

**COMMISSION CALLED HEARING ON APPLICATION OF L & B PRODUCTION TO SHOW CAUSE WHY APPLICANT IS NOT LEGALLY REQUIRED TO REMEDIATE POLLUTION ON THE HOOKS STERLING LEASE, BATSON NEW FIELD, HARDIN COUNTY, TEXAS**

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**APPEARANCES:**

**FOR RESPONDENT:**

Richard L. Coffman  
Wallace M. Poole

L & B Production

**FOR INTERVENOR:**

Lowell Williams  
Pete Fisher  
Sheila Weigand  
Ramon Fernandez

Enforcement Section  
Railroad Commission of Texas

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE OF HEARING REQUEST:</b>	October 6, 2008
<b>DATE OF NOTICE OF HEARING:</b>	November 17, 2008
<b>DATE OF HEARING:</b>	December 17, 2008
<b>HEARD BY:</b>	James M. Doherty, Hearings Examiner
<b>DATE RECORD CLOSED:</b>	December 29, 2008
<b>DATE PFD CIRCULATED:</b>	January 23, 2009

**STATEMENT OF THE CASE**

This hearing was called by the Commission at the request of L & B Production (“L & B”) to provide L & B with an opportunity to show cause why L & B is not legally responsible for cleaning up the Hooks Sterling (17938) Lease, Batson New Field, Hardin County, Texas.

A hearing was held on December 17, 2008. L & B appeared through its counsel, Richard L. Coffman and its owner, Maury Poole, and presented evidence. Appearances were also made by Lowell Williams, Pete Fisher, Sheila Weigand, and Ramon Fernandez, all members of the Commission's staff, and evidence was presented by the Enforcement Section of the Office of General Counsel. The record of the hearing was held open until December 29, 2008, for receipt of late-filed exhibits relating to the issue of whether L & B has reimbursed the State for the cost of plugging Well Nos. 2D and 3 on the subject lease and has paid the administrative penalty assessed in Oil & Gas Docket No. 03-0238280. No such exhibits have been filed by either party.

### **APPLICABLE LAW**

Pursuant to §89.011 of the Texas Natural Resources Code ("Code"), the operator of a well shall properly plug the well when required and in accordance with the Commission's rules that are in effect at the time of the plugging. According to §89.002 of the Code, "operator" is a person who assumes responsibility for the operation and control of a well as shown by a form the person files with the Commission and the Commission approves. The Commission's Statewide Rule 58 provides that Form P-4 (Certificate of Compliance and Transportation Authority) establishes the operator of an oil lease, gas well, or other well. Statewide Rule 58(a)(2) provides that an approved Form P-4 shall bind the operator until another operator files a subsequent Form P-4 and the Commission has approved the subsequent Form P-4 and transferred the property on Commission records to the subsequent operator.

Statewide Rule 14 is the Commission's well plugging rule. 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, unless the well has a plugging extension as provided for in Rule 14(b)(2)(B). As relevant to this case, Rule 14(c) 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 Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells. General plugging requirements are set out in Rule 14(d). As particularly relevant here, Rule 14(d)(12) provides that the operator shall fill the rathole, mouse hole, and cellar, and shall empty all tanks, vessels, related piping and flowlines that will not be actively used in the continuing operation of the lease within 120 days after plugging work is completed. Within the same 120 day period, the operator must remove all such tanks, vessels, and related piping, remove all loose junk and trash from the location, and contour the location to discourage the pooling of surface water at or around the facility site.

Statewide Rule 8 prohibits the discharge, release, or other disposal of oil and gas wastes without a permit. Statewide Rule 91 contains standards and requirements for cleanup of soil in non-sensitive areas contaminated by crude oil spills.

Pursuant to §89.043 of the Code, if a well is leaking salt water, oil, or gas or is likely to leak

salt water, oil or gas, and the leakage will cause or is likely to cause a serious threat of pollution or injury to the public health, the Commission may plug the well without holding a hearing. If the Commission plugs such a well, all well-site equipment is presumed to have been abandoned and the Commission may dispose of the equipment and hydrocarbons from the well. Also, the Commission by order may require the operator to reimburse the Commission for the plugging costs, or may request the attorney general to file suit against the operator to recover these costs.

Pursuant to §91.113 of the Code, if oil and gas wastes or other substances or materials regulated by the Commission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the Commission may use money from the oil-field cleanup fund to control or clean up the oil and gas wastes or other substances and materials if: (1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing; (2) the responsible person is unknown, cannot be found, or has no assets with which to control, or clean up the oil and gas wastes or other substances or materials; or (3) the oil and gas wastes or other substances or materials are causing pollution of surface or subsurface water. For the purposes of §91.113, “responsible person” means any operator or other person required by law, rules adopted by the Commission, or valid order of the Commission to control or clean up the oil and gas wastes, or other substances or materials.

Pursuant to §91.113(f), if the Commission controls or cleans up oil and gas wastes or other substances or materials, the Commission may recover all costs incurred by the Commission from any person who was required by law, rules adopted by the Commission, or a valid order of the Commission to control or clean up the oil and gas wastes or other substances or materials. Pursuant to §91.115 of the Code, the Commission has a lien in the amount of the total costs of clean up, superior to all preexisting and subsequent liens and security interests, on the responsible person’s interest in equipment that is located at the site of the facility and used by the responsible person in connection with the activity that generated the pollution. Equipment or stored hydrocarbons subject to the lien are presumed to have been abandoned on the date the Commission enters into contract to clean up the site or facility on which the equipment or stored hydrocarbons are located. The Commission may dispose of the equipment and stored hydrocarbons in accordance with the provisions of Sections 89.085, 89.086, and 89.087 of the Code for disposition of well-site equipment and hydrocarbons.

### **DISCUSSION OF THE EVIDENCE**

#### ***Matters Officially Noticed***

The examiner has officially noticed the Commission’s Master Inquiry and Officer/Agent Inquiry Selection databases for L&B Production and the Commission’s P-4 Inquiry, P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry, Oil Lease Ledger Status Inquiry, Historical Oil Ledger Inquiry, and Oil and Gas Division Plugging Data Inquiry databases for the Hooks Sterling (17938) Lease. The examiner has also officially noticed the Form P-4 (Certificate of Compliance and Transportation Authority) approved December 9, 1996, effective November 1,

1996, which changed the operator of the Hooks Sterling (17938) Lease to L&B Production and the April 15, 2008, Notice to Operator and Request for State Funds from the District Director for District 03 to L&B, relating to the Hooks Sterling (17983) Lease.<sup>1</sup> These official records of the Commission disclose the following facts relevant to the subject matter of this case.

L&B Production is a sole proprietorship, and Wallace Maury Poole II is the owner. The Form P-5 organization report of L&B was set to inactive status on May 1, 2007. L&B last filed a Form P-5 on October 26, 2000.

L&B Production was designated operator of the Hooks Sterling (17938) Lease by Form P-4 (Certificate of Compliance and Transportation Authority) approved December 9, 1996, and effective November 1, 1996.<sup>2</sup> The certificate of compliance for this lease was canceled on December 31, 2001, based on delinquency of L&B's Form P-5 organization report and has not been re-issued since that date. The lease is pending removal from schedule because all wells on the lease have been plugged.

L&B reported production to the Commission for the Hooks Sterling (17938) Lease from the time it became operator effective in November 1996 through September 2003.<sup>3</sup> No production for the lease was reported subsequent to September 2003. Well No. 2 on the subject lease was plugged on December 10, 2004. Well No. 2D on the subject lease was plugged on February 21, 2007. The last well on the lease, Well No. 3, was plugged on February 27, 2007.

On April 15, 2008, the District Director of the Commission's District Office for District 03 in Houston sent L&B a "Notice to Operator and Request for State Funds," which: (1) stated that the Hooks Sterling (17938) Lease had not been cleaned up by the deadline imposed by law, Commission rule, or Commission order; (2) stated that the subject lease threatened to pollute or was polluting surface or subsurface water; (3) directed L&B to initiate effective cleanup operations required for compliance with Statewide Rules 8 and 91; (4) stated that the District Office was recommending scheduling of the lease to be cleaned with State funds; (5) stated that if L&B believed that it legally was not required to clean up the pollution, and if no hearing had previously been held on the violation, L&B could request a hearing;<sup>4</sup> (6) stated that if L&B failed or refused to effectively clean

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<sup>1</sup> The April 15, 2008, Notice to Operator and Request for State Funds is also in evidence as Appendix C to L&B's Exhibit No. 1.

<sup>2</sup> By execution of the Form P-4, L&B acknowledged and assumed responsibility for the regulatory compliance of the subject lease including plugging of wells pursuant to Rule 14, and acknowledged also that L&B would remain designated as the operator of the lease until a new certificate designating a new operator was approved by the Commission.

<sup>3</sup> It appears that any production on the lease after December 31, 2001, would have been production against severance in violation of §91.706(a) of the Texas Natural Resources Code and Statewide Rule 73(i).

<sup>4</sup> The hearing file shows that L&B made a request for hearing by letter dated October 6, 2008.

up the pollution or did not make a timely request for hearing, the Commission could enter into a contract to clean up the lease at any time after thirty days had elapsed from the date of mailing of the notice; and (7) stated that if the Commission initiated cleanup operations on the subject lease due to failure or refusal of L&B to respond or an ineffective response, all surface equipment and hydrocarbons would be presumed to have been abandoned and could be disposed of by the Commission under Texas Natural Resources Code §91.115(f), and the attorney general could file suit against L&B to recover any unreimbursed cleanup costs.

### **L&B Production**

L&B believes that the West Hardin County Consolidated Independent School District (“School District”) should be held responsible for the clean up of the Hooks Sterling (17938) Lease. In 2002, a lawyer representing the School District notified L&B that \$10,000 in back taxes on the lease were due the School District. According to L&B, these taxes related to years prior to L&B’s take over of the lease, and L&B disputed that it owed any taxes. On or about November 16, 2004, the School District obtained an *in rem* judgment in the amount of \$11,482.93 with respect to L&B’s interest in the lease.

Production on the lease had ceased in September 2003, and on December 10, 2004, L&B plugged Well No. 2. According to L&B, on or about March 1, 2005, the School District foreclosed a tax lien on L&B’s leasehold interest in the property, and purchased this interest at a foreclosure sale. L&B claims that thereafter, the School District’s tax lawyer threatened criminal prosecution and civil liability if L&B entered the property or plugged the remaining wells.<sup>5</sup> L&B claims also that because of these threats it decided not to plug the remaining wells on the lease when the Commission directed it to do so. Well No. 2D was plugged with State funds on February 21, 2007.<sup>6</sup> The last well on the lease, Well No. 3, was plugged with State funds on February 27, 2007. As a result of an agreement with the Attorney General, L&B has reimbursed the State for the costs of plugging these two wells.

L&B has not been on the Hooks Sterling (17938) Lease since 2005. When L&B first became operator of the lease, it had the benefit of an assignment of an oil and gas lease from the mineral owners, but L&B does not believe that this old lease is still in effect after five years of non-production. Surface equipment remained at the time L&B left the lease in 2005, in fact more

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<sup>5</sup> According to L&B’s understanding, and according to correspondence to L&B from the School District’s litigation counsel attached to L&B Exhibit No. 1, the School District does not own the surface estate of the acreage comprising the Hooks Sterling (17938) Lease.

<sup>6</sup> In Oil & Gas Docket No. 03-0238280, *Enforcement Action Against Wallace Maury Poole II, dba L&B Production (Operator No. 480279) for Violations of Statewide Rules on the Hooks Sterling (17938) Lease, Well No. 2D, Batson New Field, Hardin County, Texas* (Final Order signed March 28, 2006), L&B had been ordered to plug Well No. 2D and pay an administrative penalty of \$4,000 for violations of Statewide Rule 9 (failure to perform a required mechanical integrity test) and Statewide Rule 14(b)(2) (failure timely to plug). L&B claims that the administrative penalty has been paid pursuant to agreement with the Attorney General.

equipment than reflected on 2008 inspection reports prepared by the District Office. In April 2008, when the District Office directed L&B to clean up the lease, counsel for L&B sought assurances from the School District that the School District would not seek to have L&B or its owner criminally prosecuted if L&B remediated the lease, at the same time inquiring as to what financial arrangement the School District wanted to make to reimburse L&B for the sums paid to the State to cover the State's plugging costs relative to Well Nos. 2D and 3. Counsel for the School District replied by two letters in May 2008, denying that the District's tax lawyer had made threats of the type claimed by L&B, pointing out that the School District did not have an interest in the surface estate, denying that the School District or any of its representatives had prohibited L&B's access to the lease, stating that it was L&B's duty to plug the wells and the School District would not assume any financial responsibility for such plugging, and emphasizing that "Mr. Poole should take whatever actions he is required to take as the operator of the wells."

L&B asserts that the Commission should hold the School District responsible for any required clean up of the lease because the District: (1) is the "last known working interest owner" (by reason of foreclosure of its tax lien); (2) is the "de facto lease operator;" (3) refused to replace L&B as operator on the records of the Commission; (4) threatened L&B's owner with criminal prosecution and civil liability if he entered the lease and plugged the wells; and (5) refused to say whether it claims any ownership interest in the equipment remaining on the lease.<sup>7</sup>

### **Enforcement Section**

A District Office inspection report prepared by Byron Krysher, a Houston District Office Clean Up Coordinator, properly certified by the Commission's Secretary as custodian of the files and records of the Commission, disclosed that on the occasion of Krysher's inspection of the Hooks Sterling (17983) Lease on February 7, 2008, three 400 barrel tanks in poor condition and 3 heater treaters in poor condition remained on the lease. According to the inspection report, Tank C and Heater Treater E (as identified on a hand-drawn map attached to the inspection report) had elevated NORM readings. Also according to the inspection report, the tanks contained BS&W, water, solids, and/or oil.<sup>8</sup> Pete Fisher, a Senior Technical Coordinator in the Site Remediation Section of the Commission's Oil & Gas Division estimated that removal of the equipment, disposal of contents, and remediation of the site would cost about \$15,000.

The Enforcement Section asserts that L&B, as the record operator of the Hooks Sterling (17983) Lease, is legally responsible for the emptying and removal of the remaining equipment on the lease pursuant to Statewide Rule 14(d)(12).

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<sup>7</sup> The School District was not provided notice of this hearing and did not participate.

<sup>8</sup> Enforcement also presented a second inspection report dated October 15, 2008. However, the examiner has elected not to rely on this subsequent inspection report because it was electronically transmitted for use at the hearing and not signed or certified as true and complete by the inspector.

**EXAMINER'S OPINION**

L&B became the designated operator of the Hooks Sterling (17983) Lease by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved on December 9, 1996, effective November 1, 1996. By signing and filing this Form P-4, L&B acknowledged and assumed the responsibility for the regulatory compliance of the subject lease including plugging of wells pursuant to Rule 14, and acknowledged also that L&B would remain designated as the operator of the lease until a new certificate designating a new operator was approved by the Commission. Pursuant to Statewide Rule 14(c), L&B legally was presumed to be the entity responsible for the physical operation and control of wells on the lease and to be the entity responsible for properly plugging the wells in accordance with Statewide Rule 14 [including Rule 14(d)(12)] and all other applicable Commission rules and regulations concerning the plugging of wells. Pursuant to Statewide Rule 58(a)(2), L&B could not be relieved of its responsibility for regulatory compliance of the subject lease until the Commission approved a subsequent Form P-4 transferring the lease to a subsequent operator on Commission records. L&B is the current operator of record, and no P-4 designating a subsequent operator has received Commission approval.

The duties under §89.011(a) of the Natural Resources Code to plug wells in conformity with the requirements of Statewide Rule 14, including the remediation requirements of Rule 14(d)(12), and under Statewide Rules 8 and 91 to prevent and clean up pollution, fall first on the operator. The facts of this case do not disclose any legal or equitable basis for imposing this primary responsibility elsewhere. The fact that the School District may have acquired through foreclosure sale whatever working interest in the lease that L&B retained as of March 2005 is irrelevant to L&B's duty to comply with Statewide Rules 8, 14, and 91.<sup>9</sup> The School District correspondence submitted into evidence by L&B as Appendices E and G to L&B's Exhibit No. 1 indicates that the School District disputes L&B's claim that the School District attempted to deny access to the subject lease to L&B for the purpose of complying with Commission rules. This same correspondence encouraged L&B's owner to "take whatever actions he is required to take as operator of the wells."

The evidence suggests that the School District does not own or control the surface of the subject property, but even assuming to be true L&B's claim that a representative of the School District attempted to deny L&B access to the lease, L&B nonetheless had a legal right to enter upon the lease for the purpose of complying with Commission rules. Section 89.044 of the Natural Resources Code provides that the operator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged. Section 89.045 of the Code provides that the operator is not liable for any damages that may occur as a result of acts done by it in a good faith effort to carry out the provisions of Chapter 89 of the Code. Regardless

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<sup>9</sup> It is not at all clear that as of March 2005, L&B retained any working interest for the School District to acquire. All production on the subject lease appears to have ceased as of September 2003, and the oil and gas lease held by L&B may have terminated prior to March 2005 based on cessation of production. In any event, the Commission repeatedly has held that operator responsibility for regulatory compliance of a lease is not dependent on ownership of a working interest.

of the School District's position on the matter, L&B had a legal right of entry for the purpose of plugging wells and cleaning up the lease at abandonment in conformity with Rule 14(d)(12).

Statewide Rule 14(d)(12) requires that the operator empty all tanks, vessels, related piping and flowlines that will not be actively used in the continuing operation of a lease within 120 days after plugging work is completed. Within the same 120 day period, the operator is required to remove all tanks, vessels, and related piping, and all loose junk and trash from the location, and contour the location to discourage pooling of surface water at or around the facility site. L&B plugged Well No. 2 on the subject lease on December 10, 2004. L&B failed to plug Well Nos. 2D and 3, so that these wells were required to be plugged with State funds. Well No. 2D on the subject lease was plugged on February 21, 2007. The last well on the lease, Well No. 3, was plugged on February 27, 2007. L&B has the legal responsibility to empty and remove the tanks and heater treaters that remain on the lease and to otherwise clean up the lease in conformity with Statewide Rules 8, 14, and 91, but has thus far failed and refused to do so.

Accordingly, the examiner recommends that the Commission enter an order denying all relief sought by L&B, ordering that L&B, within 30 days, clean up and remediate the Hooks Sterling (17983) Lease in conformity with Statewide Rules 8, 14(d)(12), and 91, and providing that in the event of failure or refusal of L&B to comply with the order, the Commission's staff may proceed to use money in the oil-field cleanup fund to clean up and remediate the lease, foreclose on the lien provided by §91.115 of the Natural Resources Code, and take such action as is necessary to recover all costs incurred by the Commission from L&B.

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

#### **FINDINGS OF FACT**

1. At least ten days notice of the hearing in this docket was provided to all interested persons, including L&B Production ("L&B") which requested the hearing. L&B appeared at the hearing and presented evidence.
2. On April 14, 2008, the Commission's Houston District Office sent to L&B a Notice to Operator and Request for State Funds. This notice stated that the Hooks Sterling (17938) Lease had not been cleaned up by the deadline imposed by law, Commission rule, or Commission order, and the lease threatened to pollute or was polluting surface or subsurface water.
  - a. The notice directed L&B to initiate effective cleanup operations required for compliance with Statewide Rules 8 and 91.
  - b. The notice advised L&B that the District Office was recommending scheduling the lease to be cleaned up with State funds.

- c. The notice advised L&B that if it believed that it legally was not required to clean up the lease, and if no hearing had previously been held on the violation, L&B could request a hearing.
  - d. The notice advised L&B that if L&B failed or refused to effectively clean up the lease or did not make a timely request for hearing, the Commission could enter into a contract to clean up the lease at any time after thirty days had elapsed from the date of mailing of the notice.
  - e. The notice advised L&B that if the Commission initiated cleanup operations on the lease due to the failure or refusal of L&B to respond to the notice or an ineffective response from L&B, all surface equipment and hydrocarbons would be presumed to have been abandoned and could be disposed of by the Commission under Texas Natural Resources Code §91.115(f), and the attorney general could file suit against L&B to recover any unreimbursed cleanup costs.
3. By letter dated October 6, 2008, L&B asserted that it was not legally required to clean up the Hooks Sterling (17938) Lease and requested this hearing.
  4. L&B is a sole proprietorship, and Wallace Maury Poole II is the owner. L&B last filed a Form P-5 organization report on October 26, 2000. The Form P-5 organization report of L&B was set to inactive status on May 1, 2007.
  5. L&B was designated operator of the Hooks Sterling (17938) Lease by Form P-4 (Certificate of Compliance and Transportation Authority) approved December 9, 1996, effective November 1, 1996. By signing this Form P-4, L&B acknowledged and assumed responsibility for the regulatory compliance of the Hooks Sterling (17938) Lease including plugging of wells pursuant to Statewide Rule 14, and acknowledged also that L&B would remain designated as the operator of the lease until a new Form P-4 designating a new operator was approved by the Commission.
  6. L&B is currently the operator of record of the Hooks Sterling (17938) Lease for the Commission's regulatory purposes, and no subsequent Form P-4 designating another operator has been approved by the Commission.
  7. L&B reported production to the Commission for the Hooks Sterling (17938) Lease from the time L&B became operator effective in November 1996 through September 2003. No production was reported for the lease subsequent to September 2003.
  8. The certificate of compliance for the Hooks Sterling (17938) Lease was canceled on December 31, 2001, based on delinquency of L&B's Form P-5 organization report and has not been re-issued since that date.

9. L&B plugged Well No. 2 on the Hooks Sterling (17938) Lease on December 10, 2004.
10. In Oil & Gas Docket No. 03-0238280, *Enforcement Action Against Wallace Maury Poole II, dba L&B Production (Operator No. 480279) for Violations of Statewide Rules on the Hooks Sterling (17938) Lease, Well No. 2D, Batson New Field, Hardin County, Texas* (Final Order signed March 28, 2006), the Commission ordered L&B to plug Well No. 2D on the Hooks Sterling (17938) Lease.
11. L&B failed to plug Well Nos. 2D and 3 on the Hooks Sterling (17938) Lease, and these wells were plugged with State funds, later reimbursed by L&B. Well No. 2D was plugged on February 21, 2007, and Well No. 3 was plugged on February 27, 2007. The Hooks Sterling (17938) Lease is pending removal from the Commission's Oil Proration Schedule because all wells on the lease have been plugged.
12. When L&B left the Hooks Sterling (17938) Lease in 2005, it left surface equipment on the lease.
13. On the occasion of an inspection of the Hooks Sterling (17938) Lease by the Commission's Houston District Office on February 7, 2008, three 400 barrel tanks in poor condition and 3 heater treaters in poor condition remained on the lease. The tanks contained BS&W, water, solids, and/or oil. One of the tanks and one of the heater treaters had elevated gamma ray (NORM) readings.
14. The abandoned surface equipment remaining on the Hooks Sterling (17938) Lease has the potential for pollution of surface and subsurface water due to the possibility of leaks of oil and gas wastes from tanks or heater treaters that are not being maintained and are in poor condition.
15. The estimated cost to the State to remove surface equipment and clean up the Hooks Sterling (17938) Lease is \$15,000.

#### **CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. L&B Production is the operator of the Hooks Sterling (17938) Lease responsible for compliance with all Commission rules pursuant to Statewide Rules 14(c), 58(a), and 79(a)(19) [16 TEX. ADMIN. CODE §§3.14(c), 3.58(a), and 3.79(a)(19)].

4. L&B Production violated Statewide Rule 14(d)(12) [16 TEX. ADMIN. CODE §3.14(d)(12)] by failing to empty and remove surface equipment from the Hooks Sterling (17938) Lease within 120 days after all wells on the lease had been plugged.
5. As operator of the Hooks Sterling (17938) Lease, L&B Production is legally responsible for cleaning up the lease in conformity with Statewide Rules 8, 14(d)(12), and 91 [16 TEX. ADMIN. CODE §§3.8, 3.14(d)(12), and 3.91].
6. In the event that L&B fails or refuses to clean up the Hooks Sterling (17938) Lease in conformity with Statewide Rules 8, 14(d)(12), and 91, the Commission may use money from the oil-field cleanup fund to clean up the lease, foreclose its lien on equipment and stored hydrocarbons pursuant to §91.115 of the Texas Natural Resources Code, and recover all costs incurred by the Commission from L&B Production pursuant to §91.113(f) of the Texas Natural Resources Code.

**RECOMMENDATION**

The examiner recommends that the Commission deny all relief sought herein by L&B Production, order that L&B Production clean up the Hooks Sterling (17938) Lease within 30 days after the order becomes final, and order that in the event L&B Production fails or refuses to clean up the Hooks Sterling (17938) Lease in conformity with the order, the Commission may proceed to use money from the oil-field cleanup fund to clean up the lease, foreclose its lien on any equipment and stored hydrocarbons pursuant to §91.115 of the Texas Natural Resources Code, and request the Attorney General to file suit against L&B Production to recover any unreimbursed cleanup costs.

Respectfully submitted,

James M. Doherty  
Hearings Examiner