

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**OIL AND GAS DOCKET NO. 09-0278782**

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**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY XOPHI ENERGY, LLC (945927) AS TO THE COPELAND, B.E. (10823) LEASE, WELL NOS. 1, 2, 3, 4, 6, 11, 12 AND 13, AND THE COPELAND "A" (30486) LEASE, WELL NOS. 1, 2A, 3 AND 4, CLAY COUNTY REGULAR FIELD, CLAY COUNTY, TEXAS**

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**FINAL ORDER**

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on May 15, 2014 and that the respondent, Xophi Energy, LLC (945927), failed to appear or respond to the Notice of 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. Xophi Energy, LLC (945927), ("Respondent"), was given Notice of Hearing by certified mail, addressed to the most recent Form P-5 (Organization Report) address.
2. The certified envelope containing the First Amended Original Complaint and the Notice of Hearing, was returned to the Commission marked "return to sender, unable to forward" on November 27, 2012. The certified receipt is included in the file and has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. The certified envelope containing the First Amended Original Complaint and the Notice of Hearing, was signed for by Hal Thompson, the Attorney for the "Respondent" on April 1, 2014, along with a Notice of Intent to Appear submitted to the Commission. The Notice of Intent to Appear is included in the file and has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
4. On January 26, 2010, Respondent, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Richard Author Ashton III; President.

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5. Richard Author Ashton III, was a 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 Nos. 1, 2, 3, 4, 6, 11, 12 and 13 on the Copeland, B.E. (10823) Lease and Well Nos. 1, 2A, 3 and 4 on the Copeland "A" (30486) Lease ("subject wells"/"subject leases") by filing P-4 Forms (Producers Transportation Authority and Certificate of Compliance) on January 26, 2010 for both of the leases.
8. Respondent's P-5 (Organization Report) became delinquent on February 1, 2011. Respondent had a \$50,000 bond as its financial assurance at the time of its last P-5 renewal.
9. Well Nos. 1, 3, 4, 6, 11 12 and 13 on the Copeland, B.E. (10823) Lease ceased production in May 2011.
10. Well Nos. 1, 2A, 3 and 4 on the Copeland "A" (30486) Lease ceased production in September 2005.
11. The Statewide 14b2 extensions for Well Nos. 1, 3, 4 and 6 on the Copeland, B.E. (10823) Lease were denied on October 22, 2005 for failure to file H-15's (Test On An Inactive Well More Than 25 Years Old) and a non active P-5 status.
12. The Statewide 14b2 extension for Well No. 11 on the Copeland, B.E. (10823) Lease was denied on January 3, 2003 for an H-5 issue and a non active P-5 status.
13. The Statewide 14b2 extensions for Well Nos. 12 and 13 on the Copeland, B.E. (10823) Lease were denied on January 31, 2005 for a non active P-5 status.
14. The Statewide 14b2 extension for Well Nos. 1, 2, 3 and 4 on the Copeland "A" (30486) Lease were denied on February 26, 2010 for a non active P-5 status.
15. Well Nos. 1, 2, 3, 4, 6, 11, 12 and 13 on the Copeland, B.E. (10823) Lease were plugged with State Funds between March and April 2013.
16. Well Nos. 1, 2A, 3 and 4 on the Copeland "A" Lease were plugged with State Funds between March and April 2013.
17. Commission District inspections were conducted February 28, 2012, March 19, 2012, March 29, 2012, June 20, 2012 and December 3, 2012 for the Copeland "A" Lease. The sign or identification required to be posted at the tank battery was missing.

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18. 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.
19. Commission District inspections were conducted on February 28, 2012, March 19, 2012, March 29, 2012 and May 8, 2012 for the Copeland, B.E. (10823) Lease. There was a pile of basic sediment measuring approximately 3' x 3' adjacent to a small pit behind the storage tanks.
20. No permit had been issued to Respondent for the discharge of oil and gas wastes on or from the subject lease.
21. 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.
22. Commission records indicate that the Copeland, B.E. (10823) Lease was remediated by using state funds and the clean up was completed on May 3, 2013.
23. According to Commission records, Well No. 4 of the Copeland "A" (30486) Lease was completed on April 30, 2006. Commission District inspections were conducted on January 30, 2012, February 28, 2012, March 19, 2012, March 29, 2012, June 20, 2012 and December 3, 2012 for the Copeland "A" (30486) Lease. There was an open workover pit measuring approximately 10' x 10' x 5' adjacent to Well No. 4.
24. Unfilled pits constitute a hazard to public health and safety because of the potential for illegal dumping in the pits and the potential for surface run-off to collect in the pit and seep into subsurface waters.
25. Commission records indicate the lease was remediated by using State funds and the cleanup was completed on June 10, 2013.
26. The Respondent did not demonstrate 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.
27. Respondent is the person responsible for cleaning up the discharges on the subject leases under Tex. Nat. Res. Code Ann. §91.113(b), and the Commission may recover from Respondent all costs incurred in cleaning up the subject lease pursuant to Tex. Nat. Res. Code Ann. §91.113(f).
28. The Commission was authorized to plug the subject wells and is entitled to reimbursement for State Funds expended pursuant to Tex. Nat. Res. Code §89.043, 89.046 and 89.083.

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29. Respondent has a prior history of Commission rule violations including the following docket(s);

Docket No. 01-0261382; Final Order Served: December 15, 2009;  
Docket No. 7C-0260958; Final Order Served: January 13, 2011;  
Docket No. 09-0273511; Final Order Served: August 30, 2012;  
Docket No. 7B-0275480; Final Order Served: August 30, 2012; and  
Docket No. 7B-0275481; Final Order Served: August 30, 2012.

### **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 was in violation of Commission Statewide Rules 3, 8(d)(1), 8(d)(4)(G)(i)(III), and 14(b)(2).
4. Respondent was 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 8(d)(1), which prohibits the discharge of oil and gas wastes without a permit.
6. Respondent was responsible for maintaining the subject lease in compliance with Statewide Rule 8(d)(4)(G)(i)(III), which requires workover pits to be dewatered, filled and compacted within 120 days from completion of workover operations.
7. Respondent was 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.

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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, Richard Author Ashton 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. Xophi Energy, LLC (945927), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWENTY SEVEN THOUSAND DOLLARS (\$27,000.00) and REIMBURSE STATE FUNDS in the amount of SEVENTY TWO THOUSAND FIVE HUNDRED NINETY NINE DOLLARS AND TWENTY CENTS (\$72,599.20).**

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 27<sup>th</sup> day of January 2015.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order  
dated January 27, 2015)

TJJ/sa