

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL & GAS DOCKET NO. 03-0306070

ENFORCEMENT ACTION AGAINST NOXXE OIL AND GAS, LLC (OPERATOR NO. 615853) FOR VIOLATIONS OF STATEWIDE RULES ON THE HOUSE, H. C. - WEST (02448) LEASE, WELL NOS. 21 AND 56, HUMBLE LIGHT (RIVERSIDE) FIELD, COUNTY; FOSTER LBR CO (10978) LEASE, WELL NOS. 1, 2, 3, 5, AND 6, HUMBLE FIELD, COUNTY; AND HOUSE, H. C. (10979) LEASE, WELL NOS. 16, 17, 18, AND 20, HUMBLE FIELD, HARRIS COUNTY, TEXAS

FINAL ORDER

The Railroad Commission of Texas ("Commission") finds that after statutory notice the captioned enforcement proceeding was heard by a Commission Administrative Law Judge on June 28, 2018, and that the respondent, Noxxe Oil and Gas, LLC, 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 TEX. ADMIN. 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. Noxxe Oil and Gas, LLC ("Respondent"), Operator No. 615853, 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's officer as identified on the Form P-5—Steven D. Shaffer—was sent the Original Complaint and Notice of Opportunity for Hearing by certified and first-class mail, addressed to the last known addresses.
2. The certified mail envelope containing the Original Complaint and Notice of Opportunity for Hearing addressed to the Respondent was returned to the Commission. The first-class mail was returned to the Commission on May 8, 2018. The certified mail envelope containing the Original Complaint and Notice of Opportunity for Hearing addressed to Eagle Eye Energy Partners LP, Steven D. Shafer, and Eagle Eye Management, LLC were delivered on May 2, 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 January 25, 2018, Respondent, a limited liability company, filed a Form P-5 with the Commission reporting that its officers consist of the following individuals:

Steven D. Shaffer, President/Secretary and Steven D. Shaffer, President/Secretary.

4. Steven D. Shaffer was in a position of ownership or control of Respondent, as defined in TEX. NAT. RES. CODE § 91.114, during the time period of the violations of Commission rules committed by Respondent.
5. Respondent's Form P-5 is active-ext. Respondent had a \$50,000.00 cash deposit as its financial assurance at the time of the last Form P-5 annual renewal submission.
6. Respondent designated itself to the Commission as the operator of the House, H. C. - West (02448) Lease, Well Nos. 21 and 56, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective November 10, 2009, approved January 5, 2010.
7. Respondent designated itself to the Commission as the operator of the Foster Lbr Co (10978) Lease, Well Nos. 1, 2, 3, 5, and 6, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective November 10, 2009, approved January 5, 2010.
8. Respondent designated itself to the Commission as the operator of the House, H. C. (10979) Lease, Well Nos. 16, 17, 18, and 20, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective November 10, 2009, approved January 5, 2010.
9. A Commission District inspection report made on June 19, 2017, for the House, H.C. West (02448) Lease, Well No. 21, showed that the area surrounding Well No. 21 was heavily overgrown with vegetation. There was also no access to get into the fenced area around the well site.
10. In the event of pollution or safety violation or other emergency, the lack of access to the lease, as required by Statewide Rule 2(a), may cause confusion as to the actual location of a violation or emergency. Such confusion can cause delays in containing and remediating the violation or emergency.
11. Commission inspection reports made on June 2, 2017 and June 28, 2017 for the House, H. C. - West (02448) Lease, show that the signs or identification required to be posted at the well locations were missing.
12. Commission inspection reports made on May 12, 2017 and June 19, 2017 for the Foster Lbr Co (10978) Lease, Well Nos. 2, 3, 5, and 6 show that the signs or identification required to be posted at the well locations were missing. Additionally, the sign posted at Well No. 1 contained the wrong operator information. According to pictures taken during the May 12, 2017 inspection, the sign listed the operator of Well No. 1 as IPACT.
13. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rule 3(2), may cause confusion as to the responsible operator

- to be contacted and the actual location of a violation or emergency, which can result in delays in remedying a violation or emergency.
14. Commission inspection reports made on May 2, 2017 and June 28, 2017 for the House, H. C. - West (02448) Lease show there was an ongoing spill occurring on the tank battery. The spill was located inside the firewall and measured approximately 10' x 3'. An additional inspection made on June 2, 2017 confirms that the spill has not yet been remediated.
 15. 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.
 16. 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.
 17. Commission inspection reports made on May 15, 2017 and June 28, 2017 for the House, H.C. (10979) Lease show that several areas of contaminated soil were present. Around Well No. 16 there was an impacted area measuring approximately 50' x 30'. Around Well No. 17 there was an impacted area measuring approximately 25' x 25'. Around Well No. 18 there was an impacted area measuring approximately 50' x 40', and around Well No. 20 there was an impacted area measuring approximately 40' x 40'.
 18. 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.
 19. 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.
 20. Commission district inspection reports made on May 12, 2017 and June 28, 2017 for the House, H. C. - West (02448) Lease show that Well No. 56 has been leaking from the larken head.
 21. Wells left uncontrolled or open to the atmosphere, in violation of Statewide Rule 13(a)(6)(A), 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.
 22. A Commission District inspection report made on May 18, 2017 indicated that the operator had failed to notify the District Office of a spill from a flowline which impacted nearby surface water. A District inspection made on May 2, 2017 first observed that a spill had occurred on the lease. However, no Form H8 has been filed by the Respondent with the District office. Additionally, the June 28, 2017 inspection also indicated that the broken flowline which caused the initial spill was still unrepaired.

23. Commission District inspection reports made on House H.C. (10979) Lease on May 15, 2017 and June 19, 2017 indicated that the operator had failed to notify the District Office of several spills. There was a significant spill inside the tank battery which the operator failed to notify the District Office, as well as several spills around Well Nos. 16, 17, 18, and 20. Furthermore, the latest inspection dated June 19, 2017, showed that the Respondent has not yet provided the District Office with a Form H8.
24. Unreported discharges, in violation of Statewide Rule 20(a), may result in improper or inadequate clean-up of the affected areas which can cause contamination of land surface and may eventually be discharged to surface or subsurface waters, causing pollution.
25. A Commission District inspection report made on June 19, 2017, on the House, H.C. West (02448) Lease, showed that heavy vegetation surrounds Well No. 21. This overgrown vegetation represents a fire hazard and will need to be cleared away.
26. A Commission District inspection report made on May 12, 2017 on the Foster Lbr Co (10978) Lease, showed that the firewall was not properly constructed around the tank battery to hold the contents of the largest tank. Additionally, the battery is located approximately 500' from the San Jacinto River and 200' from a residential street.
27. Failing to erect a dike or fire wall as required by Statewide Rule 21(j) can cause fires.
28. Commission District inspection reports made on the House, H.C. (10979) Lease showed that Respondent had failed to properly screen two open test tanks being used for storage.
29. Failing to properly screen or take other protective measures, as set forth in Statewide Rule 22(b), regarding open-top tanks, skimming pits, and/or collecting pits can cause harm to birds.
30. Commission records reflect that on December 18, 2013, December 2, 2016, January 5, 2017, and May 19, 2017, the Commission gave Respondent notice by certified mail of the alleged facts or conduct of the Respondent in the operation, or production, of oil or gas from the House, H.C. (10979) Lease, that appeared to violate the oil and gas conservation laws of this state, or rules or orders of the Commission adopted under those laws, to warrant the cancellation of the certificate of compliance. Said notice gave Respondent an opportunity to show compliance with all requirements of law for retention of the certificate of compliance.
31. Commission records reflect that Respondent did not timely show compliance with all requirements of law for retention of the certificate of compliance and, as a result, the certificate of compliance for the House, H.C. (10979) Lease, was cancelled,

and Respondent given notice of such cancellation, on January 2, 2017 and June 21, 2017.

32. An inspection report made on May 15, 2017 showed impacted soil around Well Nos. 16, 17, 18, and 20. A further inspection dated June 19, 2017, further showed that Well Nos. 16, 17, 18, and 20 continue to have impacted soil around them as a result of continually producing under severance.
33. By producing the House, H.C. (10979) Lease, after notice from the Commission that the certificate of compliance had been cancelled and before a new certificate of compliance had been issued, Respondent violated Statewide Rule 73(i).
34. 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 TEX. NAT. RES. CODE, chs. 89 and 91.
4. Respondent is in violation of Statewide Rules 2(a), 3(2), 8(d)(1), 13(a)(6)(A), 20(a), 21(j), 22(b), 73(i). 16 TEX. ADMIN. CODE §§ 3.2(a), 3.3(2), 3.8(d)(1), 3.13(a)(6)(A), 3.20(a), 3.21(j), 3.22(b), 3.73(i).
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 TEX. NAT. RES. CODE § 81.0531(c).
6. Respondent is responsible for maintain the subject lease in compliance with Statewide Rule 2(a), which provides that the Commission or its representatives shall have access to come upon any lease or property operated or controlled by an operator, producer, or transporter of oil, gas, or geothermal resources, and to inspect any and all leases, properties, and wells and all records of said leases, properties, and wells.
7. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 3(2), which requires that each well site that produces oil, gas, or geothermal resources shall post signs or identification showing the name of the property, name of the operator and the well number.

8. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 8(d)(1), which prohibits the discharge of oil and gas waste without a permit.
9. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 20(a), which requires that operators immediately provide notice to the appropriate Commission district office by telephone or telegraph of a fire, leak, spill or break.
10. Respondent is responsible for maintaining surface control of a well by using wellhead assemblies in compliance with Statewide Rule 13(a)(6)(A). 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 surface by influxes of surface water into the open wellbore.
11. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 20(a), which requires that operators immediately provide notice to the appropriate Commission district office by telephone or telegraph of a fire, leak, spill or break.
12. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 21(j), which requires that dikes or fire walls be erected and kept around all permanent oil tanks or battery of tanks that are within the corporate limits of any city, town or village or where such tanks are closer than 500 feet to any highway or inhabited dwelling or closer than 1,000 feet to any school or church, or where such tanks are located as to be deemed by the Commission to be an objectionable hazard.
13. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 22(b), which requires open-top tanks, skimming pits, and collecting pits to be screened or otherwise rendered harmless to birds.
14. Respondent is responsible for maintaining the subject well in compliance with Statewide Rule 73(i) and TEX. NAT. RES. CODE § 91.706, which requires the operator, upon notice from the Commission that a certificate of compliance has been cancelled, to not produce oil, gas, or geothermal resources until a new certificate of compliance has been issued by the Commission.
15. Pursuant to TEX. NAT. RES. 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.
16. An assessed administrative penalty in the amount of **FORTY-SIX THOUSAND, EIGHT HUNDRED SEVENTY-ONE DOLLARS (\$46,871.00)** is justified considering the facts and violations at issue.

17. As persons in positions of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Steven D. Shaffer and any other organization in which these individuals may hold a position of ownership or control, is subject to the restriction in TEX. NAT. RES. CODE § 91.114(a)(2).

ORDERING PROVISIONS

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

1. Noxxe Oil and Gas, LLC (Operator No. 615853) shall place the House, H. C. - West (02448) Lease, Well Nos. 21, and 56, ; Foster Lbr Co (10978) Lease, Well Nos. 1, 2, 3, 5, and 6, ; and House, H. C. (10979) Lease, Well Nos. 16, 17, 18, and 20, in compliance with Statewide Rules 2(a), 3(2), 8(d)(1), 13(a)(6)(A), 20(a), 21(j), 22(b), 73(i), and any other applicable Commission rules and statutes.
2. Noxxe Oil and Gas, LLC (Operator No. 615853) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FORTY-SIX THOUSAND, EIGHT HUNDRED SEVENTY-ONE DOLLARS (\$46,871.00)**.

It is further **ORDERED** that as persons in positions of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Steven D. Shaffer and any other organization in which these individuals may hold a position of ownership or control, **shall be subject to the restriction in TEX. NAT. RES. 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.

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 TEX. GOV'T CODE § 2001.142, by agreement under TEX. GOV'T CODE § 2001.147, or by written Commission order issued pursuant to TEX. GOV'T 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 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 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.

Done this 16th day of October 2018.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master
Order dated October 16, 2018)

CJH/dac