

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**OIL AND GAS DOCKET No. 10-0307113**

**ENFORCEMENT ACTION AGAINST NEW-TEX OPERATING II, LLC (OPERATOR NO. 606156) FOR VIOLATIONS OF STATEWIDE RULES ON THE WHITTENBURG, J. A. 'C' (01138) LEASE, WELL NOS. 1, 2, 3, 4, 5, 6, 7B, AND 8, PANHANDLE HUTCHINSON COUNTY FIELD, HUTCHINSON 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 February 15, 2018, and that the respondent, New-Tex Operating II, LLC, 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. New-Tex Operating II, LLC ("Respondent"), Operator No. 606156, 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 officers as identified on the Form P-5—Beau H. Kelley and Joseph G. Kelley—were sent the Original Complaint and Notice of Opportunity for Hearing by certified and first-class mail, addressed to the last known addresses.
2. The certified mail envelope containing the Original Complaint and Notice of Opportunity for Hearing addressed to the Respondent was returned to the Commission unopened on February 9, 2018. The Certified Mail envelope addressed to Beau H. Kelley was returned to the Commission unopened on February 9, 2018. The first-class mail envelopes addressed to Respondent and Beau H. Kelley were returned to the Commission unopened on January 2, 2018. The certified mail envelope addressed to Joseph G. Kelley was received on December 18, 2017. The first-class mail envelope addressed to Joseph G. Kelley was not returned to the Commission. 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 July 29, 2015, Respondent, a limited liability company, filed a Form P-5 with the Commission reporting that its officer consists of the following individual: Beau H. Kelley, Managing Member and Joseph G. Kelley, Managing Member.
4. Beau H. Kelley 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. Joseph G. Kelley 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.

6. Respondent's Form P-5 is delinquent. Respondent had a \$50,000.00 bond as its financial assurance at the time of the last Form P-5 annual renewal submission.
7. Respondent designated itself to the Commission as the operator of the Whittenburg, J. A. 'C' (01138) Lease, Well Nos. 1, 2, 3, 4, 5, 6, 7B, and 8, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective March 11, 2014, approved August 20, 2014.
8. A Commission inspection report made on September 13, 2017 for the Whittenburg, J. A. 'C' (01138) Lease, Well No. 7B shows that the sign or identification required to be posted at the well location fails to legibly display the required information.
9. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rule 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. A Commission inspection report made on September 13, 2017 for the Whittenburg, J. A. 'C' (01138) Lease show a stuffing box leak at Well No. 6 affecting a 3' area around the wellhead with crude oil.
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 district inspection report made on September 13, 2017 for the Whittenburg, J. A. 'C' (01138) Lease show the well cap at Well No. 3 is disassembled and production casing is open to the atmosphere.
14. Wells left uncontrolled or open to the atmosphere, in violation of Statewide Rule 13(a)(6)(A), may discharge oil and gas waste onto the land surface and affect the health of humans and animals; these discharges may eventually make their way to surface or subsurface waters, causing pollution.
15. A Commission inspection report made on September 13, 2017, and the absence of reported production since April 2015, showed that the Whittenburg, J. A. 'C' (01138) Lease, Well Nos. 1, 2, 3, 4, 5, 6, and 7B have been inactive for a period greater than one year. Production from the subject lease ceased on or before March 2015.
16. 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.
17. 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.
18. The total estimated cost to the State for plugging the Whittenburg, J. A. 'C' (01138) Lease Well Nos. 1, 2, 3, 4, 5, 6, and 7B is \$215,616.25.

19. On December 28, 2015, Respondent filed or caused to be filed with the Commission a Commission Form W-3C (Certification of Surface Equipment Removal for an Inactive Well) certifying that all surface equipment, related piping, tanks, pump jacks, etc. had been removed from Well No. 2 for the Whittenburg, J.A. 'C' (01138) Lease. Said Certification includes a declaration that the information is based on personal knowledge of the physical condition of the subject inactive well and acknowledgement that it is made pursuant to the provisions of Tex. Nat. Res. Code §91.143. A Commission district inspection of the Whittenburg, J.A. 'C' (01138) Lease, Well No. 2, conducted on September 13, 2017, however shows that the pumping unit, flowlines and related piping are still connected to the well.
20. Respondent knowingly submitted forms to the Commission containing information which was false or untrue in material fact, thereby violating TEX. NAT. RES. CODE § 91.143(a)(1).
21. 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 TEX. NAT. RES. CODE, chs. 89 and 91.
4. Respondent is in violation of Statewide Rules 3(2), 8(d)(1), 13(a)(6)(A), 14(b)(2), and TEX. NAT. RES. CODE §91.143(a)(1). 16 TEX. ADMIN. CODE §§ 3.3(2), 3.8(d)(1), 3.13(a)(6)(A), 3.14(b)(2), and TEX. NAT. RES. CODE §91.143(a)(1).
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(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.
7. 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.
8. Respondent is responsible for maintaining surface control of a well by using wellhead assemblies in compliance with Statewide Rule 13(a)(6)(A). Maintenance of surface control is necessary not only to prevent fluids from being discharged from the wellbore onto the ground surface, but also to prevent any oil and gas wastes present in the wellbore from being displaced to surface by influxes of surface water into the open wellbore.

9. 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.
10. Respondent is responsible for maintaining the subject well in compliance with Statewide Rule 73(i) and TEX. NAT. RES. CODE § 91.706, which requires the operator, upon notice from the Commission that a certificate of compliance has been cancelled, to not produce oil, gas, or geothermal resources until a new certificate of compliance has been issued by the Commission.
11. 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.
12. An assessed administrative penalty in the amount of **FORTY-SIX THOUSAND, EIGHT HUNDRED THIRTY-NINE DOLLARS (\$46,839.00)** is justified considering the facts and violations at issue.
13. As persons in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Beau H. Kelley and Joseph G. Kelley, and any other organization in which these individuals may hold a position of ownership or control, are 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. New-Tex Operating II, LLC (Operator No. 606156) shall place the Whittenburg, J. A. 'C' (01138) Lease, Well Nos. 1, 2, 3, 4, 5, 6, 7B, and 8, in compliance with Statewide Rules 3(2), 8(d)(1), 13(a)(6)(A), 14(b)(2), and TEX. NAT. RES. CODE § 91.143(a)(1), and any other applicable Commission rules and statutes.
2. New-Tex Operating II, LLC (Operator No. 606156) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FORTY-SIX THOUSAND, EIGHT HUNDRED THIRTY-NINE DOLLARS (\$46,839.00)**.

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, Beau H. Kelley and Joseph G. Kelley, and any other organization in which these 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 100 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.

Done this 10<sup>th</sup> day of April 2018.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order  
dated April 10, 2018)

KMR/pbm