

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

OIL AND GAS DOCKET NO. 01-0240702

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY FORTUNE OPERATING, INC. (278767), AS TO THE BENKE, JOHN (12592) LEASE, WELL NO. 1, PEARSALL (AUSTIN CHALK) FIELD, LA SALLE COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on November 17, 2005, and that the respondent, Fortune Operating, Inc. (278767), failed to appear or respond to the notice. 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. Fortune Operating, Inc. (278767), ("Respondent") was given First Amended 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 First Amended Notice of Hearing mailed to Respondent's most recent P-5 address was signed and returned to the Commission on April 1, 2005. The returned certified receipt (green card) that was attached to the Original Complaint and the First Amended Notice of Hearing mailed to President; Russell Lane Vera, was signed and returned to the Commission on March 28, 2005. The certified receipts have been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On March 9, 2003, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Russell Lane Vera; President.
4. Russell Lane Vera, 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. The violations of Commission rules committed by respondent are related to safety and the control of pollution.

6. Respondent designated itself to the Commission as the operator of Well No. 1 on the Benke, John (12592) Lease ("subject well"/"subject lease") by filing a Form P-4 (Producer's Transportation of Authority and Certificate of Compliance) with the Commission effective on February 1, 1992.
7. According to Commission records the Respondent's Form P-5 (Organization Report) became delinquent on May 1, 1995. Respondent paid a fee of \$750.00 as its financial assurance at the time of its last P-5 renewal.
8. The subject well ceased production on or before February 1993.
9. The subject well has not been properly plugged in accordance with, and is not otherwise in compliance with, Statewide Rule 14.
10. 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 well. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
11. The estimated cost to the State of plugging the subject well is \$14,900.00.
12. Commission district office inspections were conducted on May 28, 2004, July 9, 2004, August 20, 2004 and September 21, 2004 for the Benke, John (12592) Lease. The signs or identification required to be posted at the lease entrance and well site were missing.
13. Failure to properly identify a lease and wells 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.
14. A Commission district office inspection was conducted on May 28, 2004 for the Benke, John (12592) Lease. Well No. 1 was leaking oil. A July 9, 2004 inspection showed that oil skim on top of rain water around the wellhead area measuring approximately 5' x 5'. Follow up inspections on August 20, 2004 and September 21, 2004 revealed that the oil saturated soil area had not been cleaned or remediated.
15. No permit has been issued to the Respondent for the discharge of oil and gas wastes on or from the subject lease.
16. The unpermitted discharges of oil and gas wastes or other substances or materials on the subject lease constitute a hazard to public health and safety because leaks and spills of oil and produced waters onto soils can migrate into surface water bodies causing contamination or can leach into the ground and percolate through soils into groundwater supplies.
17. Commission district inspections were conducted on May 28, 2004, July 9, 2004, August 20, 2004 and September 21, 2004 for the Benke, John (12592) Lease. The wellhead assembly at Well No. 1 failed to maintain surface control of the well as evidenced by the fact that the well was leaking oil from the tubing.
18. Maintenance of surface control by wellhead assemblies is necessary to prevent the

discharge of oil and gas wastes on the subject lease. Failure to maintain surface control constitutes a hazard to public health and safety because the discharges of oil and gas wastes onto land surface can migrate into surface of subsurface waters.

19. The Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject lease and subject well 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(a), 8(d)(1) 13(b)(1)(B) and 14(b)(2).
4. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 3(a), 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 Rule 8(d)(1), which prohibits the discharge of oil and gas wastes without a permit.
6. Respondent is responsible for maintaining the subject lease in compliance with Rule 13(b)(1)(B), which requires that surface control of all wells be maintained with wellhead assemblies.
7. Respondent is responsible for maintaining the subject lease 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.
8. 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) (Vernon 2001).
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, Russell Lane Vera, 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. Fortune Operating, Inc. (278767), shall plug the Benke, John (12592) Lease, Well No. 1, Pearsall (Austin Chalk) Field, La Salle County, Texas in compliance with applicable Commission rules and regulations; and
2. Fortune Operating, Inc. (278767), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FOUR THOUSAND DOLLARS (\$4,000.00) less ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750.00)** already received..

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 24th day of January 2006.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated January 24, 2006)

ME/sa