

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 10-0299301

**ENFORCEMENT ACTION AGAINST MCMINN OPERATING COMPANY, INC.
(OPERATOR NO. 554070) FOR VIOLATIONS OF STATEWIDE RULES ON THE
SAGER LEASE (LEASE ID NO. 06296), WELL NO. 1, PERRYTON (MORROW,
UPPER) FIELD, OCHILTREE COUNTY, TEXAS**

FINAL ORDER

The Railroad Commission of Texas (“Commission”) finds that after statutory notice the captioned enforcement proceeding was heard by a Commission Administrative Law Judge on March 10, 2016 and that the respondent, McMinn Operating Company, Inc., 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, 16 TEX. ADMIN. CODE § 1.49, and after being duly submitted to the Commission at a conference held in its offices in Austin, Texas, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. McMinn Operating Company, Inc. (“Respondent”), Operator No. 554079, was sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to the most recent Commission Form P-5 (Organization Report) (“Form P-5”) address. Thomas J. McMinn and Dianne S. McMinn, Respondent’s officers identified on the most recent Form P-5, were sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to their last known address.
2. The certified mail envelopes containing the Original Complaint and the Notice of Opportunity for Hearing sent to Respondent, Thomas J. McMinn and Dianne S. McMinn were returned to the Commission on February 22, 2016. The first class mail was not returned. Record of the return of certified mail has been on file with the Commission for more than 15 days, exclusive of the day of receipt and day of issuance. Respondent was given more than 30 days’ notice of the Original Complaint and Notice of Opportunity for Hearing. Respondent has not entered into an agreed settlement order, filed an answer or requested a hearing.
3. On October 24, 2012, Respondent, a corporation, filed a Form P-5 with the Commission reporting that its officers consist of the following individual(s): Thomas J. McMinn, President; and Dianne S. McMinn, Treasurer.

4. Thomas J. McMinn was in a position of ownership or control of Respondent, as defined in section 91.114 of the Texas Natural Resources Code, during the time period of the violations of Commission rules committed by Respondent.
5. Dianne S. McMinn was in a position of ownership or control of Respondent, as defined in section 91.114 of the Texas Natural Resources Code, during the time period of the violations of Commission rules committed by Respondent.
6. Respondent's Form P-5 is delinquent. Respondent had a \$25,000 cash deposit as its financial assurance at the time of the last Form P-5 annual renewal submission.
7. The violations of Commission rules committed by Respondent are related to safety and the control of pollution.
8. Respondent designated itself to the Commission as the operator of the Sager Lease (Lease ID No. 06296), Well No. 1, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective June 1, 2009, approved June 12, 2009.
9. Commission inspection reports made on September 9, 2015, October 8, 2015, and November 24, 2015, and reports filed by Respondent with the Commission reflecting zero production since October 2013, show that the Sager Lease, Well No. 1 has been inactive for a period greater than one year. Production from the subject well ceased on or before October 2013.
10. No work-overs, re-entries, or subsequent operations have taken place on the subject well within the last twelve months; the subject well has not been properly plugged in accordance with Statewide Rule 14, 16 TEX. ADMIN. CODE § 3.14 and no plugging extension is in effect for the subject well as allowed by Statewide Rule 14. The subject well is not otherwise in compliance with Statewide Rule 14.
11. 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, in violation of Statewide Rules 14(b)(2), constitute a cognizable threat to the public health and safety because of the potential of pollution.
12. The total estimated cost to the State for plugging the Sager Lease, Well No. 1 is \$139,763.80.
13. Commission inspection reports made on September 9, 2015, October 8, 2015, and November 24, 2015 for the Sager Lease show that the sign or identification required to be posted at the tank displayed the incorrect operator and Railroad Commission identification number assigned to the well.

14. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rule 3(3), may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergency, which can result in delays in remedying a violation or emergency.
15. Commission inspection reports made on September 9, 2015, October 8, 2015, and November 24, 2015 on the Sager Lease show that Respondent failed to properly screen the open produced water tank and it was presenting a hazard to birds.
16. Failing to properly screen or take other protective measures, as set forth in Statewide Rule 22(b), regarding open-top tanks, skimming pits, and/or collecting pits can cause harm to birds.
17. Commission inspection reports made on September 9, 2015, October 8, 2015, and November 24, 2015, for the Sager Lease show the open produced water tank spilled over leaving a 2" saturation within the 20' x 60' dike at the tank battery.
18. Respondent did not have a permit for said discharges, nor were they authorized under Statewide Rules 8(d)(3), 8(e), 9, 46 or 98.
19. Unpermitted discharges of oil and gas waste, in violation of Statewide Rule 8(d)(1), can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution.
20. Respondent has no prior history of violations of Commission rules.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Commission to Respondent and all other appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties have been performed or have occurred.
3. Respondent is responsible for maintaining the subject lease in compliance with all applicable Commission rules and chapters 89 and 91 of the Texas Natural Resources Code.
4. Respondent is in violation of Statewide Rules 3(3), 8(d)(1), 14(b)(2) and 22(b). 16 TEX. ADMIN. CODE §§ 3.3(3), 3.8(d)(1), 3.14(b)(2) and 3.22(b).
5. The documented violations committed by Respondent constitute acts deemed serious, and a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE § 81.0531(c).

6. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 3(3), which requires that each tank battery that produces oil, gas, or geothermal resources shall post signs or identification showing the name of the property, commission lease number, name of the operator, number of acres in the property and if commingled, include the commingling permit number.
7. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 8(d)(1), which prohibits the discharge of oil and gas waste without a permit.
8. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 14(b)(2), which requires that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed, unless the operator is eligible for and obtains an extension of the plugging deadline.
9. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 22(b), which requires open-top tanks, skimming pits, and collecting pits to be screened or otherwise rendered harmless to birds.
10. Pursuant to TEX. NAT. RES. CODE § 81.0531, the Commission may assess administrative penalties against Respondent for the subject violations of up to \$10,000 per day for each violation, with each day such violations continued constituting a separate violation.
11. An assessed administrative penalty in the amount of TWELVE THOUSAND TWO HUNDRED FORTY DOLLARS (\$12,240.00) is justified considering the facts and violations at issue.
12. As persons in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Thomas J. McMinn and Dianne S. McMinn, and any other organization in which either or both may hold a position of ownership or control, are subject to the restriction in section 91.114(a)(2) of the Texas Natural Resources Code.

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

1. McMinn Operating Company, Inc. shall place the Sager Lease, Well No. 1 in compliance with Statewide Rules 3(3), 8(d)(1), 14(b)(2) and 22(b), and any other applicable Commission rules and statutes.

2. McMinn Operating Company, Inc. shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWELVE THOUSAND TWO HUNDRED FORTY DOLLARS (\$12,240.00)**.

It is further **ORDERED** that as persons in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Thomas J. McMinn and Dianne S. McMinn, and any other organization in which either or both may hold a position of ownership or control, shall be subject to the restriction in section 91.114(a)(2) of the Texas Natural Resources Code 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.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 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 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 this order in accordance with TEX. GOV'T CODE § 2001.144.

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 August 9, 2016.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated August 9, 2016)

JNC / rnf