

## RAILROAD COMMISSION OF TEXAS

OIL AND GAS DOCKET NO. 00003772

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**ENFORCEMENT ACTION AGAINST APACHE PRODUCTION COMPANY  
(OPERATOR NO. 027237) FOR VIOLATIONS OF STATEWIDE RULE(S) ON THE  
FERGUSON "BB" (09-16533) LEASE, WELL NO(S). 1, 3, 4, AND 5B, ARCHER COUNTY  
REGULAR FIELD, ARCHER COUNTY, TEXAS**

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### FINAL ORDER

The Railroad Commission of Texas ("Commission") finds that after statutory notice of the captioned enforcement proceeding Apache Production Company ("Respondent"), 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 Commissioners 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. Respondent, Operator No. 027237, 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 delivered on July 27, 2020. 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.
3. On August 8, 2017, Respondent, a Corporation, filed a Form P-5 with the Commission reporting that its officers consist of the following individual: Kirby C. Mills.
4. Kirby C. Mills was in a position of ownership or control of Respondent, as defined in Texas Natural Resources Code § 91.114, during the time period of the violations of Commission rules committed by Respondent.
5. Respondent designated itself to the Commission as the operator of the Ferguson "BB" (09-16533) Lease, Well No(s). 1, 3, 4, and 5B, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective September 1, 1990, approved November 28, 1990.
6. Commission District inspection reports made on February 21, 2020, and April 14, 2020, for the Ferguson "BB" (09-16544) Lease, show that the sign or identification required by

- Statewide Rule 3(1), [16 Texas Administrative Code § 3.3(1)], to be posted at the lease entrance was missing.
7. Commission District inspection reports made on February 21, 2020, and April 14, 2020 for the Ferguson "BB" (09-16544) Lease, Well No. 1, 3, 4, and 5B show that the sign or identification required by Statewide Rule 3(2), [16 Texas Administrative Code § 3.3(2)], to be posted at Well No. 3, 4, and 5B were missing and at Well No. 1 did not display all required information.
  8. In the event of a pollution or safety violation or other emergency, the lack of legible signs and identification displaying correct information may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergency. Such confusion will cause delays in containing and remediating the violation or emergency.
  9. Commission District inspection reports made on February 21, 2020, and April 14, 2020, for the Ferguson "BB" (09-16544) Lease, indicate oil and produced fluid have leaked from the wellhead at Well No. 3. An area measuring approximately 120 square feet is affected.
  10. Respondent did not have a permit for said discharges, nor were they authorized under Statewide Rule 8(d)(3) or 8(e), or under Statewide Rule 9, 46 or 98.
  11. Unpermitted discharges of oil and gas waste 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 February 21, 2020, and April 14, 2020 on the Ferguson "BB" (09-16544) Lease, showed that Well No. 1 was open to the atmosphere.
  13. Wells left uncontrolled or open to the atmosphere 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.
  14. Commission District inspection reports made on February 21, 2020, and April 14, 2020 on the Ferguson "BB" (09-16544) Lease, Well No. 1, 3, 4, and 5B, and the absence of reported production since March 2005, showed that the Ferguson "BB" (09-16544) Lease, Well No. 1, 3, 4, and 5B has been inactive for a period greater than one year. Production from the subject lease ceased on or before February 2005.
  15. No workovers, re-entries, or subsequent operations have taken place on the subject wells in this complaint within the last 12 months; the subject wells have not been plugged; and no plugging extensions are in effect for the subject wells as allowed by Statewide Rule 14.
  16. Unplugged wellbores are likely to cause pollution of usable quality ground water and surface water, as defined in Statewide Rule 8(a)(28) [16 Texas Administrative Code § 3.8(a)(28)], by serving as a conduit for the passage of oil, gas, saltwater, and other substances from one stratum or formation to another or to the surface or from the surface downward.

17. Pursuant to calculations by Commission District Office personnel, the total estimated cost to the State for plugging the Ferguson "BB" (09-16544) Lease, Well No. 1, 3, 4, and 5B is \$21,600.00. Commission records indicate that Well No. 1, 3, 4, and 5B measure 16,648 feet deep.

### CONCLUSIONS OF LAW

1. The Commission properly noticed 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 Ferguson "BB" (09-16533) Lease, Well No(s). 1, 3, 4, and 5B in compliance with all applicable Commission rules and Texas Natural Resource Code §§ 89 and 91.
4. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 3 [16 Texas Administrative Code § 3.3], which requires the posting of signs and identification in English, which display clearly legible and correct information, with letters and numbers at least one inch in height. Statewide Rule 3(1), [16 Texas Administrative Code § 3.3(1)], requires the posting of such a sign at the principal entrance of the property, which must show the name of the property as carried on the records of the Commission, the name of the operator, and the number of acres in the property. Statewide Rule 3(2), [16 Texas Administrative Code § 3.3(2)], requires the posting of such a sign at each well site, which must show the name of the property, the name of the operator, and the well number.
5. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 8(d)(1) [16 Texas Admin. Code § 3.8(d)(1)] captioned "Pollution Control," which requires persons disposing of oil and gas wastes by any method to have a permit to do so unless authorized under subsection (d)(3) or (e) of Statewide Rule 8, or under Statewide Rule 9, 46 or 98. Oil and gas wastes are defined in Statewide Rule 8(a)(26) [16 Texas Admin. Code § 3.8(a)(26)] to include materials to be disposed of or reclaimed, which have been generated in connection with activities associated with the exploration, development, and production of oil or gas. These materials include but are not limited to "saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semi-liquid, or solid waste material." "To dispose" is defined in Statewide Rule 8(a)(24) [16 Texas Admin. Code § 3.8(a)(24)] to include "conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming, or allowing to seep, or to cause or allow any such acts of disposal."
6. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 13(a)(6)(A) [16 Texas Administrative Code § 3.13(a)(6)(A)], which provides that wellhead assemblies shall be used on wells to maintain surface control of the well. 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 the surface by influxes of surface water into the open wellbore.

7. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 14(b)(2) [16 Texas Administrative Code § 3.14(b)(2)], which requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 15 [16 Texas Administrative Code § 3.15]. Under Statewide Rule 14(c)(2), as to any well for which the most recent Commission-approved operator designation form was filed prior to September 1, 1997, the entity designated as operator on that form is presumed to be the entity responsible for the physical operation and control of the well and to be the entity responsible for properly plugging the well in accordance with Statewide Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells. The presumption of responsibility may only be rebutted at a hearing called for the purpose of determining plugging responsibility.
8. Respondent is in violation of Statewide Rule(s) 3(1), 3(2), 13(a)(6)(A), and 14(b)(2). 16 Texas Administrative Code §§ 3.3(1), 3.3(2), 3.13(a)(6)(A), and 3.14(b)(2).
9. 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 Resource Code § 81.0531(c).
10. Pursuant to Texas Natural Resource 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.
11. An assessed administrative penalty in the amount of **THIRTY-THREE THOUSAND ONE HUNDRED EIGHTY-FOUR DOLLARS (\$33,184.00)** is justified considering the facts and violations at issue.

### ORDERING PROVISIONS

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

1. Apache Production Company (Operator No. 027237) shall plug the subject well(s) in compliance with Statewide Rule 14(b)(2) and otherwise place the subject lease and well(s) in compliance with Statewide Rule(s) 3(1), 3(2), 13(a)(6)(A), and 14(b)(2) and any other applicable Commission rules and statutes.
2. Apache Production Company (Operator No. 027237) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of

**THIRTY-THREE THOUSAND ONE HUNDRED EIGHTY-FOUR DOLLARS  
(\$33,184.00)**

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.

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.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order

dated SEP 22 2020)

MAG/wcd