

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 04-0312561

ENFORCEMENT ACTION AGAINST ASCENDANCE ENERGY PARTNERS, LLC (OPERATOR NO. 033892) FOR VIOLATIONS OF STATEWIDE RULES ON THE LOD MOGLIA ET AL (10532) LEASE, WELL NO. 1, MOGLIA (1580) FIELD, WEBB 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 December 6, 2018, and that the respondent, Ascendance Energy Partners, 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. Ascendance Energy Partners, LLC ("Respondent"), Operator No. 033892, 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 officer as identified on the Form P-5—Hildegardo Humberto Jr. Garza—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 the first-class mail 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 August 20, 2018, Respondent, a limited liability company, filed a Form P-5 with the Commission reporting that its officer consists of the following individual: Hildegardo Humberto Jr. Garza, Managing Member.
4. Hildegardo Humberto Jr. Garza 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 active. Respondent had a \$25,000.00 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 Lod Moglia Et Al (10532) Lease, Well No. 1, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective June 1, 2016, approved July 19, 2016.
7. Commission inspection reports made on March 5, 2018 for the Lod Moglia Et Al (10532) Lease show that the signs or identification required to be posted at the lease entrance displayed incorrect information.
8. Commission inspection reports made on March 5, 2018 for the Lod Moglia Et Al (10532) Lease, Well No. 1 shows that the sign or identification required to be posted at the well location was missing.
9. Commission inspection reports made on March 5, 2018 for the Lod Moglia Et Al (10532) Lease show that the signs or identification required to be posted at the tank battery displayed incorrect information.
10. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rules 3(1), 3(2), 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.
11. Commission inspection reports made on March 5, 2018 for the Lod Moglia Et Al (10532) Lease show the bottom valve on each of the two produced fluid tanks was found plumbed into a common line which ended up at a earth pit on the west side of the tanks. The common line was found actively leaking into the pit. The area of contamination measured 22' x 16'. The Commission was unable to determine how deep the contamination was due to the pit having more than 4'-6" of standing produced fluids.
12. Commission inspection reports made on March 5, 2018 for the Lod Moglia Et Al (10532) Lease show the gun barrel located at the tank batter was found corroded out at the bottom of the tank and actively leaking on the ground. The area of contamination measured 3' x 3' and 18" deep.
13. Commission inspection reports made on March 5, 2018 for the Lod Moglia Et Al (10532) Lease show a produced fluid tank marked #8134 was found to be corroded out at the bottom, and actively leaking produced fluids on the ground. The area of contamination measured 2' x 3' and 18" deep. The produced fluid tank contained 14' - 6" of produced water.
14. Commission inspection reports made on March 5, 2018 for the Lod Moglia Et Al (10532) Lease show a ball-valve on the bottom of the West side of a produced fluid storage tank marked #8133 was found actively leaking produced fluids on the ground. The area of contamination measured 3' x 3' x 18" deep.

15. Commission inspection reports made on March 5, 2018 for the Lod Moglia Et Al (10532) Lease show an oil storage tank marked #8133 and the second tank when climbing up the ladder, spilled produced fluids over the top and into the east side of the fire-wall. The area of contamination measure 61' x 3' x 18" deep.
16. Commission inspection reports made on March 5, 2018 for the Lod Moglia Et Al (10532) Lease show Well No.1 was actively leaking produced fluids from between the backing between the polish-rod and the tubing. The area of contamination measure 21' x 9' x 16" deep.
17. 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.
18. 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.
19. Commission district inspection reports made on March 5, 2018 for the Lod Moglia Et Al (10532) Lease show Respondent was using an unpermitted pit for the disposal of oil and gas waste. The pit which measured 22' x 116' and 5' deep at the outer edge where it was possible to measure the depth with a long board. The pit contained a minimum of 4' – 6" of produced fluids.
20. Continued maintenance of unpermitted pits, in violation of Statewide Rule 8(d)(2), may result in unpermitted discharges of oil and gas waste which can contaminate the land surface, affect the health of humans and animals, and may be discharged to surface or subsurface waters, causing pollution.
21. Commission inspection reports made on March 5, 2018, for the Lod Moglia Et Al (10532) Lease, show that Respondent failed to cover a fiberglass open-top tank with "any type of bird protection." Well No. 1 was also found actively producing during the inspection.
22. Failing to properly screen or take other protective measures, as set forth in Statewide Rule 22(b), regarding open-top tanks, skimming pits, and/or collecting pits can cause harm to birds.
23. Commission records show the Lod Moglia Et Al (10532) Lease Certificate of Compliance was cancelled on May 4, 2017. A review of Commission records conducted September 24, 2018 shows that the Lod Moglia Et Al (10532) Lease Certificate of Compliance has not been reissued since it was cancelled. Respondent reported production from the Lod Moglia Et Al (10532) Lease in June, July, August, September, October, November, and December 2017, and in January and February 2018.
24. 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(1), 3(2), 3(3), 8(d)(1), 8(d)(2), 22(b), and 73(i). 16 TEX. ADMIN. CODE §§ 3.3(1), 3.3(2), 3.3(3), 3.8(d)(1), 3.8(d)(2), 3.22(b), and 3.73(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 8(d)(2), which requires that pits not otherwise authorized by rule, be permitted.

11. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 22(b), which requires open-top tanks, skimming pits, and collecting pits to be screened or otherwise rendered harmless to birds.
12. 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.
13. 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.
14. An assessed administrative penalty in the amount of **THIRTY-THREE THOUSAND, EIGHTY-EIGHT DOLLARS (\$33,088.00)** is justified considering the facts and violations at issue.
15. 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, Hildegarde Humberto Jr. Garza, 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. Ascendance Energy Partners, LLC (Operator No. 033892) shall place the Lod Moglia Et Al (10532) Lease, Well No. 1, in compliance with Statewide Rules 3(1), 3(2), 3(3), 8(d)(1), 8(d)(2), 22(b), and 73(i), and any other applicable Commission rules and statutes.
2. Ascendance Energy Partners, LLC (Operator No. 033892) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **THIRTY-THREE THOUSAND, EIGHTY-EIGHT DOLLARS (\$33,088.00)**.

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, Hildegarde Humberto Jr. Garza, 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 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 23th day of January 2019.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master
Order dated January 23, 2019)

CJH/rnf