

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 09-0285068

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY WHITTEN ENERGY CORP. (921182), AS TO THE SWAIM, J.A. (07438) LEASE, WELL NO. 1, AND THE SWAIM -Y- (07468) LEASE, WELL NOS. 5 AND 14, YOUNG COUNTY REGULAR FIELD, YOUNG COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on January 23, 2014, and that the respondent, Whitten Energy Corp. (921182), 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. Whitten Energy Corp. (921182), ("Respondent"), was given Notice of Opportunity for Hearing by certified mail, addressed to the most recent Form P-5 (Organization Report) address.
2. The certified envelope containing the Original Complaint and the Notice of Opportunity for Hearing, was not returned to the Commission. The USPS has no record of delivery for certified envelope containing the Original Complaint and the Notice of Opportunity for Hearing.
3. On December 30, 2010, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officer(s) consisted of the following individual(s): Donald G. Whitten, President; and Marye L. Whitten; Vice-President.
4. Donald G. Whitten, 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.

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5. Marye L. Whitten, 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 No. 1 on the Swaim, J.A. (07438) Lease and Well Nos. 5 and 14 on the Swaim -Y- (07468) Lease ("subject wells"/"subject leases") by filing P-4 Forms (Producers Transportation Authority and Certificate of Compliance) effective on August 1, 1999 for the subject wells and leases.
8. Respondent's P-5 (Organization Report) became delinquent on December 30, 2010. Respondent had \$50,000 Letter of Credit as its financial assurance at the time of its last P-5 renewal.
9. Production from Well No. 1 on the Swaim, J.A. (07438) Lease ceased on or before September 2000.
10. Production from Well Nos. 5 and 14 on the Swaim -Y- (07468) Lease ceased on or before September 2000.
11. The Statewide 14b2 plugging extension for Well No. 1 on the Swaim, J.A. (07438) Lease was denied on December 30, 2002 for failure to file an H-15 (Test On An Inactive Well More Than 25 Years Old).
12. The Statewide 14b2 plugging extension for Well No. 5 on the Swaim -Y- (07468) Lease was denied on December 30, 2002 for failure to file H-15 (Test On An Inactive Well More Than 25 Years Old).
13. The Statewide 14b2 plugging extension for Well No. 14 on the Swaim -Y- (07468) Lease was denied on July 24, 2006 for failure to file an H-15 (Test On An Inactive Well More than 25 Years Old).
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 total estimated cost to the State for plugging Well No. 1 on the Swaim, J.A. (07438) Lease is \$3,900.00.
17. The total estimated cost to the State for plugging Well Nos. 5 and 14 on the Swaim -Y- (07468) Lease is \$7,800.00.

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18. A Commission District inspection was conducted on July 30, 2013 for the Swaim, J.A. (07438) Lease. The signs or identification required to be posted at the lease entrance and the well were missing.
19. A Commission District inspection was conducted on July 23, 2013 for the Swaim, -Y- (07468) Lease. The signs or identification required to be posted at Well Nos. 5 and 14 were missing.
20. 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.
21. A Commission District inspection was conducted on July 23, 2013 for the Swaim -Y- (07468) Lease. Well No. 5 has tubing open to the atmosphere.
22. Maintenance of surface control by wellhead assemblies is necessary to prevent the discharge of oil and gas wastes on the subject lease constituting a hazard to public health and safety because the discharges of oil and gas wastes onto land surface can migrate into surface or subsurface waters.
23. Commission records indicate no Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the Swaim, J.A. (07438) Lease, Well No. 1. Commission records further show that Swaim, J.A. (07438) Lease, Well No. 1 was completed prior to 1984, that an H-15 test was due in May 2002, and that the well has not been plugged.
24. Commission records indicate no Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the Swaim -Y- (07468) Lease, Well Nos. 5 and 14. Commission records further show that Swaim -Y- (07468) Lease, Well Nos. 5 and 14 were completed prior to 1984, and that an H-15 test was due in May 2002 for Well No. 5 and in May 2006 for Well No. 14 and that the wells have not been plugged.
25. The Respondent has not demonstrated good faith since it failed to timely plug or otherwise place the subject leases and subject 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.

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3. Respondent is in violation of Commission Statewide Rules 3, 13(b)(1)(B), 14(b)(2) and 14(b)(3).
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 is responsible for maintaining the subject lease in compliance with Statewide Rule 13(b)(1)(B), which requires that surface control of all wells be maintained with wellhead assemblies.
6. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 14(b)(3), which requires 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.
7. 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.
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.
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, Donald G. Whitten, 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.

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10. 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, Marye L. Whitten, and any other organization in which she 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. Whitten Energy Corp. (921182) , shall plug the Swaim, J.A. (07438) Lease, Well No. 1 and the Swaim -Y- (07468) Lease, Well Nos. 5 and 14, Young County Regular Field, Young County, Texas in compliance with applicable Commission rules and regulations; and
2. Whitten Energy Corp. (921182), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **EIGHTEEN THOUSAND SIX HUNDRED FIFTY EIGHT DOLLARS (\$18,658.00)**.

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. 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.

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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 16th day of September 2014.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order
dated September 16, 2014)

TJJ/sa