

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 09-0299686

ENFORCEMENT ACTION AGAINST XSTAR RESOURCES LLC (OPERATOR NO. 945934) FOR VIOLATIONS OF STATEWIDE RULES ON THE SUTTON (16346) LEASE, WELL NOS. 1 AND 2, BRYSON, EAST FIELD, JACK 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 November 10, 2016 and that the respondent, Xstar Resources LLC, failed to appear or respond to the Notice of 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 Hearing by certified and first class mail, addressed to the most recent Commission Form P-5 (Organization Report) (“Form P-5”) address: Xstar Resources LLC, PO Box 207, Jacksboro, Texas 76458 and Mark D. McBryde, Member, Xstar Resources LLC, 4237 Salt Creek Road, Jacksboro, Texas 76458. Respondent’s officer as identified on the Form P-5—McBryde, Mark D.— was sent the Original Complaint and Notice of Hearing by certified and first class mail, addressed to his last known address.
2. The certified mail envelope containing the Original Complaint and Notice of Hearing was received by the Respondent on September 28, 2016 and by Mark D. McBryde on October 7, 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. Xstar Resources LLC filed its first Form P-5 with the Commission in 2010. On June 3, 2014, Respondent, a Limited Liability Company, filed its most recent Form P-5 with the Commission reporting that its officers consist of the following individual(s): Xstar Resources LLC, Respondent; McBryde, Mark D., Member.

4. McBryde, Mark D. 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 as its financial assurance at the time of the last Form P-5 annual renewal submission.
6. Respondent designated itself to the Commission as the operator of the Sutton (16346) Lease, Well Nos. 1 and 2, by filing Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective January 1, 2010, approved January 12, 2010.
7. A Commission inspection report made on October 28, 2105 for the Sutton (16346) Lease shows that the sign or identification required to be posted at the lease entrance displayed incorrect information.
8. Commission inspection reports made on October 28, 2015 and September 23, 2016 for the Sutton (16346) Lease show that the signs or identification required to be posted at Well No. 1 was missing.
9. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rules 3(1) and 3(2), 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 April 29, 2015 and October 12, 2015, a period of approximately five and a half months, for the Sutton (16346) Lease show produced fluid from a flowline affecting an area 1' x 1'. A Commission inspection report made on September 23, 2016 shows the flowline repaired.
11. 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.
12. 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.
13. A Commission inspection report completed on October 28, 2015, and either reports filed by Respondent with the Commission reflecting zero production, or the absence of production reports being filed with the Commission, since January 2010, show the Sutton (16346) Lease, Well Nos 1 and 2 have been inactive for a period greater than one year. Production from the subject well ceased in April 2009.

14. No work-overs, re-entries, or subsequent operations have taken place on either of the subject wells within the last twelve months; neither 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 either of the subject wells as allowed by Statewide Rule 14. The subject wells are not otherwise in compliance with Statewide Rule 14.
15. The violations of Commission rules committed by Respondent are related to safety and the control of pollution. The affidavit of David Randle, Engineering Specialist, Field Operations of the Commission states that continuing violations of the Statewide Rules, as documented by the facts in the captioned docket, may result in irreparable harm. Sign violations may cause confusion in contacting the responsible operator and the actual location of the violation or emergency, which will cause delays in containing and remediating the violation or emergency. A well in violation of Rule 14 must be plugged in accordance with the technical requirements of Statewide Rule 14 in order to prevent pollution of usable quality surface or subsurface waters. Any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface. Violations of Rule 8(d)(1) may cause pollution to surface and subsurface waters if not remediated to prevent seepage and run-off.
16. Respondent is responsible for prior violations of Commission statutes and rules as documented in the enforcement final orders for Oil & Gas Docket Nos. 09-0265741 for violations of Statewide Rules 14(b)(2) and 14(b)(3); 09-0259795 for violations of Statewide Rules 8(d)(1) and 14(d)(12); and 09-0285594 for violations of Statewide Rules 46(a) and 73(i).
17. The total estimated cost to the State for plugging the the Sutton (16346) Lease, Well Nos 1 and 2 is \$26,200.00

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 leases 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(1), 3(2), 8(d)(1) and 14(b)(2). 16 TEX. ADMIN. CODE §§ 3.3(1), 3.3(2), 3.8(d)(1) and 3.14(b)(2).
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 leases in compliance with Statewide Rule 3(1) which requires that for each property that produces oil, gas or geothermal resources and each oil, gas or geothermal resource well and tank, or other approved crude oil measuring facility, a sign shall be posted at the principal entrance which shall show the name by which the property is carried on the records of the Commission, the name of the operator, and the number of acres in the property.
7. 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.
8. Respondent is responsible for maintaining the Sutton (16346) Lease; Well Nos. 1 and 2 in compliance with Statewide Rule 8(d)(1), which prohibits the discharge of oil and gas waste without a permit.
9. 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.
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 FIFTEEN THOUSAND SIX HUNDRED SIXTEEN DOLLARS (\$15,616.00) is justified considering the facts and violations at issue, consisting of one Statewide Rule 3(1) violation at \$1,000.00 for time out of compliance; one Statewide Rule 3(2) violation at \$500.00; one Statewide Rule 8(d)(1) violation at \$500.00 for time out of compliance; and two Statewide Rule 14(b)(2) violations totaling \$10,616.00 (Well No. 1 at \$5,340.00 and Well No. 2 at \$5,276.00), plus Enhancement fee of \$3,000.00 for 3 prior Orders.
12. 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, McBryde, Mark

D., and any other organization in which he may hold a position of ownership or control, is 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 plug the Sutton (16346) Lease, Well Nos. 1 and 2 in compliance with Statewide Rule 14(b)(2) and place the leases in compliance with Statewide Rules 3(1), 3(2), and 8(d)(1) any other applicable Commission rules and statutes.
2. Xstar Resources LLC (Operator No. 945934) is assessed by the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of FIFTEEN THOUSAND SIX HUNDRED SIXTEEN DOLLARS (\$15,616.00).

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, McBryde, Mark D., 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 the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code §2001.146(e). If a timely motion for rehearing of an application 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 Commission Order is signed.

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 24th day of January, 2017.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order
dated January 24, 2017)

MFE/dac