

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 04-0278838

ENFORCEMENT ACTION AGAINST JOHN FORBES DBA JOHN FORBES OPERATING, A SOLE PROPRIETORSHIP (OPERATOR NO. 275608) FOR VIOLATIONS OF STATEWIDE RULES ON THE HENRY, P. L. (05266) LEASE, WELL NO. 2, KINGSVILLE (KINGSVILLE) FIELD, KLEBERG COUNTY; HENRY, P. L., -A- (07169) LEASE, WELL NO. 2, KINGSVILLE (1400) FIELD, KLEBERG COUNTY; AND KLEBERG, R. J., JR. (07321) LEASE, WELL NO. 2, KINGSVILLE (2500) FIELD, KLEBERG 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 16, 2017, and that the respondent, Forbes, John Operating, failed to appear or respond to the **Notice of Opportunity for Hearing**. Pursuant to § 1.25 of the Commission's General Rules of Practice and Procedure, 16 TEX. ADMIN. CODE § 1.25, 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. John Forbes dba John Forbes Operating, a Sole Proprietorship ("Respondent"), Operator No. 275608, 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. Respondent's agent as identified on the Form P-5—Tony A. Crutchfield—was sent the Original Complaint and Notice of Opportunity for Hearing by certified and first-class mail, addressed to the last known address.
2. The certified mail envelope containing the Original Complaint and Notice of Opportunity for Hearing addressed to the Respondent was received on September 1, 2017. The Certified Mail envelope addressed to Tony A. Crutchfield was returned to the Commission unopened on September 11, 2017. The first-class mail envelope addressed to Tony A. Crutchfield was returned to the Commission on September 19, 2017. The first-class mail envelope addressed to Respondent was 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. On November 26, 2012, Respondent, a sole proprietorship, filed a Form P-5 with the Commission reporting that its officer consists of the following individual: John Forbes, Owner.
4. John Forbes was in a position of ownership or control of Respondent, as defined in TEX. NAT. RES. CODE § 91.114, during the time period of the violations of Commission rules committed by Respondent.
5. Respondent's Form P-5 is delinquent. Respondent had a \$50,000.00 letter of credit 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 Henry, P. L. (05266) Lease, Well No. 2, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective September 1, 2010, approved March 3, 2011.
7. Respondent designated itself to the Commission as the operator of the Henry, P. L., -A- (07169) Lease, Well No. 2, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective September 1, 2010, approved January 10, 2011.
8. Respondent designated itself to the Commission as the operator of the Kleberg, R. J., Jr. (07321) Lease, Well No. 2, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective September 1, 2010, approved January 10, 2011.
9. Commission District inspection reports made on September 15, 2011 and March 25, 2013, for the Henry, P. L. (05266) Lease show that the sign or identification required by Statewide Rule 3(1), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(1)], to be posted at the lease entrance did not display correct information. The sign did not reflect the current operator's name. Commission District follow-up inspections made on July 27, 2012, October 1, 2012, March 11, 2015, October 11, 2016, and October 25, 2016, showed the sign to be missing.
10. Commission District inspection reports made on September 15, 2011 and March 11, 2015, for the Henry, P. L. (05266) Lease, Well No. 2 show that the sign or identification required by Statewide Rule 3(2), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(2)], to be posted at the well did not display correct information. The sign did not display the current operator's name. Follow-up Commission District inspections made on July 27, 2012, September 28, 2012, October 1, 2012, March 25, 2013, October 11, 2016, and October 25, 2016, showed the sign was missing.
11. Commission District inspection reports made on September 15, 2011, March 25, 2013, and March 11, 2015, for the Henry, P. L. (05266) Lease show that the sign or identification required by Statewide Rule 3(3), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(3)], to be posted at the tank battery did not display correct information. The sign did not display the current operator's name. Follow-up

- Commission District inspection reports made on July 27, 2012 and September 28, 2012, showed the sign did not contain the required lease id number. Follow-up Commission District inspection reports made on October 1, 2012 and October 11, 2016, showed the sign to be illegible.
12. Commission District inspection reports made on September 15, 2011, August 12, 2012, September 7, 2012, March 25, 2013, March 11, 2015, and October 11, 2016, for the Henry, P. L., -A- (07169) Lease show that the sign or identification required by Statewide Rule 3(1), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(1)], to be posted at the lease entrance was missing.
 13. Commission District inspection reports made on September 15, 2011, August 12, 2012, September 7, 2012, March 11, 2015, and October 11, 2016, for the Henry, P. L., -A- (07169) Lease, Well No. 2 show that the sign or identification required by Statewide Rule 3(2), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(2)], to be posted at the well does not display the correct information. The sign did not display the current operator's name. A follow-up Commission District inspection report made on December 1, 2016, showed the sign to be missing.
 14. Commission District inspection reports made on September 7, 2012, March 25, 2013, March 11, 2015, and October 11, 2016, for the Henry, P. L., -A- (07169) Lease, Well No. 2 show that the sign or identification required by Statewide Rule 3(3), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(3)], to be posted at the tank battery was missing.
 15. Commission District inspection reports made on September 15, 2011, August 2, 2012, March 25, 2013, March 11, 2015, and October 11, 2016, for the Kleberg, R. J., Jr. (07321) Lease show that the sign or identification required by Statewide Rule 3(1), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(1)], to be posted at the lease entrance was missing.
 16. Commission District inspection reports made on September 15, 2011, August 2, 2012, March 25, 2013, March 11, 2015, and October 11, 2016, for the Kleberg, R. J., Jr. (07321) Lease, Well No. 2 show that the sign or identification required by Statewide Rule 3(2), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(2)], to be posted at the well displayed incorrect information. The well signed did not display the current operator's name.
 17. Commission District inspection reports made on March 11, 2015 and October 11, 2016, for the Kleberg, R. J., Jr. (07321) Lease, show that the sign or identification required by Statewide Rule 3(3), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(3)], to be posted at the tank battery was missing.
 18. 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.

19. Commission District inspection reports made on September 15, 2011, July 27, 2012, and September 28, 2012, for the Henry, P. L. (05266) Lease indicate that Respondent allowed a discharge from storage drums located on the facility with impacted soil area measuring 10 feet by 10 feet by 6 inches deep. A Commission District follow-up inspection made on October 1, 2012, showed the impacted soil to measure 5 feet by 5 feet. A later inspection made on March 25, 2013, showed the violation remained.
20. Commission District inspection reports made on August 12, 2012 and September 7, 2012, for the Henry, P. L., -A- (07169) Lease indicate that Respondent allow a discharge of hydrocarbons from tank battery number 14671 with impacted soil area measuring 15 feet by 15 feet by 6 inches deep.
21. 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.
22. 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.
23. Commission District inspection reports made on October 1, 2012, March 11, 2015, March 15, 2016, August 9, 2016, October 11, 2016, October 25, 2016, and January 6, 2017, and the absence of reported production since June 2006, showed that the Henry, P. L. (05266) Lease, Well No. 2 has been inactive for a period greater than one year. Production from the subject lease ceased on or before July 2006.
24. Commission District inspection reports made on March 11, 2015 and October 11, 2016, and the absence of reported production since July 2007, showed that the Henry, P. L., -A- (07169) Lease, Well No. 2 has been inactive for a period greater than one year. Production from the subject lease ceased on or before August 2007.
25. Commission District inspection reports made on June 11, 2013, March 11, 2015, March 15, 2016, October 11, 2016, December 1, 2016, and January 6, 2017, and the absence of reported production since July 2007, showed that the Kleberg, R. J., Jr. (07321) Lease, Well No. 2 has been inactive for a period greater than one year. Production from the subject lease ceased on or before August 2007.
26. 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.
27. 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.

28. The total estimated cost to the State for plugging the Henry, P. L. (05266) Lease, Well No. 2 is \$18,502.00. Pursuant to calculations by Commission District Office personnel, the total estimated cost to the State for plugging the Henry, P. L., -A- (07169) Lease, Well No. 2 is \$9,302.04. Pursuant to calculations by Commission District Office personnel, the total estimated cost to the State for plugging the Kleberg, R. J., Jr. (07321) Lease, Well No. 2 is \$16,160.54. The total estimated cost for these wells is \$43,964.58.
29. Commission District inspection reports made on June 11, 2013, March 11, 2015, March 15, 2016, October 11, 2016, December 1, 2016, and January 6, 2017, and the absence of reported production since July 2007, showed that the Kleberg, R. J., Jr. (07321) Lease, Well No. 2 has been inactive for a period greater than one year. Production from the subject lease ceased on or before August 2007. Commission District inspection reports made on December 1, 2016 and January 6, 2017, shows the tanks contain fluids.
30. By failing to empty the tanks of all production fluids, Respondent violated Statewide Rule 15(f)(2)(A)(i).
31. The Respondent charged with the violations herein recited has no 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 TEX. NAT. RES. CODE, chs. 89 and 91.
4. Respondent is in violation of Statewide Rules 3(1), 3(2), 3(3), 8(d)(1), 14(b)(2), and 15(f)(2)(A)(i). 16 TEX. ADMIN. CODE §§ 3.3(1), 3.3(2), 3.3(3), 3.8(d)(1), 3.14(b)(2), and 3. 15(f)(2)(A)(i).
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 15(f)(2)(A)(i), which requires an operator who does not own the surface of the land where the well is located and the well has been inactive for at least five (5) years but for less than ten (10) years as of the date of renewal of the operator's organization report, that the operator has emptied or purged of production fluids all piping, tanks, vessels, and equipment associated with and exclusive to the well.
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 **TWENTY-EIGHT THOUSAND, NINE HUNDRED EIGHTY-EIGHT DOLLARS (\$28,988.00)** is justified considering the facts and violations at issue.
14. 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, John Forbes, and any other organization in which this individual may hold a position of ownership or control, is subject to the restriction in TEX. NAT. RES. CODE § 91.114(a)(2).

ORDERING PROVISIONS

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

1. John Forbes dba John Forbes Operating, a Sole Proprietorship (Operator No. 275608) shall place the subject leases and wells into compliance with Commission Statewide Rules 3(1), 3(2), 3(3), 14(b)(2), and 15(f)(2)(A)(i) by plugging the subject wells and completing all surface requirements in accordance to Commission Statewide Rule 14 and into compliance with Commission Statewide Rule 8(d)(1), and all other applicable Commission Statewide Rules; and
2. John Forbes dba John Forbes Operating, a Sole Proprietorship (Operator No. 275608) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWENTY-EIGHT THOUSAND, NINE HUNDRED EIGHTY-EIGHT DOLLARS (\$28,988.00)**.

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, John Forbes, and any other organization in which this individual may hold a position of ownership or control, **shall be subject to the restriction in TEX. NAT. RES. CODE § 91.114(a)(2) 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 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 per day per violation.

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Final Order

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Done this 23th day of January 2018.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master
Order dated January 23, 2018)

CJH/dac