

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

OIL AND GAS DOCKET NO. 01-0261382

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY XOPHI ENERGY, LLC (945927), AS TO THE POWELL, C.Y., JR. (05689) LEASE, WELL NO. 1 B, LENTZ FIELD, BASTROP COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on October 1, 2009 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 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 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 Respondent's most recent P-5 address, was signed and returned to the Commission on May 14, 2009. 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 February 5, 2009, Respondent filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): William Thorne; Vice-President.
4. William Thorne, 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 No. 1 B on the Powell, C.Y., Jr. (05689) Lease ("subject well"/"subject lease") by filing a Form P-4 (Producers Transportation Authority and Certificate of Compliance) with the Commission effective on December 1, 2006.
7. According to Commission records the Respondent's Form P-5 (Organization Report) is active. Respondent has a \$50,000.00 Bond as its financial assurance.
8. The subject well ceased production on or before July 2007.
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 estimated cost to the State of plugging the subject well is \$5,600.00.
12. The Statewide Rule 14(b)(2) plugging extension for the subject well was cancelled on September 10, 2008, for failure to file a Good Faith Claim to operate.
13. According to Commission records, Well No. 1 B of the Powell, C.Y., Jr. (05689) Lease was completed in May 1978, is more than 25 years old, inactive, unplugged and subject to the testing requirements of Statewide Rule 14(b)(3). Commission records further indicate the subject well was due for a fluid level or hydraulic pressure test in October 2008. Respondent has failed to test the well and file an approved Commission Form H-15 (Test On An Inactive Well More Than 25 Years Old).
14. The Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject lease and well 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 doesn't 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 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(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, William Thorne, 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 Powell, C.Y., Jr. (05689) Lease, Well No.1 B, Lentz Field, Bastrop County, Texas in compliance with applicable Commission rules and regulations; and
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 **FOUR THOUSAND DOLLARS (\$4,000.00)**.

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 15th day of December 2009.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated December 15, 2009)

MH/sa