

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

OIL AND GAS DOCKET NO. 04-0317833

ENFORCEMENT ACTION AGAINST WHITESANDS OPERATING, L.L.C. (OPERATOR NO. 919650) FOR VIOLATION OF STATEWIDE RULES ON THE SHOEMAKE, E. C., ET AL LEASE, WELL NO. 1 (GAS RRC ID 04-011962), MCALLEN-PHARR (ONSOLIDATED) FIELD, HIDALGO COUNTY, TEXAS

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, Whitesands Operating, L.L.C., 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. Whitesands Operating, L.L.C. ("Respondent"), Operator No. 919650, 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. Joel Gonzalez, Bankruptcy Attorney for Whitesands Operating, L.L.C, was sent the Original Complaint and Notice of Opportunity for Hearing by electronic mail.
2. The certified mail envelope containing the Original Complaint and Notice of Opportunity for Hearing addressed to the Respondent was received by Respondent on May 7, 2019. The first-class mail was not returned. The electronic mail to Joel Gonzalez, Bankruptcy Attorney, was received on May 3, 2019. 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 17, 2019, Respondent, Whitesands Operating, L.L.C., filed a Form P-5 with the Commission reporting that its officers consisted of the following individuals: Coleman E. Hatherly, Jr., Member/Manager; and Anita E. Hatherly, Member.
4. Respondent's Form P-5 is delinquent. Respondent had a \$20,382.00 cash deposit as its financial assurance at the time of the last Form P-5 annual renewal submission.
5. Respondent's Chapter 7 Bankruptcy Case, Case No. 19-20234, was closed with an Order Closing Case, signed on December 26, 2019.

6. Respondent is the operator of record of the Shoemake, E. C., et al Lease, Well No. 1 (Gas RRC ID 04-011962), McAllen (Hansen) Field, Hidalgo County, Texas (the "Shoemake Well"), pursuant to a Commission Form P-4 (Certificate of Compliance) on file with the Commission: effective March 1, 2005, and approved May 9, 2005.
7. Respondent discharged produced water, gas condensate, and other hydrocarbons from the Shoemake Well altering and contaminating groundwater.
8. Respondent polluted State subsurface waters. The pollution of State subsurface waters is a violation of Statewide Rule 8(b). 16 Tex. Admin. Code § 3.8(b).
9. Discharges, in violation of Statewide Rule 8(b), reduce the available supplies of usable fresh water and reduce the quality of the affected water.
10. Respondent discharged produced water, gas condensate (waste oil), or other hydrocarbons (waste oil) at the Shoemake Well.
11. Respondent did not have a permit for the discharges, nor were they authorized under Statewide Rules 8(d)(3), 8(e), 9, 46 or 98. The unpermitted discharge of oil and gas wastes is a violation of Statewide Rule 8(d)(1). 16 Tex. Admin. Code § 3.8(d)(1).
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. For violations that involve actual pollution, the Commission may assess an enhancement of the guideline penalty amount pursuant to 16 Texas Administrative Code § 3.107(f). Penalty enhancement amount for time out of compliance is \$228,000.00, at 228 months noncompliant with Statewide Rules, \$1,000.00 per month.
14. 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 Rule 8(b) and 8(d)(1). 16 Tex. Admin. Code §§ 3.8(b) and 3.8(d)(1).
5. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 8(b), which prohibits persons from conducting activities subject to regulation by the Commission to cause or allow pollution of surface or subsurface water in the state.

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. 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).
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 **TWO HUNDRED TWENTY-NINE THOUSAND FIVE HUNDRED DOLLARS (\$229,500.00)** 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. Whitesands Operating, L.L.C. ("Respondent"), Operator No. 919650, shall place Shoemake, E. C., et al Lease, Well No. 1 (RRC ID 04-011962) into compliance with Statewide Rules 8(b) and 8(d)(1), and any other applicable Commission rules and statutes.
2. Whitesands Operating, L.L.C. ("Respondent"), Operator No. 919650, shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWO HUNDRED TWENTY-NINE THOUSAND FIVE HUNDRED DOLLARS (\$229,500.00)**.

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 civil penalties of up to \$10,000 per day, per violation.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order

dated **MAY 05 2020**)

JHM/bt