

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

OIL AND GAS DOCKET NO. 03-0271502

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY EMBRY SOLUTIONS, INC. (250990), AS TO THE 1ST NATL. BANK OF MARSHALL, TR. 3 (11402) LEASE, WELL NOS 1 AND 2, HALLIDAY, SE (LEWISVILLE 8700) FIELD, MADISON COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on November 17, 2011 and that the respondent, Embry Solutions, Inc. (250920), 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. Embry Solutions, Inc. (250920), ("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 returned to the Commission marked "unclaimed" on October 28, 2011. 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 May 21, 2010, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Mark Embry; President.
4. Mark Embry, 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 Nos. 1 and 2 on the 1st Natl. Bank of Marshall, Tr. 3 (11402) Lease ("subject wells"/"subject lease") by filing P-4 Forms (Producer's Transportation Authority and Certificate of Compliance) effective June 18, 2010.

7. Commission records indicate that Respondent's Form P-5 (Organization Report) is active. Respondent has a \$25,000.00 Bond as its financial assurance.
8. Production from Well No. 2 on the 1st Natl. Bank of Marshall, Tr. 3 (11402) Lease ceased in November 2009.
9. Disposal into Well No. 1 on the 1st Natl. Bank of Marshall, Tr. 3 (11402) Lease ceased in April 2008.
10. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with, Statewide Rule 14.
11. The Statewide Rule 14b2 extension for Well No. 1 on the 1st Natl. Bank of Marshall, Tr. 3 (11402) Lease was denied on September 11, 2010 for an H-5 issue.
12. The Statewide Rule 14b2 extension for Well No. 2 on the 1st Natl. Bank of Marshall, Tr. 3 (11402) Lease was denied on September 11, 2010 for an inactive P-5 status.
13. Usable quality groundwater in the area could have been 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.
14. The estimated cost to the State of plugging Well Nos. 1 and 2 on the 1st Natl. Bank of Marshall, Tr. 3 (11402) Lease is \$104,671.00.
15. Commission District inspections were conducted on October 5, 2010, November 12, 2010, February 9, 2011, March 28, 2011, October 17, 2011 and November 28, 2011 for the 1st Natl. Bank of Marshall, Tr. 3 (11402) Lease. The signs or identification required to be posted at the lease entrance, wells and tank battery, respectively, display incorrect information at the lease entrance and at Well Nos. 1 and 2 and was missing from the tank battery.
16. 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.
17. Well No. 1 of the 1st Natl. Bank of Marshall, Tr. 3 (11402) Lease is a permitted disposal well. Commission records reflect the well was due for a mechanical integrity (pressure) test by April 30, 2007. Respondent has failed to conduct the required test and report the test results on the Commission Form H-5.
18. The Respondent did not demonstrate good faith since it failed to plug or otherwise place the subject lease 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.

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 Rules 3, 9(12)(A)&(B) and 14(b)(2).

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 was responsible for maintaining the subject lease in compliance with Statewide Rule 9(12)(A)&(B), which requires that the mechanical integrity of a disposal well shall be evaluated by conducting pressure tests to determine whether the well tubing, packer, or casing have sufficient mechanical integrity. Failure to perform a test could lead to leaks of fluid and cause pollution.
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.
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, Mark Embry, 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. Embry Solutions, Inc. (250920), shall plug or otherwise place the 1st Natl. Bank of Marshall, Tr. 3 (11402) Lease, Well Nos. 1 and 2, Halliday, SE (Lewisville 8700) Field, Madison County, Texas in compliance with applicable Commission rules and regulations;
2. Embry Solutions, Inc. (250920), shall pay the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **SEVEN THOUSAND DOLLARS (\$7,000.00)**.

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 11th day of April 2012.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated April 11, 2012)

MC/sa