

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**OIL AND GAS DOCKET NO. 01-0297072**

---

**ENFORCEMENT ACTION AGAINST VISTAR OIL TEXAS LLC (OPERATOR NO. 886286) FOR VIOLATION OF A STATEWIDE RULE ON THE LYSSY-DEERING LEASE (RRC PERMIT NO. 768543), WELL NO. 3H, MARCELINA CREEK (BUDA) FIELD, WILSON 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 June 2, 2016 and that the respondent, **VISTAR OIL TEXAS 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. **VISTAR OIL TEXAS LLC** ("Respondent"), Operator No. 886286, 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' officers and agents as identified on the Form P-5, Robert L. Cuthbertson, Member, was sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to his last known address on March 17, 2016, 32102 Rolling Woods Trl, Fulshear, Texas 77441. Rodney Bray, Member, was sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to his last known address on March 17, 2016, 13822 Holley Lynn Lane, Houston Texas 77077. Wesley E. Franklin, Member, was sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to his last known address on March 17, 2016, 607 Huntercrest St., Seabrook, Texas 77586. Vistar Oil Texas LLC was sent the Original Complaint and Notice of Opportunity for Hearing at 900 W. Parkwood Ave., Friendswood, TX 77546.
2. The certified mail envelope addressed to Wesley E. Franklin, Member, containing the Original Complaint and the Notice of Opportunity for Hearing was returned by the Respondent on April 28, 2016. The first-class mail was not returned. The certified mail envelope addressed to Rodney Bray, Member, containing the Original Complaint and the Notice of Opportunity for Hearing was returned by the Respondent on March 28, 2016. The first-class mail was not returned. The certified mail envelope addressed to Robert L.

## FINAL ORDER

Cuthbertson, Member, containing the Original Complaint and the Notice of Opportunity for Hearing was returned by the Respondent on March 28, 2016 and March 29, 2016. The first-class mail was not returned. Record of 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 March 19, 2015, Respondent, an Officer, filed a Form P-5 with the Commission reporting that its officers consist of the following individual(s): Robert L. Cuthbertson, Member; Rodney Bray, Member; and Wesley E. Franklin.
4. **ROBERT L. CUTHBERTSON** 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. **RODNEY BRAY** 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. **WESLEY E. FRANKLIN** 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.
7. 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.
8. The violations of Commission rules committed by Respondent are related to safety and the control of pollution.
9. Respondent designated itself to the Commission as the operator of the Lyssy-Deering Lease (RRC Permit No. 768543), Well No. 3H, Marcelina Creek (Buda) Field, Wilson County, Texas, by filing a Commission Form W-1 (Application for Permit to Drill, ReComplete or Re-Enter), received August 19, 2013, issued August 21, 2013.
10. A District Office Inspection of the Lyssy-Deering Lease (RRC Permit No. 768543), Well No. 3H, conducted on October 31, 2013, was an inspection in response to an October 23, 2013 incident in which the rig crew was disconnecting drill pipe when one hand was overcome by H<sub>2</sub>S gas.
11. The Commission District Inspection report dated October 31, 2013 noted that no Commission Form H-9 had been filed prior to the commencement of drilling by

## FINAL ORDER

Respondent for Well No. 3H. The Commission Form H-9 was subsequently filed on November 13, 2013.

12. Commission records show that Respondent failed to give immediate notification to the District Office of the H2S incident that occurred on October 23, 2013 at the Lyssy-Deering Lease (RRC Permit No. 768543), Well No. 3H. Notification of the incident was provided by Respondent on October 31, 2013.
13. Commission records indicate that Respondent did not give written notice of the H2S incident that occurred on October 23, 2013 at the Lyssy-Deering Lease (RRC Permit No. 768543), Well No. 3H, within 10 days of the incident. The Respondent sent written notice of the H2S incident on November 14, 2013 to the District Office.
14. 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. By failing to file a Commission Form H-9, Respondent violated Statewide Rule 36(d)(1)(G), [Tex. R. R. Comm'n, 16 TEX. ADMIN. CODE § 3.36(d)(1)(G)].
5. By failing to immediately notify the District Office immediately of an H2S incident, Respondent violated Statewide Rule 36(c)(14), [Tex. R.R. Comm'n 16 TEX. ADMIN. CODE §3.36(c)(14)].
6. By failing to send written notice within 10 days of the H2S incident to the District Office, Respondent violated Statewide Rule 36(d)(3), [Tex. R. R. Comm'n, 16 TEX. ADMIN. CODE §3.36(d)(3)].
7. 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.

## FINAL ORDER

8. An assessed administrative penalty in the amount of **SIXTEEN THOUSAND DOLLARS (\$16,000.00)** is justified considering the facts and violations at issue.
9. As a person in a position of ownership or control of Respondent at the time Respondent violated Commission rule related to safety and the control of pollution, Robert L. Cuthbertson, Rodney Bray, and Wesley E. Franklin and any other organization in which she 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. **VISTAR OIL TEXAS LLC** (Operator No. 886286) shall place the Lyssy-Deering Lease (RRC Permit No. 768543), Well No. 3H in compliance with Statewide Rule 36(c)(14), 36(d)(1)(g) and any other applicable Commission rules and statutes.
2. **VISTAR OIL TEXAS LLC** (Operator No. 886286) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **SIXTEEN THOUSAND DOLLARS (\$16,000.00)**.

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, Robert L. Cuthbertson, Rodney Bray, and Wesley E. Franklin and any other organization in which she 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

FINAL ORDER

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 24<sup>th</sup> day of January, 2017.

**RAILROAD COMMISSION OF TEXAS**

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

RML/see