

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

OIL AND GAS DOCKET NO. 7C-0262381

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY PENERGY (651174), AS TO THE VAUGHN -B- (02053) LEASE, WELL NOS. 3 AND 5, VAUGHN -A- T (02073) LEASE, WELL NO. 2, VAUGHN FIELD, AND SHANNON -D- (07086) LEASE, WELL NO. 1, VAUGHN (QUEEN) FIELD, CROCKETT COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on November 5, 2009 and that the respondent, Penergy (651174), failed to appear or respond to the Notice of Opportunity for 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. Penergy (651174) ("Respondent") was given Notice of Opportunity for Hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report, which was returned to the Commission.
2. The returned certified receipt containing the Original Complaint and the Notice of Opportunity for Hearing mailed to Respondent's most recent P-5 address was returned to the Commission marked "unable to forward" on September 28, 2009. The returned certified receipt (green card) that was attached to the Original Complaint and the Notice of Opportunity for Hearing sent to Ricky Wayne Patterson, President; was signed and returned to the Commission on September 21, 2009. 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 May 26, 2009, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Ricky Wayne Patterson, President; and Ladon Patterson; Secretary.
4. Ricky Wayne Patterson, 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. Ladon Patterson, 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 Nos. 3 and 5 on the Vaughn -B- (02053) Lease, Well No. 2 on the Vaughn -A- T (02073) Lease and Well No. 1 on the Shannon -D- (07086) Lease ("subject wells"/"subject leases") by filing a Form P-4 (Producers Transportation Authority and Certificate of Compliance) with the Commission effective on September 1, 2004 for all of the subject wells and subject leases.
8. The Respondent's Form P-5 (Organization Report) is active. Respondent has a \$250,000.00 Letter of Credit as its financial assurance.
9. Well Nos. 3 and 5 on the Vaughn -B- (02053) Lease, Well No. 2 on the Vaughn -A- T (02073) Lease and Well No.1 on the Shannon -D- (07086) Lease ceased production on or before January 1, 1993.
10. The Statewide Rule 14(b)(2) extension for Well No. 3 on the Vaughn -B- (02053) Lease was denied on February 6, 2009 for an H-15 problem.
11. The Statewide Rule 14(b)(2) extension for Well No. 5 on the Vaughn -B- (02053) Lease was denied on October 30, 2008 for an H-15 problem.
12. The Statewide Rule 14(b)(2) extension for Well No. 2 on the Vaughn -A- T (02073) Lease was denied on October 30, 2008 for an H-15 problem.
13. The Statewide Rule 14(b)(2) extension for Well No. 1 on the Shannon -D- (07086) Lease was denied on October 30, 2008 for an H-15 problem.
14. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with Statewide Rule 14.
15. 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 probability of pollution.
16. The estimated cost to the State of plugging Well Nos. 3 and 5 on the Vaughn -B- (02053) Lease is \$12,200.00.
17. The estimated cost to the State of plugging Well No. 2 on the Vaughn -A- T (02073) Lease is \$6,100.00.

18. The estimated cost to the State of plugging Well No. 1 on the Shannon -D- (07086) Lease is \$6,100.00.
19. No Form H-15(Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the Vaughn -B- (02053) Lease, Well Nos. 3 and 5. A Form H-15 fluid level test was performed on May 20, 2008 for both Well Nos. 3 and 5 and the Form H-15 test was not approved. A District inspection report dated April 9, 2009 indicates the Commission District Office witnessed a fluid level test on Well Nos. 3 and 5 and both tests failed. The Vaughn -B- (02053) Lease, Well Nos. 3 and 5 were completed on July 23, 1949 and March 23, 1950 respectively, and that the wells have not been plugged.
20. No Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the Vaughn -A- T (02073) Lease, Well No. 2. A Form H-15 fluid level test was performed on July 8, 2008 and the Form H-15 test was not approved. A District inspection report dated April 9, 2009 indicates the Commission District witnessed a fluid level test on Well No. 2 and the test failed. The Vaughn -A- T (02073) Lease, Well No. 2 was completed on January 10, 1951, and that the well has not been plugged.
21. No Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the Shannon -D- (07086) Lease, Well No. 1. A Form H-15 fluid level test was performed on August 4, 2008 and the Form H-15 test was not approved. A District inspection report dated April 9, 2009 indicates the Commission District Office witnessed a fluid level test on Well No. 1 and the test failed. The Shannon -D- (07086) Lease, Well No. 1, was completed on November 3, 1962, and the well has not been plugged.
22. The Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject leases and wells in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.
23. The Respondent has a prior history of Commission rule violations including the following docket(s):

Docket No. 08-0240691; Final Order Served: December 22, 2004;
Docket No. 7C-0252771; Final Order Served: November 20, 2007; and
Docket No. 08-0244590; Final Order Served: March 28, 2006.

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 14(b)(2) and 14(b)(3)
4. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 14(b)(3), which requires that the operator of any well more than 25 years old that becomes inactive shall plug the well or successfully conduct a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.
5. Respondent is responsible for maintaining the subject leases 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.
6. 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).
7. 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, Ricky Wayne Patterson , 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.
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, Ladon Patterson, and any other organization in which she/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. Penergy (651174), shall plug the Vaughn -B- (02053) Lease, Well Nos. 3 and 5, the Vaughn -A- T (02073) Lease, Well No. 2, Vaughn Field, and the Shannon -D- (07086) Lease, Well No. 1, Vaughn (Queen) Field, Crockett County, Texas in compliance with applicable Commission rules and regulations; and
2. Penergy (651174), shall pay the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **NINETEEN THOUSAND DOLLARS (\$19,000.00)**.

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. GOVT. 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 9th day of March 2010.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated March 9, 2010)

JD/sa