

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 09-0299593

ENFORCEMENT ACTION AGAINST XSTAR RESOURCES LLC (OPERATOR NO. 945934) FOR VIOLATIONS OF STATEWIDE RULES ON KECK LEASE, WELL NO. 1 (RRC NO. 218958), NEWARK, EAST (BARNETT SHALE) FIELD, PALO PINTO 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 August 18, 2016 and that the respondent, Xstar Resources LLC, 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. Xstar Resources LLC ("Respondent"), Operator No. 945934, 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. Respondents' officer and agent, as identified on the Form P-5, Mark D. McBryde, was sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to his last known address.
2. The certified mail envelope containing the Original Complaint and the Notice of Opportunity for Hearing/ Notice of Hearing was received by the Respondent on June 13, 2016. The first class mail was not returned. The certified mail envelope containing the Original Complaint and the Notice of Opportunity for Hearing/ Notice of Hearing was received by Mark D. McBryde on June 16, 2016. The first class mail was not returned. Record of the delivery 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 June 3, 2014, Respondent, a corporation, filed a Form P-5 with the Commission reporting that its officers consist of the following individual(s): Mark D. McBryde, Member.

4. Mark D. McBryde 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. Respondent's Form P-5 is delinquent. Respondent had a \$50,000 bond that expired on September 30, 2015, as its financial assurance at the time of time of the last Form P-5 annual renewal submission.
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 the Keck Lease, Well No. 1 (RRC No. 218958), by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective January 1, 2010, approved January 12, 2010.
8. Commission inspection reports made on December 7, 2015, and January 11, 2016, for the Keck Lease, Well No. 1 (RRC No. 218958), show that the sign or identification required to be posted at the well and tank battery displayed incorrect information.
9. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rules 3(2) and 3(3), may cause confusion as to the responsible operator to be contacted and the actual location of a violation or emergency, which can result in delays in remedying a violation or emergency.
10. Commission inspection reports made on December 7, 2015, and January 11, 2016, for the Keck Lease, Well No. 1 (RRC No. 218958), and either reports filed by the Respondent showing zero production, or the absence of production reports filed by Respondent since becoming the P-4 operator in January 2010, show that the well has been inactive for a period greater than one year. According to Commission records, the subject well has never produced.
11. No work-overs, re-entries, or subsequent operations have taken place on any of the subject wells within the last twelve months; none of the subject wells have been properly plugged in accordance with Statewide Rule 14, 16 TEX. ADMIN. CODE § 3.14; and no plugging extensions are in effect for any of the subject wells as allowed by Statewide Rule 14. The subject wells are not otherwise in compliance with Statewide Rule 14.
12. Commission inspection reports made on December 7, 2015 and January 11, 2016, on the Keck Lease show that Respondent has failed to maintain surface control of Well No. 1 (RRC No. 218958) as evidenced by the fact that the wellhead is venting gas and forming bubbles in standing water.

13. Failing to maintain surface control of Well No. 1 is a serious hazard to the public health and safety because wells left uncontrolled or open to the atmosphere may discharge oil and gas waste onto the land surface and affect the health of humans and animals.
14. Commission inspection reports made on December 7, 2015 and January 11, 2016, on the Keck Lease show that there is no firewall around the tank battery, which is less than 500 feet from a stock tank.
15. Failing to erect a dike or fire wall as required by Statewide Rule 21(j) creates a fire hazard.
16. Respondent has 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, 14(b)(2), 13(a)(6)(A), and 21(j). 16 TEX. ADMIN. CODE §§ 3.(2), 3.3(3), 3.14(b)(2), 3.13(a)(6)(A), and 21(j).
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(2), which requires that each well site that produces oil, gas, or geothermal resources shall post signs or identification showing the name of the property, name of the operator and the well number.
7. 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.

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 13(a)(6)(A), which requires that wellhead assemblies shall be used on wells to maintain surface control of the well at all times. Each well component of the wellhead shall have a pressure rating equal to or greater than the anticipated pressure to which a particular component might be exposed during the course of drilling, testing or producing the well.
10. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 21(j), which requires that dikes or fire walls be erected and kept around all permanent oil tanks or battery of tanks that are within the corporate limits of any city, town or village or where such tanks are closer than 500 feet to any highway or inhabited dwelling or closer than 1,000 feet to any school or church, or where such tanks are located as to be deemed by the Commission to be an objectionable hazard.
11. 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.
12. An assessed administrative penalty in the amount of THIRTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$13,800.00) is justified considering the facts and violations at issue.
13. 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 D. McBryde, and any other organization in which they 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. Xstar Resources LLC (Operator No. 945934) shall place the KECK LEASE, WELL NO. 1 in compliance with Statewide Rules 3.(2), 3.3(3), 13(a)(6)(A), 21(j), and any other applicable Commission rules and statutes.
2. Xstar Resources LLC (Operator No. 945934) shall plug the KECK LEASE, WELL NO. 1 in accordance with Statewide Rules.

3. Xstar Resources LLC (Operator No. 945934) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of THIRTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$13,800.00).

It is further **ORDERED** that 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 D. McBryde, and any other organization in which he 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 15th day of November, 2016.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated November 15, 2016.)

DAL/pbm