lease, Well Nos. 2, 3, 4 and 5, Archer County Regular Field, Archer County, Texas in compliance with applicable Commission rules and regulations; and
2. B.W. Oil & Gas, Inc. (042179), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **ELEVEN THOUSAND NINE HUNDRED FIFTY DOLLARS (\$11,950.00)**.

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 order is served on the parties.

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 20th day of May 2003.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order dated May 20, 2003)

JD/sa