

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

OIL AND GAS DOCKET NO. 03-0254784

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY CYGNUS OPERATOR, INC. (161366), AS TO THE DUNCAN LEASE, WELL NOS. 1 (207577) AND 2 (558560), N. HUNGERFORD (VICKSBURG) FIELD, WHARTON COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on March 27, 2008, and that the respondent, Cygnus Operator, Inc. (161366), failed to appear to the Notice of Hearing. Pursuant to § 1.49 of the Commission's General Rules of Practice and Procedure [Tex. R. R. Comm'n, 16 TEX. ADMIN. CODE § 1.49] and after being duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Cygnus Operator, Inc. (161366), ("Respondent") was given a Notice of Hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report, which was signed and returned to the Commission.
2. The returned certified receipt (green card) that was attached to the Original Complaint and the Notice of Hearing mailed to Respondent's most recent P-5 address was signed and returned to the Commission on February 11, 2008. The certified receipt has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On October 31, 2006, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Patrick R. Oenbring, President; and Gerald W. Walrath, Vice-President.
4. Patrick R. Oenbring, was a person in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violations of Commission rules committed by respondent.
5. Gerald W. Walrath, was a person in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violations of Commission rules committed by respondent.

6. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
7. Respondent designated itself to the Commission as the operator of Well No. 1 (207577) on the Duncan Lease ("subject well"/"subject lease") by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission on effective November 2, 2006.
8. Respondent designated itself to the Commission as the operator of Well No. 2 (558560) on the Duncan Lease ("subject well"/"subject lease") by filing a Form W-1 (Application to Drill, Deepen, Plug Back or Re-Enter) with the Commission on March 4, 2005.
9. According to Commission records the Respondent's Form P-5 (Organization Report) became delinquent on October 1, 2007. Respondent had a \$25,000.00 Letter of Credit as its financial assurance at the time of its last P-5 renewal.
10. Well No. 1 (207577) on the Duncan Lease ceased production on or before April 30, 2005
11. Well No. 2 (558560) on the Duncan Lease has never produced.
12. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with, Statewide Rule 14.
13. Usable quality groundwater in the area is likely to be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the potential for pollution.
14. The estimated cost to the State of plugging Well No. 1 (207577) on the Duncan Lease is \$14,853.00.
15. The estimated cost to the State of plugging Well No. 2 (558560) on the Duncan Lease is \$35,840.00.
16. Commission inspections were conducted on September 17, 2007, October 16, 2007 and November 16, 2007 for the Duncan Lease. The signs or identification required to be posted at the lease entrance and at Well Nos. 1 (207577) and 2 (558560) were missing.
17. Failure to properly identify a well by the posting of the sign required by Statewide Rule 3 has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.
18. Commission inspections conducted on September 24, 2007, October 16, 2007 and November 16, 2007 for the Duncan Lease, showed that Well No. 2 (558560) has been completed with a dry hole tree assembly, and Commission records show that Respondent has not filed the required completion report.

19. The Respondent has not demonstrated good faith since it failed to timely place the subject lease and subject wells in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Railroad Commission to respondent and to all other appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Respondent is in violation of Commission Statewide Rules 3, 14(b)(2) and 16(b).
4. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 3, which requires that each property that produces oil, gas or geothermal resources and each oil, gas or geothermal resource well and tank, or other approved crude oil measuring facility shall post signs or identification.
5. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 16(b), which requires that the owner, or operator of an oil, gas or geothermal resource well, must within thirty days (30) after the completion of such well, or the plugging of such well, if the well is a dry hole, shall file with the Commission the appropriate completion or plugging report.
6. Respondent is responsible for maintaining the subject lease and subject wells in compliance with all applicable Commission rules according to Statewide Rules 14, 58, and 79 and Chapters 89 and 91 of the Texas Natural Resources Code.
7. The documented violations committed by the respondent constitute acts deemed serious, a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).
8. 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, Patrick R. Oenbring, and any other organization in which he may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resource Code Section 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, whichever is earlier.

9. 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, Gerald W. Walrath, and any other organization in which he may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resource Code Section 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, whichever is earlier.

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

1. Cygnus Operator, Inc. (161366), shall plug or otherwise place the Duncan Lease, Well Nos. 1 (207577) and 2 (558560), N. Hungerford (Vicksburg) Field, Wharton County, Texas in compliance with applicable Commission rules and regulations; and
2. Cygnus Operator, Inc. (161366), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$5,250.00)**.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing 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 90 days from the date the parties are notified of the order.

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 \$10,000.00 per day per violation.

Done this 12th day of August 2008.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated August 12, 2008)

ME/sa