

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

OIL AND GAS DOCKET NO. 09-0259795

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY XSTAR RESOURCES, LLC (945934), AS TO THE MCCLOUD COMMERCIAL DISPOSAL (24219) LEASE, JACK COUNTY REGULAR FIELD, JACK COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on November 17, 2011 and that the respondent, XStar Resources, LLC (945934), 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. XStar Resources, LLC (945934), ("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 signed and returned to the Commission on October 3, 2011. 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 April 9, 2010, Respondent, filed an Organization Report (Form P-5) with the Commission reporting that its members consisted of the following individual(s): Mark McBryde; Member/President.
4. Mark McBryde, 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 the McCloud Commercial Disposal (24219) Lease ("subject lease") by filing a P-4 Form (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective on January 1, 2010.

7. Commission records indicate that Respondent's Form P-5 (Organization Report) is active. Respondent has a \$50,000.00 Bond as its financial assurance.
8. Commission District inspection reports were conducted on June 10, 2010, October 28, 2010 and July 18, 2011 on the McCloud Commercial Disposal (24219) Lease. There was an approximate 4" area around the 1000 barrel steel tank affected with basic sediment and oil stained soil. In addition, multiple areas around the facility measuring approximately 200' x 400' were found affected with scattered oil and basic sediment with stained and saturated soil.
9. No permit has been issued to the Respondent for the discharge of oil and gas wastes on or from the subject lease.
10. 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.
11. According to Commission records, Respondent plugged Well No. 1 of the McCloud Commercial Disposal (24219) Lease on September 30, 2008. Commission District inspections conducted on June 10, 2010, October 28, 2010 and July 18, 2011 for the McCloud Commercial Disposal (24219) Lease indicate that all equipment has not been removed from the lease. A steel tank, concrete bases and blocks, empty drums and other junk and trash remain on the lease.
12. A Commission District inspection conducted on November 29, 2011, show the bottom of the water tank remains with basic sediment, there is an area measuring approximately 4' x 8' x 14" on the outside of the east side of the tank. The remainder of the tank has been hauled away from the facility. Old 4" hoses, 2" pipe and trash remain along the fence on the North side of the old tank.
13. A Commission District inspection was conducted on January 10, 2008 for the McCloud Commercial Disposal (24219) Lease. There was a background NORM reading of 12 uR/hr and a reading of 480 uR/hr at the 1000 and 500 barrel tanks, 370 uR/hr at the 300 barrel tanks and 1700 uR/hr at the above ground pit. The inspection further revealed that neither the tanks nor the pit were identified as NORM. Subsequent inspection reports made on August 29, 2008 and February 11, 2009 showed that although the tanks had been labeled NORM, the permitted pit, above ground pit and equipment still had not. An April 27, 2009 inspection revealed a NORM reading of 800 uR/hr at the above ground pit which remained unidentified as NORM although the equipment was found labeled. Follow up inspections conducted on June 10, 2010, October 28, 2010 and July 8, 2011 indicate that while the pits had been backfilled, not all of the equipment had been removed. A NORM survey of the facility indicated three separate areas with readings of > 50 mR/hr on the surface of the soil and a background of 8 uR/hr. A Commission District inspection conducted on November 29, 2011 show the NORM survey had a ready of 10 uR/hr, Max 360 uR/hr around the bottom of the old tank, with no NORM sign posted.
14. Respondent has a prior history of Commission rule violations including the following docket(s):

Docket No. 09-0260428; Final Order Served: March 11, 2009.

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 8(d)(1), 14(d)(12) and 16 TAC §4.605.
4. 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.
5. Respondent was responsible for maintaining the subject lease in compliance with Statewide Rule 14(d)(12), which requires that the operator shall fill the rathole, mouse hole, and cellar, and shall empty all tanks, vessels, related piping and flowlines that will not be actively used in the continuing operation of the lease within 120 days after plugging work is completed. Within the same 120 day period, the operator shall remove all such tanks, vessels, and related piping, remove all loose junk and trash from the location, and contour the location to discourage pooling of surface water at or around the facility site.
6. Respondent is responsible for maintaining the subject lease 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.
7. 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.
8. 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, Mark McBryde, 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. XStar Resources, LLC (945934), shall place the McCloud Commercial Disposal (24219) Lease, Jack County Regular Field, Jack County, Texas in compliance with applicable Commission rules and regulations;
2. XStar Resources, LLC (945934), shall pay the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **ELEVEN THOUSAND FOUR HUNDRED DOLLARS (\$11,400.00)**.

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 April 2012.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated April 11, 2012)

MC/sa