

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 01-0301311

ENFORCEMENT ACTION AGAINST VISTAR OIL TEXAS LLC (OPERATOR NO. 886286) FOR VIOLATIONS OF STATEWIDE RULES ON THE LYSSY-DEERING (18228) LEASE, WELL NO. 1H, 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 March 23, 2017, 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: Vistar Oil Texas LLC, 900 W Parkwood Ave, Friendswood TX 77546. Respondent's officers as identified on the Form P-5—Bray, Rodney, Member; Cuthbertson, Robert L, Member; and Franklin, Wesley E, Member—were sent the Original Complaint and Notice of Opportunity for Hearing by certified and first-class mail, addressed to their last known address: Bray, Rodney, Member, 13822 Holley Lynn Lane, Houston TX 77077; Cuthbertson, Robert L, Member, 32102 Rolling Woods Trl, Fulshear TX 77441; and Franklin, Wesley E, Member, 607 Huntercrest St, Seabrook TX 77586.
2. The certified mail envelope containing the Original Complaint and Notice of Opportunity for Hearing addressed to the Respondent was received on December, 12, 2016. The Certified Mail envelope addressed to Franklin, Wesley E was received on December 10, 2016. The Certified Mail envelopes addressed to Bray, Rodney and Cuthbertson, Robert L were returned to the Commission unopened on December 13, 2016 and December 27, 2016 respectively. The first-class mail envelope addressed to Cuthbertson, Robert L was returned to the Commission on December 15, 2016. The first-class mail envelopes addressed to Respondent, Bray, Rodney, and Franklin, Wesley E were not returned. Record of the delivery and 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. Respondent filed its first Form P-5 with the Commission in 2013. On March 19, 2015, Respondent, a Ltd Liability Co, filed a Form P-5 with the Commission reporting that its officers consist of the following individuals: Bray, Rodney; Cuthbertson, Robert L; and Franklin, Wesley E.
4. Bray, Rodney 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. Cuthbertson, Robert L 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. Franklin, Wesley E 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 \$25,000.00 cash deposit as its financial assurance at the time of the last Form P-5 annual renewal submission.
8. Respondent designated itself to the Commission as the operator of the Lyssy-Deering (18228) Lease, Well No. 1H, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective October 15, 2013, approved May 14, 2015.
9. Commission inspection reports made on December 29, 2015, February 2, 2016, and February 17, 2016 for the Lyssy-Deering (18228) Lease, show that the signs or identification required to be posted at the lease entrance were missing.
10. Commission inspection reports made on December 29, 2015, February 2, 2016, and February 17, 2016 for the Lyssy-Deering (18228) Lease, Well No. 1H shows that the sign or identification required to be posted at the well location was missing.
11. Commission inspection reports made on December 29, 2015, February 2, 2016, and February 17, 2016 for the Lyssy-Deering (18228) Lease, show that the signs or identification required to be posted at the tank battery were missing.
12. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rules 3(1), 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.

13. Commission district inspection reports made on December 29, 2015, February 2, 2016, and February 17, 2016 for the Lyssy-Deering (18228) Lease indicated 17 drums of chemicals, some of which are open, were at the site and several oil spills throughout the tank battery covering an affected area of approximately 120' x 60".
14. 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.
15. 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.
16. Commission inspection reports made on December 29, 2015, February 2, 2016, and February 17, 2016, and the absence of reported production since April 2014, showed that the Lyssy-Deering (18228) Lease, Well No. 1H has been inactive for a period greater than one year. Production from the subject lease ceased on or before May 2014.
17. No workovers, 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 extensions are in effect for the subject well as allowed by Statewide Rule 14.
18. Usable quality groundwater in the area can become contaminated by migrations or discharges of saltwater and other oil and gas waste from the subject well. Unplugged wellbores, in violation of Statewide Rule 14(b)(2), constitute a cognizable threat to the public health and safety because of the potential of pollution.
19. According to an affidavit signed by Petar Buva, Field Operations, "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."
20. The total estimated cost to the State for plugging the Lyssy-Deering (18228) Lease, Well No. 1H is \$49,252.00.
21. The hydrogen sulfide concentration of the Lyssy-Deering (18228) Lease is in excess of 500 ppm and the lease is subject to the warning requirement of Statewide Rule 36(c)(5)(B). Commission inspection reports made on December 29, 2015, February 2, 2016, and February 17, 2016 showed that the required sign was missing at Well No. 1H.

22. Unmarked or illegibly marked sites that have a high concentration of sour gas, in violation of Statewide Rule 36(c)(5)(B), may result in failure to provide warning to alert the general public of the potential danger, resulting in possible injury or death to the exposed public.
23. The 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(1), 3(2), 3(3), 8(d)(1), 14(b)(2), and 36(c)(5)(B). 16 TEX. ADMIN. CODE §§ 3.3(1), 3.3(2), 3.3(3), 3.8(d)(1), 3.14(b)(2), and 3.36(c)(5)(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(1), 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(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 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.

9. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 8(d)(1), which prohibits the discharge of oil and gas waste without a permit.
10. Respondent is responsible for maintaining the subject lease 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.
11. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 36(c)(5)(B), which requires that storage tanks, which are utilized as a part of a production operation, and which are operated at or near atmospheric pressure, and where the vapor accumulation has a hydrogen sulfide concentration in excess of 500 ppm, shall have a warning sign posted on or within 50 feet of the facility to alert the general public of the potential danger.
12. 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.
13. An assessed administrative penalty in the amount of **FIFTEEN THOUSAND, THREE HUNDRED FIFTY DOLLARS (\$15,350.00)** is justified considering the facts and violations at issue.
14. As persons in positions of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Bray, Rodney, Cuthbertson, Robert L, and Franklin, Wesley E, and any other organization in which these individuals 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. Vistar Oil Texas LLC (Operator No. 886286) shall place the Lyssy-Deering (18228) Lease, Well No. 1H, in compliance with Statewide Rules 3(1), 3(2), 3(3), 8(d)(1), 14(b)(2), and 36(C), 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 **FIFTEEN THOUSAND, THREE HUNDRED FIFTY DOLLARS (\$15,350.00)**.

It is further **ORDERED** that as persons in positions of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Bray, Rodney, Cuthbertson, Robert L, and Franklin, Wesley E, and any other organization in which these individuals 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 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 25th day of April, 2017.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master
Order dated April 25, 2017)

CJH/dac