

**RAILROAD COMMISSION OF TEXAS  
OFFICE OF GENERAL COUNSEL**

**OIL AND GAS DOCKET NO. 09-0314324**

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**ENFORCEMENT ACTION AGAINST PEDEN, MARSHELL, SOLE PROPRIETOR (OPERATOR NO. 650100) FOR VIOLATIONS OF STATEWIDE RULES ON THE PHILLIPS, H. N. (11322) LEASE, WELL NOS. 1, AND 5 W, CLAY COUNTY REGULAR FIELD, CLAY COUNTY, TEXAS**

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**FINAL ORDER**

The Railroad Commission of Texas ("Commission") finds that statutory notice of the captioned enforcement proceeding was provided pursuant to Commission rules, and that the Respondent, Peden, Marshall, Sole Proprietor, 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 Texas Administrative 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. Peden, Marshall, Sole Proprietor, ("Respondent"), Operator No. 650100, 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 was also sent the Original Complaint and Notice of Opportunity for Hearing by certified and first-class mail, at the change of address received at the Commission after the most recent P-5 was filed.
2. The certified mail envelope containing the Original Complaint and Notice of Opportunity for Hearing addressed to Respondent's change of address was received on November 26, 2018. The Certified Mail envelope addressed to Respondent's P-5 address was received on November 23, 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 September 28, 2016, Respondent, a sole proprietorship, filed a Form P-5 with the Commission reporting that its officer consists of the following individual: Marshall, Peden, Owner.
4. 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.

5. Respondent designated itself to the Commission as the operator of the Phillips, H. N. (11322) Lease, Well Nos. 1 and 5 W, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective and approved June 23, 1977.
6. Commission District inspection reports made on July 28, 2016, September 12, 2016, May 4, 2017, October 11, 2017, March 6, 2018 and April 11, 2018 show heavy oil-stained soil around the well bore of Well No. 1, on the Phillips, H. N. (11322), measuring approximately 15' x 12' x 2", and under the loading valve of the first tank on the Phillips, H. N. (11322) Lease, measuring approximately 6' x 9' x 3" and 2' x 2' x 2".
7. 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.
8. 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.
9. Commission Records show Well No. 5 W on the Phillips, H. N. (11322) Lease is a permitted disposal well. Commission inspection reports made on March 6, 2018 and April 11, 2018, and the absence of reported production since December 2016, and the absence of reported injection since July 2017, show that the Phillips, H. N. (11322) Lease, Well Nos. 1 and 5W, have been inactive for a period greater than one year. Production from Well No. 1 ceased in November 2016 and injection into Well No. 5 W ceased in June 2017.
10. 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.
11. 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.
12. The total estimated cost to the State for plugging the Phillips, H. N. (11322) Lease Well Nos. 1 and 5 W is \$9,400.00.
13. 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 Texas Natural Resources Code, Chapters 89 and 91.

4. Respondent is in violation of Statewide Rules 8(d)(1) and 14(b)(2). 16 Texas Administrative Code §§ 3.8(d)(1), and 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 Texas Natural Resources Code § 81.0531(c).
6. 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.
7. 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.
8. Pursuant to Texas Natural Resources 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.
9. An assessed administrative penalty in the amount of **TWELVE THOUSAND TWENTY-FIVE DOLLARS (\$12,025.00)** is justified considering the facts and violations at issue.
10. Respondent violated Commission rules related to safety and the control of pollution. Any other organization in which an officer of this organization holds a position of ownership or control, is subject to the restriction in Texas Natural Resources Code § 91.114.

### ORDERING PROVISIONS

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

1. Peden, Marshall, Sole Proprietor, (Operator No. 650100) shall place the Phillips, H. N. (11322) Lease, Well Nos. 1, and 5 W, in compliance with Statewide Rules 8(d)(1) and 14(b)(2), and any other applicable Commission rules and statutes.
2. Peden, Marshall, Sole Proprietor, (Operator No. 650100) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWELVE THOUSAND TWENTY-FIVE DOLLARS (\$12,025.00)**.

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 Texas Government Code § 2001.142, by agreement under Texas Government Code § 2001.147, or by written Commission order issued pursuant to Texas Government 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 Texas Government 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.

Any other organization in which an officer of this organization holds a position of ownership or control at the time Respondent violated Commission rules related to safety and the control of pollution, **shall be subject to the restriction in Texas Natural Resources 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.

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 20<sup>th</sup> day of August 2019.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order dated August 20, 2019)

EMM/bt