

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

OIL AND GAS DOCKET NO. 09-0257290

**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY KELLY MAHLER
D/B/A KELLY MAHLER OPERATING (522276), AS TO THE YOUNG (22260) LEASE, WELL
NOS. 1 AND 2, YOUNG COUNTY REGULAR FIELD, YOUNG COUNTY, TEXAS**

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on August 28, 2008, and that the respondent, Kelly Mahler d/b/a Kelly Mahler Operating (522276), failed to appear or respond to the Notice of 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. Kelly Mahler d/b/a Kelly Mahler Operating (522276), ("Respondent") was given Notice of Hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report, which was signed and returned to the Commission.
2. The returned certified receipt (green card) that was attached to the Original Complaint and the Notice of Hearing mailed to Respondents, most recent P-5 address, was signed and returned to the Commission on July 24, 2008. 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 September 26, 2007, Respondent, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Kelly Mahler; Owner.
4. Kelly Mahler, as sole proprietor, 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 Nos. 1 and 2 on the Young (22260) Lease ("subject wells"/"subject lease") by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective on November 1, 1990.
7. According to Commission records the Respondent's Form P-5 (Organization Report) is active. Respondent has a \$50,000.00 Letter of Credit as its financial assurance.
8. Production from the Well No. 2 ceased on or before February 28, 2001.
9. The subject well has not been properly plugged in accordance with, and is not otherwise in compliance with Statewide Rule 14.
10. 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 well. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
11. The total estimated cost to the State of plugging Well No. 2 is \$2,600.00.
12. No Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the Young (22260) Lease, Well No. 2. The Young (22260) Lease, Well No. 2, was completed on May 20, 1982, there has not been any production reported since February 28, 2001, an H-15 test was due by May 2007, and the well has not been plugged.
13. On August 13, 2008, Well No. 2 on the Young (22260) Lease was tested. The H-15 was "not approved", the top of the fluid level in the well was less than 250' below the base of usable quality water.
14. Commission records reflect that on July 2, 2007, the Commission gave Respondent notice by certified mail of the alleged facts or conduct of the Respondent in the operations, or production, of oil or gas from the Young (22260) Lease, that appeared to violate the oil and gas conservation laws of this state, or rules or orders of the Commission adopted under those laws, to warrant the cancellation of the certificate of compliance. Said notice gave Respondent an opportunity to show compliance with all requirements of law for retention of the certificate of compliance. In this instance, the entire lease was severed due to a delinquent H-15 test on Well No. 2.
15. Commission records reflect that Respondent did not timely show compliance with all requirements of law for retention of the certificate of compliance and, as a result, the certificate of compliance for the Young (22260) Lease, was cancelled, and Respondent given notice of such cancellation, on August 1, 2007.

16. Injection activity reports filed by Respondent with the Commission for the Young (22260) Lease, Well No. 1, from August, September, October and November 2007, show Respondent injected 4,839 barrels of fluids into Well No. 1 on the Young (22260) Lease, after the certificate of compliance had been canceled and before a new certificate of compliance had been issued. Commission records show that Well No. 1 on the subject lease was permitted for salt water injection, secondary recovery, under Permit No. 09129, dated November 19, 1982.
17. By injecting into Well No. 1 on the Young (22260) Lease, after notice from the Commission that the certificate of compliance for the lease had been canceled and before a new certificate of compliance had been issued, Respondent violated Statewide Rule 73(i) and the Tex. Nat. Res. Code Ann. §85.166.
18. 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.
19. The Respondent has not demonstrated good faith since it failed to timely plug or otherwise place the subject lease 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 14, 73(i) and Tex. Nat. Res. Code Ann. §85.166.
4. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 73(i), which requires that the operator of such well shall not produce oil, gas, or geothermal resources from that well until a new certificate of compliance with respect to the well has been issued by the Commission.
5. Respondent is responsible for maintaining the subject lease 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(c).

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, Kelly Mahler, 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. Kelly Mahler d/b/a Kelly Mahler Operating, LLC (522276), shall plug Well Nos. 1 and 2, Young (22260) Lease, Young County Regular Field, Young County, Texas in compliance with applicable Commission rules and regulations; and
2. Kelly Mahler d/b/a Kelly Mahler Operating, LLC (522276), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FIVE THOUSAND DOLLARS (\$5,000.00) less THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$3,750.00) already received.**

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 10th day of February 2009.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order
dated February 10, 2009)

JD/sa