

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 01-0310056

ENFORCEMENT ACTION AGAINST D & S PETROLEUM, INC. (OPERATOR NO. 196871) FOR VIOLATION OF STATEWIDE RULE ON THE PILCHER (12464) LEASE, WELL NO. 2, LYTTON SPRINGS FIELD, CALDWELL 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 July 12, 2018 and that the respondent, D & S Petroleum, Inc., 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. D & S Petroleum, Inc. ("Respondent"), Operator No. 196871, was sent the First Amended Original Complaint and First Amended 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.
2. The certified mail envelope containing the First Amended Original Complaint and First Amended Notice of Opportunity for Hearing addressed to the Respondent was returned to the Commission on June 11, 2018. The first-class mail was not returned. Record of the delivery or 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 September 15, 1992, Respondent, a corporation, filed a Form P-5 with the Commission reporting that its officers consist of the following individuals: Robert Duane Foster, President and Susan Sherwood Foster, Vice President.
4. Robert Duane Foster was in a position of ownership or control of Respondent, as defined in TEX. NAT. RES. CODE § 91.114, during the time of the violations of Commission rules committed by Respondent.
5. Susan Sherwood Foster was in a position of ownership or control of Respondent, as defined in TEX. NAT. RES. CODE § 91.114, during the time of the violations of Commission rules committed by Respondent.

6. Respondent's Form P-5 is delinquent. Respondent had a \$0.00 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 Pilcher (12464) Lease, Well No. 2, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective September 1, 1992, approved September 30, 1992.
8. Commission inspection reports made on November 17, 2016, and the absence of reported production since October 1993, showed that the Pilcher (12464) Lease, Well No. 2 has been inactive for a period greater than one year. Production from the subject lease ceased on or before September 1993.
9. 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.
10. 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.
11. The total estimated cost to the State for plugging the Pilcher (12464) Lease Well No. 2 is \$14,976.00.
12. 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 Rule 14(b)(2). 16 TEX. ADMIN. CODE § 3.14(b)(2).
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 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. 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.
8. An assessed administrative penalty in the amount of **TWENTY-THREE THOUSAND, NINE HUNDRED FIFTY DOLLARS (\$23,950.00)** is justified considering the facts and violations at issue.
9. 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, Robert Duane Foster and Susan Sherwood Foster, and any other organization in which these individuals 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. D & S Petroleum, Inc. (Operator No. 196871) shall plug the Pilcher (12464) Lease, Well No. 2, and place the subject leases in compliance with Statewide Rule 14(b)(2), and any other applicable Commission rules and statutes.
2. D & S Petroleum, Inc. (Operator No. 196871) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWENTY-THREE THOUSAND, NINE HUNDRED FIFTY DOLLARS (\$23,950.00)**.

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, Robert Duane Foster and Susan Sherwood Foster, and any other organization in which these individuals 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 13th day of November 2018.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master
Order dated November 13, 2018)