

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 09-0284037

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY WHITTEN ENERGY CORP. (921182), AS TO THE HAMILTON, G.B. (SHALLOW) (07128) LEASE, WELL NOS. 1, 4, 5, 6, 7, 8, 9, 11G, 12, 13, 23, 24G, 30W, 34W, 35W, 36W, 37W, 40, 41, 42, B 2 AND C 2W, 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 January 16, 2014, and that the respondent, Whitten Energy Corp. (921182), 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. Whitten Energy Corp. (921182), ("Respondent"), was given Notice of Hearing by certified mail, addressed to the most recent Form P-5 (Organization Report) address.
2. The certified and regular envelopes containing the Original Complaint and the Notice of Hearing, were sent to the most recent P-5 address. However, the USPS has no record of delivery. The electronic verification has been on file with the Commission for 15 days, exclusive of the day of the receipt and day of issuance.
3. On December 30, 2010, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Donald G. Whitten, President; and Marye L. Whitten, Vice President.
4. Donald G. Whitten, 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. Marye L. Whitten, 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.

OIL AND GAS DOCKET NO. 09-0284037

6. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
7. Respondent designated itself to the Commission as the operator of Well Nos. 1, 4, 5, 6, 7, 8, 9, 11G, 12, 13, 23, 24G, 30W, 34W, 35W, 36W, 37W, 40, 41, 42, B 2 and C 2W on the Hamilton, G.B. (Shallow) (07128) Lease ("subject wells"/"subject lease") by filing a P-4 Form (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective on January 9, 1999.
8. Respondent's P-5 (Organization Report) became delinquent on December 1, 2011. Respondent had a \$50,000 Letter of Credit as its financial assurance at the time of its last P-5 renewal.
9. The subject wells ceased production on or before December 2000.
10. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with Statewide Rule 14.
11. Usable quality groundwater 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 potential for pollution.
12. The total estimated cost to the State for plugging the subject wells on the Hamilton, G.B. (Shallow) (07128) Lease is \$101,400.00.
13. The Statewide 14b2 plugging extensions for Well Nos. 4, 5, 6, 7, 8, 9, 11G, 12, 13, 23, 24G, 35W, 36W and 37W on the Hamilton, G.B. (Shallow) (07128) Lease were denied on December 30, 2002 for H-15 (Test On An Inactive Well More Than 25 Years Old) problems.
14. The Statewide 14b2 plugging extensions for Well Nos. 30W and C 2W on the Hamilton, G.B. (Shallow) (07128) Lease were denied on December 3, 2008 for H-5 (Disposal/Injection Well Pressure Test) issues.
15. The Statewide 14b2 plugging extensions for Well Nos. 1, 34W, 40, 41, 42 and B 2 on the Hamilton, G.B. (Shallow) (07128) Lease were denied on December 30, 2002 for failure to file H-15's (Test On An Inactive Well More Than 25 Years Old).
16. 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.

OIL AND GAS DOCKET NO. 09-0284037

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 Rule 14(b)(2).
4. 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.
5. 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.
6. 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, Donald G. Whitten, 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.
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, Marye L. Whitten, 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.

OIL AND GAS DOCKET NO. 09-0284037

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

1. Whitten Energy Corp. (921182), shall plug the Hamilton, G.B. (Shallow) (07128) Lease, Well Nos. 1, 4, 5, 6, 7, 8, 9, 11G, 12, 13, 23, 24G, 30W, 34W, 35W, 36W, 37W, 40, 41, 42, B 2 and C 2W, Young County Regular Field, Young County, Texas; in compliance with applicable Commission rules and regulations
2. Whitten Energy Corp. (921182), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **SIXTY FOUR THOUSAND FIVE HUNDRED NINETY TWO DOLLARS (\$64,592.00)**.

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 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 12th day of August 2014.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated August 12, 2014)

LMV/sa