

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL & GAS DOCKET NO. 08-0300375

ENFORCEMENT ACTION AGAINST CALVIN STEWART DBA C & S OPERATING (OPERATOR NO. 121055) FOR VIOLATIONS OF STATEWIDE RULES ON TERRY - A- LEASE, WELL NO. 1, AND TERRY -B- (30900) LEASE, WELL NOS. 2 AND 3, IATAN, EAST HOWARD FIELD, MITCHELL COUNTY, TEXAS

FINAL ORDER NUNC PRO TUNC

The Final Order in this docketed case, signed December 6, 2016, was drafted using a previous docket as a shell, and inadvertently mis-states, in Conclusion of Law No. 10, an assessed penalty amount inconsistent with the amount pled in the Original Complaint and inconsistent with the correctly assessed penalty amount in the Ordering language.

For this reason, the Commission's Final Order in this docket is hereby amended, *nunc pro tunc*, so that Conclusion of Law No. 10 correctly reflects the actual assessed penalty amount as pled in the Original Complaint and as actually set out in the Ordering language of the 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 October 13, 2016 and that the respondent, Calvin Stewart dba C & S Operating, failed to appear or respond to the Notice of Opportunity for Hearing and Original Complaint. 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. Calvin Stewart dba C & S Operating ("Respondent"), Operator No. 121055, was sent the Notice of Opportunity for Hearing and Original Complaint 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 are identified on the Form P-5. Calvin Stewart dba C & S Operating, was sent the Original Complaint and Notice of Opportunity for Hearing and Original Complaint by certified and first class mail, addressed to his most recent Form P-5 Organization Report address, at P.O. Box 2, Whiteface, Texas 79379. Notice of Opportunity for Hearing and Original Complaint was also served by Certified and First Class Mail on Calvin Stewart dba C & S Operating at his most recent organization report location address at 202 Pierce, Whiteface, Texas 79379.

2. The Certified Mail, Return Receipt Requested envelope containing the Original Complaint and the Notice of Opportunity for Hearing was returned to the Commission on September 9, 2016 and September 14, 2016, unopened and marked RETURN TO SENDER. 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. C & S Operating filed its first Form P-5 with the Commission in 1984. On January 25, 2013, Respondent, an Officer, filed a Form P-5 with the Commission reporting that its officers consist of the following individual(s): Calvin Stewart
4. Calvin Stewart 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, from 1984-2014, of the violations of Commission rules committed by Respondent.
5. Respondent's Form P-5 is delinquent. Respondent had a \$50,000 letter of credit as its financial assurance at the 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 Terry – A- (27551) Lease, Well No. 1, and Terry –B- (30900) Lease, Well No. 2 and 3, Iatan, East Howard Field, Mitchell County, Texas by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), both effective May 3, 2006, both approved September 5, 2006.
8. Commission District inspection reports made on December 21, 2015, December 22, 2015, February 25, 2016, April 5, 2016, May 9, 2016, and June 17, 2016, and reports filed by Respondent with the Commission reflecting zero production, or the absence of production reports being filed with the Commission, since November 2012, show the Terry – A- Lease, Well No. 1, and Terry –B- (30900) Lease, Well No. 2 and 3, Iatan, East Howard Field, Mitchell County, Texas have been inactive for a period greater than one year. Production from the subject well ceased in October 2012.
9. No work overs, re-entries, or subsequent operations have taken place on any of the subject wells in this complaint within the last 12 months; none of the subject wells have been plugged; no plugging extensions are in effect for any of the subject wells as allowed by Statewide Rule 14.
10. Commission District inspection reports made on December 21, 2015 for the Terry –A- (27551) Lease indicated a small amount of hydrocarbons have spilled at Well No. 1. The

hydrocarbons have weathered but are still a semi-solid sludge. The inspection goes on to state that the affected area measures 6' x 4' x 2' at the wellhead and rainfall events have carried a small amount of the hydrocarbons to areas around 12 (twelve) feet away from the well. Follow-up District inspection reports made on February 25, 2016, April 5, 2016, May 9, 2016, and June 17, 2016 indicate that the spill has not been remediated.

11. A Commission District inspection report was made on December 21, 2015 for the Terry – B- (30900) Lease indicated Well No. 2 is leaking/oozing crude oil from an area below the surface near the well with an affected area measuring 20' x 40' x 4". The inspection goes on to state that the leak is very slow and must have been going on for quite a while, as a large pool of crude has accumulated due north and west of the wellhead. A Commission District inspection made on February 8, 2016, showed a new impacted area measuring 30' x 65' x 1', due to continued leak/ooze, with approximately 5 bbls of freestanding oil at the site. Commission District inspections dated March 23, 2016 and March 28, 2016, show Commission District staff working with a third party contractor to perform emergency state funded operations to stop the leak and build a berm around the wellhead and affected area. Commission District inspections made on April 5, 2016 and May 9, 2016, show that affected area to still not have been remediated by Respondent. A Commission District inspection made on June 17, 2016, shows that affected area in need of remediation still remains and the recommendation for use of additional state funds to remediate as Respondent has failed to do so.
12. 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.
13. 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.
14. Commission inspection reports made on February 25, 2016, April 5, 2016, and May 9, 2016 on the Terry –A- (27551) Lease showed that the firewall has been removed from around the tank battery.
15. Failing to erect a dike or fire wall around a tank battery closer than 500 feet to a highway, as required by Statewide Rule 21(j), may cause a fire.
16. 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 14(b)(2), 8(d)(1), and 21(j) [16 TEX. ADMIN. CODE §§ 3.14(b)(2), 3.8(d)(1), and 3.21(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 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.
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 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.
9. 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.
10. An assessed administrative penalty in the amount of TWENTY THOUSAND THIRTEEN DOLLARS (\$20,013.00) is justified considering the facts and violations at issue.
11. 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, Calvin Stewart dba C & S Operating, and any other organization in which he 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.

12. Respondent is responsible, under TEX. NAT. RES. CODE ANN. §91.113(f), for reimbursing the Railroad Commission of Texas the \$555.00 spent to clean up the Terry – B- (30900) Lease.

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

CALVIN STEWART DBA C & S OPERATING (Operator No. 121055) shall place the Terry – A- Lease, Well No. 1, and Terry –B- (30900) Lease, Well No. 2 and 3, Iatan, East Howard Field, Mitchell County, Texas in compliance with Statewide Rules 14(b)(2), 8(d)(1), and 21(j) and any other applicable Commission rules and statutes.

CALVIN STEWART DBA C & S OPERATING (Operator No. 121055) is hereby assessed, by the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of TWENTY THOUSAND THIRTEEN DOLLARS (\$20,013.00).

CALVIN STEWART DBA C & S OPERATING (Operator No. 121055) shall reimburse the Railroad Commission of Texas \$555.00 for the clean-up expenses of the Terry -B- (30900) Lease.

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, Calvin Stewart 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 25th day of April, 2017.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order
dated 25th day of April, 2017]

MFE/see/dac