

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 09-0314019

ENFORCEMENT ACTION AGAINST BOBBY EARL GILBERT, SOLE PROPRIETOR OF B.E.G. PRODUCTION (OPERATOR NO. 040396) FOR VIOLATIONS OF STATEWIDE RULES ON THE KEMPNER -R- (04911) LEASE, WELL NOS. 2, 3, 8, 17, 33, 34, 46, 48, 49, 51, 52, 53, 56, 57, 60, 61, 62, 64, AND 65, WICHITA COUNTY REGULAR FIELD, WICHITA 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 October 18, 2018, and that the respondent, Bobby Earl Gilbert, Sole Proprietor of B.E.G. Production, 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. Bobby Earl Gilbert, Sole Proprietor of B.E.G. Production ("Respondent"), Operator No. 040396, 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.
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 October 10, 2018. 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 January 27, 2015, Respondent, a sole proprietorship, filed a Form P-5 with the Commission reporting that its officer consists of the following individual: Bobby Earl Gilbert.
4. Bobby Earl Gilbert 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 Kempner -R- (04911) Lease, Well Nos. 2, 3, 8, 17, 33, 34, 46, 48, 49, 51, 52, 53, 56, 57, 60, 61, 62, 64, and 65, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective December 1, 1998, approved February 22, 1999.
7. Commission inspection reports made on July 10, 2017; July 21, 2017; June 26, 2018; and July 19, 2018 for the Kempner -R- (04911) Lease, Well Nos. 3, 8, 34, 52, 60, and 62 showed that the signs or identification required to be posted at the well locations were either missing, illegible, or incomplete.
8. 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.
9. Commission inspection reports made on July 10, 2017; July 21, 2017; June 26, 2018; and July 19, 2018 for the Kempner -R- (04911) Lease, Well No. 62, report an area of oil saturated soil around the wellhead measuring 32 square feet.
10. 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.
11. 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.
12. Commission district inspection reports made on July 10, 2017; July 21, 2017; June 26, 2018; and July 19, 2018 for the Kempner -R- (04911) Lease, Well Nos. 51 and 53, indicate that Respondent had not timely closed two workover pits.
13. Completion/workover pits used when completing or working over a well that are not maintained, emptied and backfilled, as set forth in Statewide Rule 8(d)(4)(H)(i)(III), 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.
14. Commission district inspection reports made on July 10, 2017; July 21, 2017; June 26, 2018; and July 19, 2018 for the Kempner -R- (04911) Lease showed that Well Nos. 3, 33, 34, 52, 60, and 65 were open to the atmosphere.
15. 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.

16. Commission inspection reports made on July 10, 2017; July 21, 2017; June 26, 2018; and July 19, 2018, and the absence of reported production since May 2015, showed that the Kempner -R- (04911) Lease, Well Nos. 2, 3, 8, 17, 33, 34, 46, 48, 49, 51, 52, 53, 56, 57, 60, 61, 62, 64, and 65 have been inactive for a period greater than one year. Production from the subject lease ceased on or before April 2015. Further, injection has not been reported at the subject lease for a period of greater than one year.
17. 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.
18. 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.
19. The total estimated cost to the State for plugging the Kempner -R- (04911) Lease Well Nos. 2, 3, 8, 17, 33, 34, 46, 48, 49, 51, 52, 53, 56, 57, 60, 61, 62, 64, and 65 is \$47,315.52.
20. Commission district inspection reports made on July 10, 2017; July 21, 2017; June 26, 2018; and July 19, 2018 for the Kempner -R- (04911) Lease showed that the tank battery was within 500 feet of a highway but did not have a firewall.
21. Failing to erect a dike or firewall as required by Statewide Rule 21(j) can cause fires.
22. Commission district inspection reports made on July 10, 2017; July 21, 2017; June 26, 2018; and July 19, 2018 for the Kempner -R- (04911) Lease and a review of Commission records, indicate that mechanical integrity tests have not been run and no Form H-5 has been filed for Well Nos. 46 and 53.
23. Disposal/injection wells must pass a pressure test at least once every five years, or as required by permit, to show that the well is not leaking, the at waste is being confined to the permitted injection interval, and that the usable quality water zones are properly isolated. Any injection of fluid down a wellbore could be a potential source of pollution. Without testing and supporting documentation, as required by Statewide Rule 46(j), the Commission cannot determine if a well poses a threat to natural resources.
24. The Respondent has a history of violations of Commission Rules. Respondent is currently subject to the restrictions of Tex. Nat. Res. Code § 91.114 due to the existence of two unsatisfied Commission orders: one order (Oil & Gas Docket No. 09-0283507) related to violations of Commission Rules by Respondent; and one

order (Oil & Gas Docket No. 20-0296699) related to noncompliance with Statewide Rule 15 by Respondent.

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), 21(j), 46(j), and 8(d)(4)(H)(i)(III). 16 TEX. ADMIN. CODE §§ 3.3(2), 3.8(d)(1), 3.13(a)(6)(A), 3.14(b)(2), 3.21(j), 3.46(j), and 3.8(d)(4)(H)(i)(III).
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 the subject lease in compliance with Statewide Rule 8(d)(4)(H)(i)(III), which requires that all completion and workover pits used when completing or working over a well shall be dewatered within 30 days and backfilled and compacted within 120 days of well completion.
9. 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.
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 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.
12. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 46(j), which requires a passing mechanical integrity test every five years.
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 **ONE HUNDRED SIX THOUSAND, FOUR HUNDRED THIRTY-FOUR DOLLARS (\$106,434.00)** 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, Bobby Earl Gilbert, 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. Bobby Earl Gilbert, Sole Proprietor of B.E.G. Production (Operator No. 040396) shall place the Kempner -R- (04911) Lease, Well Nos. 2, 3, 8, 17, 33, 34, 46, 48, 49, 51, 52, 53, 56, 57, 60, 61, 62, 64, and 65, in compliance with Statewide Rules 3(2), 8(d)(1), 13(a)(6)(A), 14(b)(2), 21(j), 46(j), and 8(d)(4)(H)(i)(III), and any other applicable Commission rules and statutes.
2. Bobby Earl Gilbert, Sole Proprietor of B.E.G. Production (Operator No. 040396) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **ONE HUNDRED SIX THOUSAND, FOUR HUNDRED THIRTY-FOUR DOLLARS (\$106,434.00)**.

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, Bobby Earl Gilbert, 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)

KMR/pbm