



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL AND GAS DOCKET NO. 02-0281491

**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY
SONTERRA OPERATING, INC. (802302), AS TO THE STATE TRACT 150 (216125)
LEASE, WELL NO. 2, AND STATE TRACT 150-1 (252274) LEASE, WELL NO. 1,
MATAGORDA BAY (BOL MEX) FIELD, CALHOUN COUNTY, TEXAS**

APPEARANCES:

FOR MOVANT:

Kristi M. Reeve
Staff Attorney

RESPONDENT:

Gary L. Lancaster
Attorney

MOVANT:

Enforcement Section
Railroad Commission of Texas

RESPONDENT:

Sonterra Operating, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Original Complaint Filed:	July 15, 2013
First Amended Complaint Filed:	September 17, 2013
Notice of Hearing:	September 17, 2013
Date of Hearing:	November 7, 2013
Heard By:	Terry Johnson, Hearings Examiner
Default Order Circulated:	July 8, 2014
Motion for Rehearing Granted:	September 16, 2014
Date Second Amended Complaint Filed:	September 29, 2014
Notice of Hearing, Second Hearing:	September 29, 2014
Trial Amendment:	October 27, 2014
Docket Reassigned:	October 27, 2014
Date Second Hearing:	October 27, 2014
Second Hearing Heard By:	Cecile Hanna, Administrative Law Judge
Record Closed:	November 24, 2014
PFD Circulation:	May 2, 2016

STATEMENT OF THE CASE

This proceeding was called by the Commission's Enforcement Section on the recommendation of the District Office to determine the following:

1. Whether Respondent, Sonterra Operating, Inc. (Operator ID 802302) (Sonterra or Respondent) should be required to plug or otherwise place in compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE § 3.14(b)(2)] the State Tract 150 (216125) Lease, Well No. 2, Matagorda Bay (Bol Mex) Field, Calhoun County; and State Tract 150-1 (252274) Lease, Well No. 1, Matagorda Bay (Bol Mex) Field, Calhoun County, Texas. (Subject Wells);
2. Whether Sonterra has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, of the Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules, including Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE § 3.14(b)(2)] and laws pertaining to safety or prevention or control of pollution, including by failing to plug the subject wells or otherwise place the wells into compliance with Statewide Rules 3 and 14(b)(2);
3. Whether, pursuant to Texas Natural Resources Code § 81.0531, Sonterra should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject leases and wells;
4. Whether the alleged violations of Statewide Rule 14(b)(2) by Sonterra constitute acts deemed serious, a hazard to the public health, and demonstrate a lack of good faith pursuant to Texas Natural Resources Code § 81.0531; and
5. Whether as a person in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and control of pollution, Donald Edwin Vandenberg, Gary Lee Lancaster, and Donald Jay Sebastian, and any other organization in which each of them may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resources Code §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 in accordance with a schedule to which the Commission and the organization have agreed, whichever is earlier.

BACKGROUND

On November 7, 2013, the above-captioned enforcement proceeding was heard.¹ At that hearing, Respondent, Sonterra Operating, Inc. (802302) failed to appear or respond after a Notice

¹ The November 7, 2013 hearing was held by Terry Johnson, Hearings Examiner, Hearings Division.

of Hearing was issued in accordance with the Commission's General Rules of Practice and Procedure § 1.49. On July 8, 2014, a Final Order was approved by the Commission on the Default Master Order requiring Sonterra Operating, Inc. to (1) plug the State Tract 150 (216125) Lease, Well No. 2 and the State Tract 150-1 (802302) Lease, Well No. 1, Matagorda Bay (Bol Mex) Field, Calhoun County, Texas; and (2) pay an administrative penalty in the amount of \$79,058.

A Motion for Rehearing was filed on July 28, 2014, by Gary Lee Lancaster, Attorney, on behalf of himself, Donald Edwin Vandenberg and Donald Jay Sebastian, and Sonterra Resources, Inc. The audio record of the hearing could not be located and thus, absent the ability for the Commission to confirm that the movants had a fair opportunity to present testimony and exhibits in their favor, the Commission granted the Motion for Rehearing on September 16, 2014.

On October 27, 2014, a second hearing was held. Gary Lee Lancaster appeared on behalf of himself, Donald Edwin Vandenberg, Donald Jay Sebastian and Sonterra Operating, Inc.

APPLICABLE LAW

Texas Natural Resources Code § 91.142 requires an organization performing operations within the Commission's jurisdiction to file a Form P-5 organization report and to re-file annually according to a schedule established by the Commission. Pursuant to § 91.142, an organization that does not maintain a Form P-5 and financial assurance on file may not perform operations under the jurisdiction of the Commission, except as necessary to remedy a violation of law or Commission rules, and, on written notice, the Commission may suspend any permits held by the organization.

Statewide Rule 1 implements the statutory requirement for filing and the annual renewal of the Form P-5 organization reports. Pursuant to Statewide Rule (1)(a)(3), each organization must maintain a current organization report with the commission until all duties, obligations, and liabilities incurred pursuant to Commission rules, Texas Natural Resources Code, Title 3, Subtitles A, B, C and Chapter 111 of Subtitle D, and Texas Water Code, Chapters 27 and 29, are fulfilled.

Pursuant to Texas Natural Resources Code § 91.103, organizations required by § 91.142 to file an organization report must also file financial assurance as required by §§ 91.104, 91.1041, and 91.1042.

Pursuant to Texas Natural Resources Code § 89.011, the operator of a well must properly plug the well when required and in accordance with the Commission's rules. The Commission's Statewide Rule 14(b)(2) provides that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed, unless a plugging extension for the well is approved. An organization that maintains the required financial assurance will be granted a one-year plugging extension for each inactive well it operates at the time renewal of its annual organization report is

approved, only if, the following criteria are met: (1) the well and associated facilities are in compliance with all laws and Commission rules; and (2) the organization has, and upon request provides evidence of, a good faith claim to a continuing right to operate the well.

Statewide Rule 14(c)(1) provides that the entity designated as the operator of a well specifically identified on the most recent Commission approved operator designation form filed on or after September 1, 1997 is responsible for properly plugging the well in accordance with Statewide Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells. Under Statewide Rule 14(c)(2) provides that as to any well for which the most recent Commission approved operator designation form was filed prior to September 1, 1997, the entity designated as operator on that form is presumed to be the entity responsible for the physical operation and control of the well and to be the entity responsible for properly plugging the well in accordance with Statewide Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells. The presumption of responsibility may be rebutted only at a hearing called for the purpose of determining plugging responsibility.

If a person violates provisions of Title 3 of the Texas Natural Resources Code or a Commission rule pertaining to safety or the prevention or control of pollution, the person may be assessed an administrative penalty by the Commission not to exceed \$10,000 a day for each violation. In determining the amount of the penalty, the Commission must consider the Respondent's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the Respondent.²

DISCUSSION OF THE EVIDENCE

Form P-5 Organization Report

The last Form P-5 organization report filed by Sonterra was approved on July 22, 2010.³ This organization report, signed by Don Vandenberg on July 19, 2010, listed Sonterra's officers as:

- Donald Edwin⁴ Vandenberg – President;
- Gary Lee Lancaster – VP/Chief Legal Officer/Director; and
- Donald Jay Sebastian, VP/CFO/Director

These same persons were also listed as the officers of Respondent on Respondent's two preceding Commission Forms P-5, filed September 1, 2009 and October 1, 2008.⁵ What is more, these same persons were listed as officers of Respondent on the Commission Form P-5 in effect at the time the General Land Office (GLO) terminated Sonterra's mineral lease on October 7, 2009, which was documented in a GLO letter dated November 5, 2009.⁶

² Texas Natural Resources Code §81.0531.

³ Staff Ex. 6, p. 1.

⁴ Mr. Vandenberg's middle name as filed with the Commission was Edward, but it is not disputed by Mr. Vandenberg that the individual identified on the Form P-5 is any person other than himself.

⁵ Staff Ex. 6, pp. 2-3.

⁶ Staff Ex. 5.

It is Respondent's position that the three individuals listed in this docket as persons in ownership or control were officers only of Respondent's parent company. Mr. Donald Sebastian testified that Sonterra Resources was the parent company of Respondent, Sonterra Operating, Inc. Subsequently, Sonterra Resources changed its name to Velocity Energy Inc. and remained the parent company for Sonterra Operating, Inc.⁷

According to Mr. Sebastian, he and Mr. Vandenberg resigned as officers of both the parent company Velocity Energy, Inc. and Sonterra Operating, Inc. effective May 18, 2011.⁸ They also resigned at that time from the sister companies. These alleged resignations occurred after the alleged violations in this docket. Mr. Sebastian testified that he was never an officer of Respondent and that he simply signed what was put in front of him.

Mr. Sebastian testified that he assumed that the corporate officers that succeeded him would make the proper public filings to reflect the new officers and directors of the new companies, which would include the filing of an updated P-5. According to Mr. Sebastian, Sonterra Operating, Inc. ceased doing business in 2011 and had incurred debt in excess of \$20 million by late 2008. Respondent asserts that the management team of Sonterra transferred all investor funds to South Texas Oil Company on June 23, 2008 and through a joint operating agreement, discharged Sonterra's share of all financial obligations including funds necessary to plug and abandon all wells.

Through witness Mr. Sebastian, a resignation letter was admitted into the record to show that Mr. Lancaster had resigned from Velocity Energy Inc. and its affiliates on April 26, 2010.⁹ It is Mr. Lancaster's position, that the SEC filing printouts for Velocity Energy Inc. support his claim that he was affiliated only with the parent company and never as an officer of Sonterra Operating, Inc.¹⁰

On cross-examination, however, Mr. Sebastian testified about a document that was filed in 2008 with the Texas Secretary of State that has Mr. Lancaster's signature as Vice President and Secretary of Sonterra Operating, Inc. Similarly, Mr. Lancaster's signature is on the Respondent's P-5 filing in 2008, 2009 and 2010 as VP/Chief Legal Officer.

Form P-4 and Statewide Rule 14(b)(2)

The Enforcement Section presented evidence demonstrating the following related to the P-4 and the production on the two leases and two wells at issue in this proceeding:

State Tract 150 (216125) Lease, Well No. 2. Sonterra designated itself operator of the State Tract 150 (216125) Lease, Well No. 2, Matagorda Bay (Bol Mex) Field, Calhoun County by filing Form P-4 (Certificate of Compliance and Transportation Authority), filed October 31, 2007 and effective November 1, 2007.¹¹ Production on the State Tract 150 (216125) Lease, Well

⁷ Audio Recording of Hearing Tape 4.

⁸ Respondent Ex. 6.

⁹ Respondent Ex. No. 6.

¹⁰ Respondent Ex. No. 5.

¹¹ Staff Ex. 1, p. 2 and Testimony of Olin Macnamara, Geoscientist in Field Operations, Railroad Commission of Texas.

No. 2, ceased on or before April 2008.¹² Thus, by April 2009, the well had been inactive for 12 months. Mr. Lancaster, Mr. Sebastian, and Mr. Vandenberg were P-5 officers and/or directors during the time of violation as they signed the Forms P-5 on October 1, 2008, September 1, 2009, and July 22, 2010.

State Tract 150-1 (252274) Lease, Well No. 1. As for the State Tract 150-1 (252274) Lease, Well No. 1, Matagorda Bay (Bol Mex) Field, in Calhoun County, Texas, Sonterra filed a Completion Report (Commission Form G-1) on July 29, 2009. Sheila Weigand, Program Specialist, with the Railroad Commission of Texas, testified that a well completion packet contains a Form P-4 and Form G-1 for the designation of the operator and their gatherers and purchasers for that well bore. Sonterra became the operator of record by returning the Form G-1 and notifying the Commission. According to Ms. Weigand, two of the ways an operator becomes the regulatory responsible operator of a well or lease is by filing and having approved, the Commission Form P-4 and/or Form G-1. These forms essentially add wells and leases to the Respondent's responsibilities under the Form P-5.

On the State Tract 150-1 (252274) Lease, Well No. 1 was drilled and completed on December 18, 2008. No production was ever reported.¹³ Thus, by December 18, 2009, the well had been inactive for 12 months. Mr. Lancaster, Mr. Sebastian, and Mr. Vandenberg were P-5 officers and/or directors during the time of violation as they signed the Forms P-5 on October 1, 2008, September 1, 2009, and July 22, 2010.

Thus, the Enforcement Section maintains that neither well has produced in a period of greater than one year. Olin Macnamara, Geoscientist in Field Operations, Railroad Commission of Texas, testified that there is no current Inspection Report of these wells because they are located in Matagorda Bay and the Commission does not have boats to take offshore. District Inspectors coordinate transportation with the General Land Office and other governmental agencies. According to Mr. Macnamara, during the inspection on October 27, 2010, the inspector was unable to determine that the wells were not producing because that is not apparent from a physical inspection of an offshore well.¹⁴ Mr. Macnamara testified further that the production reports from Commission records, however, establish that production on the State Tract 150 (216125) Lease, Well No. 2, ceased in approximately March 2008. Thus, the Enforcement Section argues that production on the subject wells ceased producing on or before April 2008, or never produced.

The Enforcement Section maintains that the evidence establishes that Respondent is deemed to be the operator with the responsibility for the proper plugging of the subject wells based on the Form P-4 Filing for the State Tract 150 (216125) Lease, Well No. 2 and the Form G-1 for the State Tract 150-1 (252274) Lease. A plugging extension under Statewide Rule 14(b)(2) may not be granted to Sonterra for the subject wells, because as of October 7, 2009, Sonterra's lease from the General Land Office expired, as well as Well No. 1 never produced and Well No. 2 has not produced since April 2008.¹⁵ As a result, Respondent's plugging extension on the subject wells expired by statute and rule upon the termination of its oil and gas lease.

¹² Staff Ex. 2.

¹³ Staff Ex. 3.

¹⁴ Staff Ex. 1 and Testimony of Mr. Macnamara.

¹⁵ Staff Ex. 5.

Sonterra had neither a valid lease on the subject wells, nor a good faith claim to operate. Furthermore, Sonterra does not have a current organization report (Form P-5) as required by Statewide Rule 15(c) as it became delinquent in August 2011.¹⁶

According to the Enforcement Section, the estimated cost to the State to plug the subject wells are as follows: State Tract 150-1 (252274) Lease, Well No. 1 - \$627,557; and for the State Tract 150 (216125) Lease, Well No. 2 - \$603,644.¹⁷

The Enforcement Section requests that Sonterra Operating, Inc. be ordered to (1) plug the subject wells; and (2) pay an administrative penalty in the amount of \$79,058. This penalty is calculated by taking two violations of Statewide Rule 14(b)(2) at \$15,000 per well plus \$2 per foot of well depth totaling 19,529, plus an enhancement of \$5,000 per well for threatened pollution of Matagorda Bay.¹⁸ Moreover, the Enforcement Section requests that Mr. Lancaster, Mr. Vandenberg and Mr. Sebastian, the officers listed on the most recently filed Commission Form P-5, should be made subject to the restrictions of TEX. NAT. RES. CODE ANN. § 91.114.

Sonterra argues that neither the P-4, P-5, nor the G-1 establish the liability of Respondent to plug the subject wells. Respondent contends that the names of Mr. Sebastian, Mr. Vandenberg and Mr. Lancaster are on the Forms P-4, P-5 and G-1 as a result of fraud. The Form G-1 for State Tract 150-1 was filed on July 29, 2009 and was signed by an agent for Respondent. According to Respondent, the signature is illegible and no printed name accompanies the signature. Respondent requests the Administrative Law Judge to take judicial notice of the similarity of the signatures on the Form G-1 and the initials on the other Commission forms admitted into evidence. Respondent asks the Commission to find that the defective forms do not require Respondent to have liability for plugging the referenced wells.

In addition, Respondent maintains that Michael J. Pawelek signed the last P-4 while he was President of Boss Exploration in 2007. Respondent asserts that Mr. Pawelek, Mr. Spurlock, and Mr. Psencik with South Texas Oil Company operated the wells at issue since 2005 and they also held themselves out to the public and to vendors as the operator.

OPINION OF ADMINISTRATIVE LAW JUDGE

After careful consideration of the evidence presented, the Administrative Law Judge finds that Respondent, as an operator performing operations under the jurisdiction of the Commission, was required to have a Commission approved organization report, P-5, and financial security, on file prior to beginning operations.¹⁹ Additionally, Respondent was required to maintain a current P-5 with the Commission until all duties, obligations, and liabilities

¹⁶ Extension of deadline for plugging an inactive bay or offshore well. The Commission or its delegate may administratively grant an extension of the deadline for plugging an inactive bay or offshore well as defined by Commission rules if: (1) the operator has a current organization report; (2) the operator has, and on request provides, evidence of a good faith claim to a continuing right to operate the well; (3) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and (4) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves 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. [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE § 3.15(c)]

¹⁷ Testimony of Olin Macnamara, Geoscientist in Field Operations, Railroad Commission of Texas.

¹⁸ Staff Ex. 4.

¹⁹ TEX. NAT. RES. CODE ANN. §§ 91.103 – 91.1091, 91.142 and 16 TEX. ADMIN. CODE § 3.1(a)(1).

incurred pursuant to Commission rules were fulfilled.²⁰ Respondent last filed an organization report on July 22, 2010. The most recent information the Commission is to rely upon is that which was provided on this July 22, 2010 Form P-5.

Evaluation of the most recent Form P-5 shows that Mr. Vandenberg signed the form for Respondent, Sonterra Operating, Inc. as its President. Mr. Vandenberg is listed as CEO/President/Director. Mr. Sebastian is listed as VP/CFO/Director. Mr. Lancaster is listed as VP/Chief Legal Officer/Director.²¹ Regardless of whether the person's name appears or is required to appear on the organization report required by Texas Natural Resources Code §91.142, if the person is an officer or director of the organization, then the person is deemed to hold a position of ownership or control in an organization.²² Thus, persons listed as a P-5 officer or director have the burden to prove they are in fact not officers or directors. Respondent has alleged that the names of Mr. Vandenberg, Sebastian and Lancaster appear on the most recently filed P-5 as a result of mistake or fraud but this assertion was not established by the preponderance of the credible evidence.

Furthermore, Respondent's arguments that other companies were actually in control and operating the wells, were also not demonstrated by the preponderance of the credible evidence in the record. Respondent argues that the three referenced individuals were not officers of Sonterra Operating, Inc. Yet, Mr. Sebastian and Mr. Vandenberg's alleged resignation letters (not on any company's letterhead) states that one of the companies they are resigning from is Sonterra Operating, Inc.²³ The preponderance of the credible evidence in this case demonstrates that in accordance with TEX. NAT. RES. CODE ANN. § 91.114, Donald E. Vandenberg, Gary L. Lancaster and Donald J. Sebastian are persons in positions of ownership or control of Respondent and subject to the restrictions of TEX. NAT. RES. CODE ANN. § 91.114.

The notice requirements under applicable Commission rules are satisfied by mailing the items to the organizations mailing address shown on the most recently filed organization report.²⁴ The Administrative Law Judge further finds that the Enforcement Section has shown that the certificates of service, all notices and pleadings were mailed to the addresses and persons listed on Respondent's most recently filed P-5. Accordingly, the Commission has properly obtained jurisdiction in this docket.

The evidence shows that production on the State Tract 150 (216125) Lease, Well No. 2, ceased on or before April 2008. Well No. 2 became inactive in April 2009. Also, on the State Tract 150-1 (252274) Lease, Well No. 1 was drilled and completed on December 18, 2008. No production was ever reported. Well No. 1 became inactive on December 18, 2009.

The Commission's production reports establish that the subject wells either ceased producing on or before April 2008 or never produced. Furthermore, the evidence demonstrates that Respondent is deemed to be the operator with the responsibility for the proper plugging of

²⁰ TEX. NAT. RES. CODE ANN. Subtitles A, B, C, and Chapter 111 of Subtitle D) and 5, TEX. WATER CODE ANN. Chapters 26, 27, and 29 and 16 TEX. ADMIN. CODE § 3.1(a)(3).

²¹ Staff Ex. 10.

²² TEX. NAT. RES. CODE ANN. § 91.114(c).

²³ Respondent Ex. No. 6.

²⁴ 16 TEX. ADMIN. CODE § 3.1(a)(8). See *Morris v. State*, 894 S.W.2d 22 (Tex. App.—Austin 1994).

the subject wells based on (1) the Form P-4 effective November 1, 2007 for the State Tract 150 (216125) Lease, Well No. 2; and (2) the Form G-1 filed on July 29, 2009 for the State Tract 150-1 (252274) Lease, Well No. 1.

No Statewide Rule 14(b)(2) plugging extension could be granted to Sonterra for these wells after October 7, 2009, the date that Sonterra's lease from the General Land Office expired. Also, Sonterra's Form P-5 became delinquent in August 2011.

Inactive wellbores must be plugged in order to prevent pollution of usable quality surface and subsurface waters. Any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

Sonterra Operating, Inc. continues to be the designated operator of the State Tract 150 (216125) Lease, Well No. 2, and the State Tract 150-1 (252274) Lease, Well No. 1, and no Form P-4 has been filed with the Commission to change the operator of these wells to South Texas Oil Company or any other operator. Thus, Sonterra Operating, Inc. is the operator with the responsibility for curing these violations of Statewide Rule 14(b)(2).

The Administrative Law Judge finds that Respondent should be ordered to (1) plug the subject wells; and (2) pay an administrative penalty in the amount of \$79,058. This penalty is calculated by taking two violations of Statewide Rule 14(b)(2) at \$15,000 per well plus \$2 per foot of well depth totaling 19,529, plus an enhancement of \$5,000 per well for threatened pollution of Matagorda Bay. Moreover, the Administrative Law Judge finds that Mr. Lancaster, Mr. Vandenberg and Mr. Sebastian, the officers listed on the most recently filed Commission Form P-5, should be subject to the restrictions of TEX. NAT. RES. CODE ANN. § 91.114.

OTHER ISSUES

In closing brief, Respondent maintains that the Commission has never acquired personal jurisdiction over Respondent or the P-5 officers and/or directors except through improper conduct and procedural irregularities. Respondent and the P-5 Officers argue that jurisdiction was never acquired because the Certificate of Service accompanying the Enforcement Section's Original Complaint and Second Amended Complaint was signed by the Legal Assistant rather than the attorney handling the case. As a result, Respondent argues that the pleadings should be stricken, the case dismissed, and that sanctions should be assessed against the Commission, the Enforcement Section Attorney and Legal Assistant.

The Administrative Law Judge concurs with the Enforcement Section that the Commission's General Rules of Practice and Procedure do not prohibit a Legal Assistant from signing the Certificate of Service, as this is the person who may best attest to whom the mailings were sent. The Attorney for the Enforcement Section signed the Notice of Hearings and Complaints filed in this case. As for Respondent's argument that the Texas Rules of Civil

Procedure prohibit the practice of a legal assistant signing a Certificate of Service, the Administrative Law Judge notes that the Commission's Rules of General Practice and Procedure do not provide for a blanket adoption of the Texas Rules of Civil Procedure.

Likewise, the Administrative Law Judge finds that this practice by the Enforcement Section is also not a violation of the Texas Civil Practices & Remedies Code § 9.011 as alleged by Respondent because this provision makes a reference to the signing of a pleading as required by the Texas Rules of Civil Procedure. Again, the Commission's General Rules of Practice and Procedure do not provide for adoption of the Texas Rules of Civil Procedure nor do they specify that an attorney must sign a Certificate of Service or that signing the Certificate of Service is an unauthorized practice of law. Such requirements would prohibit *pro se* parties from filing documents and copying opposing parties.

A second noteworthy issue is in Mr. Lancaster's closing brief where he states that Sonterra Operating, Inc. and the three P-5 officers and directors are now participating under "Intervenor" status. The brief reflects the following:

Gary L. Lancaster "counsel" represents Donald Edwin Vandenberg... Donald Jay Sebastian, ... and Gary Lee Lancaster ... individually, as "Intervenor" and collectively as "Intervenors" ... and as "Amicus Curiae" on behalf of "Respondent and companies desirous of securing the honest services of Intervenors..."²⁵

This position in Mr. Lancaster's written closing brief is entirely inconsistent with his representations at the hearing on the merits. The Administrative Law Judge specifically asked Mr. Lancaster if he was at the hearing representing Sonterra Operating, Inc. Mr. Lancaster responded, "Yes."²⁶ Also, during Mr. Lancaster's "opening statement," substantial discussion occurred regarding Mr. Lancaster's representation of Sonterra Operating, Inc., Mr. Vandenberg, Mr. Sebastian and himself. At the conclusion of this discussion among counsel, the Administrative Law Judge outlined the scope of the hearing stating that evidence would be allowed in the hearing related to Sonterra Operating, Inc. and to the three individuals as to whether they are individually or collectively, persons or a person, in ownership or control of Sonterra Operating, Inc.²⁷

The Administrative Law Judge points out that Mr. Lancaster never filed or moved for a Motion to Intervene and participate as an Intervenor in this proceeding in accordance with the Commission's General Rules of Practice and Procedure. Rule § 1.64(a) states that an intervenor is a person or agency who:

...has a justiciable or administratively cognizable interest and who is not an applicant, petitioner, complainant, **respondent**, or protestant and who desires to be designated as a party in any contested case before the Commission may file a

²⁵ Amicus Curiae is a Latin term meaning "friend of the court," which is filed by someone who is not a party to the litigation, but who believes that the court's decision may affect its interest."

²⁶ Audio Transcript of Hearing on the Merits, October 27, 2014, Tape No. 1 at 9:30.

²⁷ Audio Transcript of Hearing on the Merits, October 27, 2014, Tape No. 1 at 11:30.

petition for leave to intervene no later than **five days** prior to the hearing date.
(emphasis added)

No motion, written or oral, was ever filed related to party status as an Intervenor in accordance with the above rule in this proceeding. To the contrary, Mr. Lancaster stated on the record that he represents Respondent, Sonterra Operating, Inc. and Mr. Vandenberg, Mr. Sebastian and himself. Mr. Lancaster may not now, during the pendency of the proceeding, change his position on his representation of Respondent, Sonterra Operating, Inc. Mr. Lancaster is an officer of the court and his representations may be relied upon. The Administrative Law Judge finds that the Commission has jurisdiction over Respondent, Sonterra Operating, Inc. based upon Mr. Lancaster's statements during the hearing on the merits as an officer of the court.

Accordingly, the ALJ finds that Respondent's argument that the subject enforcement action should be dismissed is without merit.

FINDINGS OF FACT

Based on the record in this case, the Administrative Law Judge recommends adoption of the following Findings of Fact and Conclusions of Law.

1. Sonterra Operating, Inc. (Sonterra or Respondent) was given at least ten (10) days notice of the October 27, 2014, hearing by certified mail, addressed to Sonterra's most recent Form P-5 organizational report address. Gary Lee Lancaster, representing for Sonterra, appeared at the hearing representing Sonterra and presented evidence.
2. On November 7, 2013, the above-captioned enforcement proceeding was heard and at that hearing, Respondent, Sonterra Operating, Inc. (802302) failed to appear or respond after a Notice of Hearing was issued in accordance with the Commission's General Rules of Practice and Procedure § 1.49.
3. On July 8, 2014, a Final Order was approved by the Commission on the Default Master Order requiring Sonterra Operating, Inc. to (1) plug the State Tract 150 (216125) Lease, Well No. 2 and the State Tract 150-1 (802302) Lease, Well No. 1, Matagorda Bay (Bol Mex) Field, Calhoun County, Texas; and (2) pay an administrative penalty in the amount of \$79,058.
4. A Motion for Rehearing was filed on July 28, 2014, by Gary Lee Lancaster, Attorney, on behalf himself, Donald Edwin Vandenberg, Donald Jay Sebastian and of Sonterra Operating, Inc. The audio record of the hearing could not be located and thus, absent the ability for the Commission to confirm that the movants had a fair opportunity to present testimony and exhibits in their favor, the Commission granted the Motion for Rehearing on September 16, 2014.
5. This docket was reassigned from Terry Johnson, Hearings Examiner to Cecile Hanna, Administrative Law Judge on October 27, 2014.

6. On October 27, 2014, a second hearing was held. Gary Lee Lancaster appeared on behalf of himself, Donald Edwin Vandenberg, Donald Jay Sebastian and Sonterra Operating, Inc.
7. Sonterra is a corporation. Its officers, as listed on its most recent Form P-5 organization report that was approved on July 22, 2010, are Donald Edwin Vandenberg, President; Gary Lee Lancaster, Vice President, Chief Legal Officer, and Director; and Donald Jay Sebastian, Vice President, Chief Financial Officer, and Director.
8. Donald Edwin Vandenberg, 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.
9. Mr. Vandenberg's middle name as filed with the Commission was Edward, but it is not disputed at the hearing by Mr. Vandenberg that the individual identified on the Form P-5 is any person other than himself.
10. Gary Lee Lancaster, 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.
11. Donald Jay Sebastian, 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.
12. The violations involved in this docket were violations of Commission rules related to safety and prevention or control of pollution.
13. Sonterra's Form P-5 organization report has been in delinquent status since August 2011. At that time its last Form P-5 was received by the Commission on July 22, 2010 and approved in July 2010. Respondent had a \$85,000 Bond as its financial assurance at the time of its last Form P-5 renewal.
14. Sonterra designated itself to the Commission as the operator of the State Tract 150 (216125) Lease, Well No. 2, Matagorda Bay (Bol Mex) Field, Calhoun County by filing Form P-4 (Certificate of Compliance and Transportation Authority), on October 31, 2007 and effective November 1, 2007.
15. Sonterra designated itself to the Commission as the operator of the State Tract 150-1 (252274) Lease, Well No. 1, Matagorda Bay (Bol Mex) Field, in Calhoun County, Texas, by filing a Completion Report (Commission Form G-1) on July 29, 2009.
16. The State Tract 150 (216125) Lease, Well No. 2, has been inactive for more than one year, has not been plugged, and does not have a Statewide Rule 14(b)(2) plugging extension.

- a. On October 27, 2010, the District Office conducted an inspection.
 - b. No production has been reported to the Commission for Well No. 2 since approximately March 2008; thus, production ceased on or before April 2008. Twelve months later the Well No. 2 was still inactive.
 - c. A Statewide Rule 14(b)(2) plugging extension could not be granted to Sonterra for Well No. 2, after October 7, 2009, the date that Sonterra's lease with the General Land Office expired. Upon the termination of its oil and gas lease, Sonterra had neither a valid lease on the subject wells, nor a good faith claim to operate.
17. The State Tract 150-1 (252274) Lease, Well No. 1, has been inactive for more than one year, has not been plugged, and does not have a Statewide Rule 14(b)(2) plugging extension.
- a. On October 27, 2010, the District Office conducted an inspection.
 - b. Well No. 1 was drilled and completed on December 18, 2008. No production was ever reported.
 - c. A Statewide Rule 14(b)(2) plugging extension could not be granted to Sonterra for Well No. 2, after October 7, 2009, the date that Sonterra's lease with the General Land Office expired. Upon the termination of its oil and gas lease, Sonterra had neither a valid lease on the subject wells, nor a good faith claim to operate.
18. The subject wells have not been properly plugged in accordance with, and are not otherwise in compliance with Statewide Rule 14.
19. Usable quality groundwater 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 potential for pollution.
20. The estimated cost to the State to plug the State Tract 150 (216125) Lease, Well No. 2, is \$603,644.
21. The estimated cost to the State to plug State Tract 150-1 (252274) Lease, Well No. 1, is \$627,557.
22. 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.

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. Sonterra Operating, Inc. was and is the operator of State Tract 150 (216125) Lease, Well No. 2, Matagorda Bay (Bol Mex) Field, Calhoun County; and State Tract 150-1 (252274) Lease, Well No. 1, Matagorda Bay (Bol Mex) Field, in Calhoun County, Texas, as defined by Commission Statewide Rules 14, 58, and 79 [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §§ 3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Sonterra Operating, Inc., had responsibility for complying with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE § 3.14(b)(2)] and Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject leases and wells.
5. Sonterra Operating, Inc. violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE § 3.14(b)(2)] by failing to timely plug the State Tract 150 (216125) Lease, Well No. 2, Matagorda Bay (Bol Mex) Field, Matagorda Bay (Bol Mex) Field, Calhoun County.
6. Sonterra Operating, Inc. violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE § 3.14(b)(2)] by failing to timely plug the State Tract 150-1 (252274) Lease, Well No. 1, Matagorda Bay (Bol Mex) Field, in Calhoun County, Texas.
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, Donald Edwin Vandenberg, 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.
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, Gary Lee Lancaster, 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.

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, Donald Jay Sebastian, 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.

RECOMMENDATION

The Administrative Law Judge recommends that the Commission adopt that attached final order requiring that Sonterra Operating, Inc.:

1. Plug in compliance with Commission rules the (a) State Tract 150 (216125) Lease, Well No. 2, Matagorda Bay (Bol Mex) Field, Calhoun County; and (b) State Tract 150-1 (252274) Lease, Well No. 1, Matagorda Bay (Bol Mex) Field, in Calhoun County, and otherwise place said leases into compliance with all Commission rules; and
2. Pay an administrative penalty in the amount of \$79,058.

Respectfully submitted,



Cecile Hanna
Administrative Law Judge
Hearings Division

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL AND GAS DOCKET NO. 02-0281491

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY SONTERRA OPERATING, INC. (802302), AS TO THE STATE TRACT 150 (216125) LEASE, WELL NO. 2, AND STATE TRACT 150-1 (25227) LEASE, WELL NO. 1, MATAGORDA BAY (BOL MEX) FIELD, CALHOUN COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the Administrative Law Judge on October 27, 2014. The Administrative Law Judge has circulated a Proposal for Decision containing Findings of Fact and Conclusions of Law. Having been duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas, those Findings of Fact and Conclusions of Law are hereby adopted and made a part hereof by reference.

It is accordingly **ORDERED** that, within 30 days from the day immediately following the date this order becomes final, Sonterra Operating, Inc. (Operator. No. 802302) shall:

- 1) plug in compliance with Commission Statewide rules the State Tract 150 (216125) Lease, Well No. 2, Matagorda Bay (Bol Mex) Field, Calhoun County, Texas; and the State Tract 150-1 (252274) Lease, Well No. 1, Matagorda Bay (Bol Mex) Field, Calhoun County, Texas, and otherwise place said leases into compliance with all Commission rules; and
- 2) remit to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty of **SEVENTY-NINE THOUSAND, FIFTY-EIGHT DOLLARS AND 00 CENTS (\$79,058.00)**.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 days after the Commission's order is signed, unless the time for filing a motion for rehearing has been extended under TEX. GOV'T CODE § 2001.142, by agreement under TEX. GOV'T CODE §2001.147, or by written Commission Order issued pursuant to TEX. GOV'T CODE § 2001.146(e).

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 Commission Order is signed.

Each exception to the Administrative Law Judge’s proposal for decision not expressly granted herein is overruled. 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 ____ day of _____, 2016, in Austin, Texas.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN DAVID PORTER

COMMISSIONER CHRISTI CRADDICK

COMMISSIONER RYAN SITTON

ATTEST:

SECRETARY

Terri Baird

From: Terri Baird
Sent: Monday, May 02, 2016 10:24 AM
To: 'Kristi Reeve'; Lori Wrotenbery; Leslie Savage; Santos Gonzales
Subject: Oil & Gas Docket No. 02-0281491 - Sonterra Operating, Inc.
Attachments: 02-0281491 Sonterra NTP-PFD.pdf

Oil & Gas Docket No. 02-0281491; Enforcement Action for Alleged Violations Committed by Sonterra Operating, Inc. (802302) as to the State Tract 150 (216125) Lease, Well No. 2, and State Tract 150-1 (252274) Lease, Well No. 1, Matagorda Bay (Bol Mex) Field, Calhoun County, Texas

Good Morning –

Please find attached the Notice to the Parties, Proposal for Decision, and Proposed Final Order issued on May 2, 2016 in the above-referenced matter.

Thank you,

Terri

Terri Baird
Legal Assistant
Hearings Division
Railroad Commission of Texas
Tel: (512)463-1290



Please note that effective September 1, 2015 my new email address is Terri.Baird@rrc.texas.gov. Save my new email address to your email contacts. Thank you.

Transmission Report

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RANDALL D. COLLINS, INTERIM DIRECTOR



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

Date: May 2, 2016 Oil & Gas Docket No. 02-0281491

NOTICE TO THE PARTIES

The attached document is a Proposal for Decision and recommended Final Order issued by the examiner(s) in this case. Under Section 1.141 of the Commission's General Rules of Practice and Procedure, we are required to circulate the document to each party or its authorized representative. This is only a proposal and is not to be interpreted as a final decision unless an official order adopting the proposal is signed and issued by the Commission.

Under Section 1.142 of the General Rules of Practice and Procedure (16 T.A.C. §1.142), you have the right to file a written statement disagreeing with the proposal and setting out your reasons for this position. This document is referred to as "Exceptions" and must be filed with the Docket Services Section of the Hearings Division (Room 12-123) within 15 days of the date above. You have the right to respond in writing to any exceptions filed by another party. This document is referred to as "Replies to Exceptions" and must be filed with the Docket Services Section of the Office of General Counsel (Room 12-123) within 10 days after the deadline for filing exceptions.

In addition to written exceptions and replies, the parties may file with the Commission a one page summary of the case. The summary shall be filed with the Commission at the time exceptions are due. The summary is specifically limited to one page and shall contain only information of record or argument based on the record. The summary shall not be submitted in reduced print. If the summary contains any material not of record, has reduced print, or exceeds one page (8-1/2" x 11"), the examiner(s) will reject the summary and it will not be submitted to the Commissioners for their review.

The summary shall contain the name of the party, the status of the party, the name and docket number of the case, the issue(s), the key facts, the legal principles involved (including proposed conclusions of law), and the action requested. (See enclosed form.)

In view of the due dates stated above, all parties are reminded that pleadings are considered filed only upon actual receipt by the Docket Services Section of the Hearings Division (Room 12-123). Furthermore, each pleading must be served upon all Parties of Record and a statement certifying such and giving complete names and addresses must be included. Exceptions and replies may not be filed by telephonic document transfer unless otherwise directed by the examiner(s). **An original plus TEN copies of exceptions, replies and summaries should be submitted to the Commission. PLEASE DO NOT STAPLE.** Further, a copy of these pleadings must be

1701 NORTH CONGRESS AVENUE ★ POST OFFICE BOX 12967 ★ AUSTIN, TEXAS 78711-2967 ★ PHONE: 512/463-6924 FAX: 512/463-6989
 TDD 509-735-2989 OR TDD 512-463-7284 AN EQUAL OPPORTUNITY EMPLOYER <http://www.rrc.state.tx.us>

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Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct