

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

OIL AND GAS DOCKET NO. 01-0272453

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY ARRIOLA OPERATING & CONSLTG, INC. (033181), AS TO THE BYRD 2-H (12983) LEASE, WELL NO. 2H, MARCELINA CREEK (AUSTIN CHALK) FIELD, WILSON COUNTY TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on March 15, 2012 and that the respondent, Arriola Operating & Consltg, Inc. (033181), 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. Arriola Operating & Consltg, Inc. (033181), ("Respondent") was given a Notice of Opportunity for Hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report.
2. The returned certified receipt attached to the Original Complaint and the Notice of Opportunity for Hearing mailed to Respondent's most recent P-5 address, was signed and verified by the electronic return on January 20, 2012. The certified electronic verification has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On October 4, 2011, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Robert B. Ruston, III; President.
4. Robert B. Ruston, III, was 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. 2H on the Byrd 2-H (12983) Lease ("subject well"/"subject lease") by filing a P-4 Form (Producer's Transportation Authority and Certificate of Authority) effective on March 1, 2008.

7. Commission records indicate that Respondent's Form P-5 (Organization Report) is active. Respondent has \$50,000.00 cash as its financial assurance.
8. Commission District inspections were conducted on September 14, 2010, November 19, 2010, March 10, 2011 and January 12, 2012 for the Byrd 2-H (12983) Lease, Well No. 2H. The well is inactive and the electric box for the well is sealed. On August 3, 2010, the Commission advised Respondent it failed to establish a continuing right to operate the referenced well and, as a result, the Commission was cancelling the well's plugging extension. Respondent has since failed to provide evidence of a good faith claim to operate the well or to plug the well.
9. The subject well has not been properly plugged in accordance with, and is not otherwise in compliance with, Statewide Rule 14.
10. The Statewide Rule 14b2 extension for Well No. 2H on the Byrd 2-H (12983) Lease was denied on August 3, 2010 for failure to provide a Good Faith Claim to operate.
11. Usable quality groundwater in the area could 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.
12. The estimated cost to the State of plugging Well No. 2H on the Byrd 2-H (12983) Lease is \$42,300.00.
13. The Respondent did not demonstrate good faith since it failed to plug or otherwise place the subject lease and well in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.
14. Respondent has a prior history of Commission rule violations including the following docket(s):

Docket No. 01-0259511; Final Order Served: December 16, 2008; and
Docket No. 01-0264894; Final Order Served: February 8, 2011.

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 responsible for maintaining the subject lease in compliance with Statewide Rule 14(b)(2).
4. Respondent is responsible for maintaining the subject lease and subject well 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.

5. 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.
6. 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, Robert B. Ruston, III, 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. Arriola Operating & Consltng, Inc. (033181), shall plug the Byrd 2-H (12983) Lease, Well No. 2H, Marcelina Creek (Austin Chalk) Field, Wilson County, Texas in compliance with applicable Commission rules and regulations;
2. Arriola Operating & Consltg, Inc. (033181), shall pay the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FOUR THOUSAND DOLLARS (\$4,000.00)**.

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 7th day of August 2012.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated August 7, 2012)

MFE/sa