SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION, BARNEY COCKBURN, E. J. BOASE, ET AL., PETITIONERS,

vs.

ARCHIE D. RYAN, S. D. BENNETT AND PHIL E. BAER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 31, 1934.

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[fols. ½ & A-J & 1] [Captions omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

In Equity

No. 652

AMAZON PETROLEUM CORPORATION et al., Complainants,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants

BILL IN EQUITY—Filed Oct. 27, 1933

The Amazon Petroleum Corporation is a corporation organized and existing under the laws of the State of Delaware. It is qualified to do business in the State of Texas. Its office and principal place of business is located in [fol. 3] Henderson, Rusk County, Texas. The complainants Barney Cockburn and E. J. Boase are each citizens and residents of the State of Oklahoma, temporarily residing in Rusk County, Texas. Complainant Charles M. Cope is a resident of Kilgore, Gregg County, Texas. Complainant W. C. Turnbow Petroleum Corporation is a corporation organized and existing under the laws of the State of Colorado, duly qualified to do business in Texas. Its office and principal place of business is at Longview, in Gregg County, Texas.

The defendant Railroad Commission of Texas is a body politic, created by the laws of the State of Texas, with its principal office in Austin, Texas; the defendants Lon A. Smith, C. V. Terrell and E. O. Thompson are the duly elected, qualified and acting members of said Commission, Lon A. Smith residing in Henderson, Rusk County, Texas; C. V. Terrell residing in Austin, Travis County, Texas, and E. O. Thompson residing in Amarillo, Potter County, Texas. The defendant James V. Allred is the duly elected, qualified and acting Attorney General of the State of Texas. The defendant H. H. Wellborn is the duly elected,

qualified and acting District Attorney of Rusk County, Texas, residing in Henderson, Texas. The defendant Milton Molhusen is the duly elected, qualified and acting District Attorney of Gregg County, Texas, residing in Longview, Texas. (The above named defendants for convenience will hereinafter sometimes be referred to as State officers.) The defendant Nat Gentry, Jr., is the duly elected, qualified and acting County Attorney of Smith County, Texas, residing in Tyler, Texas. The defendant Archie D. Ryan is Special Agent in Charge of Division of [fol. 4] Investigation of the United States Department of the Interior, and is a non-resident of the State of Texas, temporarily residing at Tyler, in said State. The defendant J. Howard Marshall is Special Assistant to the United States Attorney General, and is a non-resident of the State of Texas, temporarily residing at Tyler, in said state. The defendant S. D. Bennett is United States District Attorney, and resides at Beaumont, Texas. The defendant Phil E. Baer is United States Marshal, and resides at Paris, Texas. (The above named defendants for convenience will hereinafter sometimes be referred to as Federal officers.)

House Bill No. 5755, being Public Act No. 67, passed by the 73rd Congress of the United States, and approved by the President June 16, 1933, styled Federal Industrial Control Act, will for convenience be hereinafter referred to as the National Recovery Act, or NRA. Title 102 of Texas Civil Revised Statutes, with amendments thereto, will for convenience be hereinafter referred to as the Conservation Act.

This is a suit of a civil nature, as between each of the complainants and the defendants, arising under the laws and Constitution of the United States, and the matter or amount in controversy, as between each of the complainants and defendants, exceeds, exclusive of interest and costs, the sum of three thousand dollars.

The complainants, for their several and separate causes of action against the defendants, allege as follows:

I

The Amazon Petroleum Corporation is the owner of oil and gas mining leases covering the following described [fol. 5] lands situated in the State of Texas, to-wit: 4.43 acres out of T. O. Wright Farm, in Juan Vargas Survey,

Smith County, Texas, on which there are two oil wells, each capable of producing 5,000 barrels of oil per day; 3¾ acres out of W. D. Peterson Farm, in Jacob Lewis Survey, Rusk County, Texas, on which there is one oil well, capable of producing 4,000 barrels of oil per day; 1.56 acres known as the Carlisle M. E. Church property in J. B. Cadena Survey, Rusk County, Texas, on which is located one oil well, capable of producing 3500 barrels of oil per day; 4⅔ acres of the E. J. Woodrum land in M. J. Pru Survey, Rusk County, Texas, known as the Afton Thrash and J. C. Crossman lease, on which is located one oil well, capable of producing 3500 barrels of oil per day.

The complainants Barney Cockburn and E. J. Boase are the joint owners of oil and gas mining leases covering the following described lands situated in the State of Texas, to-wit: 12 acres of the A. Thrash Farm, in the E. Collard Survey, of Rusk County, Texas, on which is located two oil wells, having an estimated capacity of approximately 10,000 barrels of oil per day; 52 acres of the Lula Jackson Farm, in the E. Daniels Survey, of Smith County, Texas, on which is located one oil well, having an estimated capacity of approximately 10,000 barrels of oil per day; and 45 acres of the Amanda Green Farm, in the M. Hussner Survey, Smith County, Texas, which has not been developed yet for oil or gas, but which these complainants are preparing to drill two wells on.

The complainant Charles M. Cope is the owner of oil and [fol. 6] gas mining leases covering the following described lands situated in the State of Texas, to-wit: West 4 acres of 5 acre tract on C. H. Hedge Farm, J. C. Barnett Survey, Rusk County, Texas, on which is located one well, capable of producing approximately 5,000 barrels of oil per day; and the northwest ten acres of F. A. Taylor 103 acre tract in the J. C. Barnett Survey, Rusk County, Texas on which is located one oil well, capable of producing approximately 5,000 barrels of oil per day.

The complainant W. C. Turnbow Petroleum Corporation is the owner of oil and gas mining leases covering the following described lands situated in the State of Texas, to-wit: 2 acres, known as the Florence lease, out of the Mary Van Winkle Survey, Gregg County, Texas, on which is located one oil well capable of producing approximately 9600 barrels of oil per day; a town lot in the City of Kilgore,

Texas, known as the Heard lease, adjoining the Heard Hotel, on which is located one oil well, capable of producing approximately 9600 barrels of oil per day; a town lot in the City of Kilgore, Texas, known as the Lacy lease, on which is located one oil well, capable of producing approximately 11,500 barrels of oil per day; 60 acres in the I. Baity Survey, Gregg County, Texas, known as the Dickson lease, on which is located one oil well; capable of producing approximately 6,000 barrels of oil per day; Elder B. lease, containing 2.75 acres of land, in the Mary Van Winkle Survey, Gregg County, Texas, on which is located one oil well, capable of producing approximately 9,600 barrels of oil per day; Elder A. lease, containing 4.47 acres of land, in the Mary Van Winkle Survey, Gregg County, Texas, on [fol. 7] which is located one oil well, capable of producing approximately 10,000 barrels of oil per day; 16.36 acres of land, in the Dolores Sanchez Survey, Gregg County, Texas, known as the McKinley lease, and on which is located one oil well, capable of producing approximately 15,600 barrels of oil per day; 20 acres in the William Castleberry Survey, Gregg County, Texas, known as the Pearsons lease, on which is located two wells, capable of producing approximately 18,000 barrels of oil per day each; 6 acres, in the Dolores Sanchez Survey, Gregg County, Texas, known as the McGrede lease, on which is located one oil well, capable of producing approximately 15,000 barrels of oil per day; 1.97 acres, Mary Van Winkle Survey, Gregg County, Texas, known as the Knowles lease, on which is located one oil well, capable of producing approximately 10,000 barrels of oil per day.

II

Under and by virtue of the leases owned by the complainants as aforesaid, they and each of them are entitled to the exclusive control and possession of their said separate properties, and have the absolute right to produce therefrom all of the oil and gas which said properties are capable of producing, and the wells located on said properties are capable of producing, without waste, and without injury of any kind, at least one-half of their capacity, and these complainants have a market demand for quantities of oil far in excess of the amounts which they are allowed to produce under the acts and orders of the defend-

ants hereinafter complained of, and were it not for such [fol. 8] acts and orders of the defendants, these complainants could produce, handle and dispose of large quantities of oil which they are being deprived of producing by reason of such acts and orders.

III

In doing the acts and things and carrying into effect the orders hereinafter complained of, the state officers purport to be acting under and by authority of the Conservation Act of the State of Texas, and also under and by virtue of authority of the National Recovery Act. The Federal officers purport to be acting under and by authority of the National Recovery Act, but these complainants and each of them allege that all of said defendants are acting without any authority whatsoever, and that they are mere trespassers in enforcing or attempting to enforce said orders and in doing the acts and things hereinafter complained of.

IV

Beginning with the discovery and bringing in of the East Texas oil field, the Railroad Commission of Texas, under pressure from a major part of the oil industry, inaugurated a plan and program of "proration", the purpose of which was and is to curtail the production of oil in the State of Texas to such an extent as to create an artificial demand therefor, their objective being to reduce the supply below the actual consumptive demand with a view of creating and maintaining a high price for crude oil. To obtain this objective, they entered into an agreement with the Conservation boards of the various oil producing states, whereby [fol. 9] they agreed to hold the output of crude petroleum in Texas to approximately 900,000 barrels per day. Since that time they have from time to time made, issued, promulgated and put into effect so-called proration orders, whereby they have prohibited or attempted to prohibit in excess of that amount being produced in the State of Texas, and in order to accomplish that purpose they have from time to time restricted the production from each of the complainants' wells to whatever extent has been necessary to hold the production of the state to approximately that figure, and in doing so have disregarded the producing ca-

pacity of the wells, the market outlet, the requirements of the complainants, and the facilities of the complainants for handling and disposing of their production. All of said orders have been arbitrarily fixed for the purpose of holding the state output to approximately the aforesaid figure without regard to a proper enforcement of the Conservation Act or public necessity.

V

On April 22, 1933, in furtherance of the aforesaid plan, the Railroad Commission of Texas made, issued, promulgated and put into effect an order providing that no well in the East Texas field, including the wells of these complainants, should be allowed to produce in one day in excess of fifteen per cent of its average hourly potential producing capacity, as determined by said Commission.

On June 13, 1933, the order was amended reducing the allowable production per well to ten per cent. On Septem- [fol. 10] ber 30, 1933, the order was amended further reducing the allowable twenty-six per cent, and on October 18, 1933, the order was again amended further reducing the allowable four per cent, so that at the present time the complainants are prohibited from producing from any well on any day in excess of approximately seven per cent of the amount the well is capable of producing in one hour, or 7% of 1/24 of the wells capacity to produce, or about .002 11/12% of their total producing capacity, which, from a practical standpoint, is virtual confiscation of complainants' properties.

VI

The East Texas oil field is very large, comprising approximately 125,000 acres. It has a potential producing capacity of 100,000,000 barrels per day. It is capable of furnishing the United States supply of oil for several years. It is also capable of flowing this supply without the aid of artificial lifting power, and can, therefore, supply the requirements of the industry much cheaper than stripper fields and oil fields which have ceased to flow and from which the oil can be produced by the use of artificial lifting means. One of the purposes, and the operation and effect of the aforesaid plan, is to arbitrarily curtail the production in East Texas so as to enable those engaged in the

industry elsewhere to compete with complainants and others similarly situated in East Texas, thus penalizing complainants and other East Texas producers for the benefit of producers less favorably situated. This results in denying these complainants the equal protection of the law.

[fol. 11]

VII

Prior to the enactment and approval by the President of the National Recovery Act, the Railroad Commission attempted to justify its proration orders as conservation measures to prevent waste, but since that time, and at present, said orders are not and do not purport to be conservation measures, and have and bear no relation to the prevention of waste, but their purpose, as stated in the orders, is to carry into effect the program of the Federal officers, hereinafter defined and set forth.

VIII

Purporting to be acting under authority conferred by the National Recovery Act, on August 19, 1933, the Honorable Franklin D. Roosevelt, assuming to act in his official capacity as President of the United States, but as a matter of fact, without any authority whatever, approved and promulgated what is known as the "Code of Fair Competition for the Petroleum Industry." By executive order of July 14, 1933, he attempted to delegate to the Honorable Harold L. Ickes, Secretary of the Interior of the United States, Plenary power and authority to enforce and carry into effect the provisions of the National Recovery Act relating to the Petroleum Industry, being specifically referred to as section 9 of the Act.

IX

The defendants herein referred to as Federal officers, under color of authority conferred by the National Recovery Act, and the orders of the Honorable Franklin D. [fol. 12] Roosevelt and the Honorable Harold L. Ickes, with the assistance and joint action of the defendants referred to as State officers, are attempting to enforce the aforesaid code and orders as against these complainants, and as an incident to such enforcement are demanding of

and compelling complainants to furnish them with monthly reports showing the following information:

(a) Name, residence, and post office address;

(b) Location of producing properties and number of wells;

(c) Allowable production for each well as prescribed by the Railroad Commission;

(d) Daily production in barrels from each property;

(e) Daily production in barrels from each well;

(f) Amount of all deliveries of petroleum, showing names and places of business of all persons to whom deliveries are made, the quantity involved in each delivery, transportation or other disposition thereof;

(g) All petroleum in storage;

(h) Declaration that no part of such petroleum products has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed by any board, commission, officer or duly authorized agency of the state.

[fol. 13] X

The Federal officers are further demanding that complainant produce no more oil from their wells than the amount prescribed by the orders of the Texas Railroad Commission, and as incident to enforcement of such demands they make repeated inspection of complainants' properties, and gauge their tanks to ascertain the amount of oil being produced by the complainants, and said Federal officers have informed the complainants that they were policing the East Texas oil field for the purpose of compelling the complainants and other producers to comply with the orders of the Railroad Commission of Texas, and said orders of the Honorable Franklin D. Roosevelt and the Honorable Harold L. Ickes, as herein set out.

The said code further provides:

(a) That complainants and other producers engaged in the producing of oil shall pay their employees not less than a specified wage;

(b) shall not work their employees in excess of a specified number of hours per day;

(c) that all employees engaged in similar work shall work the same number of hours, and be paid at least a specified wage, the hours of service and rates of pay being subject to change by the President;

(d) that complainants, and all persons subject to the code, shall insert in all contracts made by them for work to be done in the industry, whereby the contractor shall agree that all of his employees, and all employees of any subcontractor shall be paid the rates prescribed by said code, [fol. 14] and that the schedule of hours of all such employees conform to those prescribed by said code;

(e) that complainants, and other members of said industry, shall not, as a condition of employment, require any employee or anyone seeking employment to join any union or refrain from joining any union or labor organization;

(f) that complainants and other oil producers be prohibited from storing oil or withdrawing oil from storage without the consent and approval of a Planning and Coordinating Committee appointed by the President;

(g) that not in excess of 100,000 barrels of oil shall be withdrawn from storage in the United States on any day;

(h) that required production of oil to balance consumer demand for petroleum products shall be estimated by a Federal agency designated by the President; that allocation of such requirements shall be made among the states, and no state shall be permitted to produce in excess of such allocation, all allocations to be approved by the President.

The defendants herein referred to as Federal officers are attempting to compel these complainants to comply with all the aforesaid provisions of said code and also the aforesaid orders made by the Honorable Franklin D. Roosevelt and the Honorable Harold L. Ickes.

[fol. 15] XI

Further complaining, these complainants allege that on July 11, 1933, the Honorable Franklin D. Roosevelt, President of the United States, made and promulgated an order, whereby he decreed and ordered that no petroleum, or the products thereof, produced or withdrawn from storage in

excess of the amount permitted to be produced or withdrawn by any state law or valid regulation or order prescribed thereunder by any board, commission, officer; or other duly authorized agency of a state should be transported in interstate or foreign commerce. Under the assumption that the present orders of the Texas Railroad Commission are valid, the Federal officers are attempting under the guise of carrying into effect the order of the President, to prevent these complainants from producing any oil except the allowable fixed by said Railroad Commission, claiming that they are regulating interstate commerce, whereas, as a matter of fact, these complainants are not engaged in shipping any oil, either intrastate or interstate, but are engaged solely in the business of producing and marketing oil. The oil is sold by them on their respective leases, and title to said oil passes from complainants upon its being delivered to buyers on the premises where it is produced. Moreover, complainants allege that they are not producing or shipping any oil in violation of any valid order of any state board, commission, officer or other duly authorized agency of the state, because the orders of the Railroad Commission of Texas, which said defendants are acting under, are void for the various reasons herein set out.

[fol. 16] XII

These complainants further allege that the Secretary of the Interior has further ordered that there shall not be produced within the State of Texas daily in excess of 965,000 barrels of oil per day; that this amount shall be allocated among the different oil fields in the state, and among the different producers in the state, by the Railroad Commission of Texas; that the order of said Commission fixing the allowable for the wells of the complainants was made to carry into effect the aforesaid order of the Secretary of the Interior, and the operation and effect of said order is not the prevention of waste or the conservation of oil, but solely to curtail the production of oil within the state to that figure. Notwithstanding the aforesaid facts, the defendants both Federal and State officers have announced their intention of enforcing the aforesaid orders, and unless restrained from so doing by this Court they will compel these complainants to comply with said orders.

XIII

These complainants further allege that the Secretary of the Interior has made, issued and promulgated an order effective December 1, 1933, which prohibits complainants from selling any oil at a price below $1.17 per barrel, and unless enjoined from so doing the Federal officers will force complainant's obedience to said order.

XIV

These complainants further allege that the defendants State officers have informed the complainants that unless [fol. 17] they comply with the aforesaid orders of the Railroad Commission of Texas that said officers will institute and prosecute against complainants suits to recover penalties of $1,000.00 per day for each day that said orders are violated, and will file informations and cause complainants to be arrested and prosecuted and attempt to have fines and prison sentences inflicted on complainants, as provided in the Conservation Act, and also Act No. — of the 43rd Legislature of the State of Texas, 1933, page 422, Chapter 165, (Title 14, Article 1112 B, Vernon's Annotated Revised Civil and Criminal Statutes of the State of Texas, October, 1933, Cumulative Pamphlet). And said Federal officers have stated that, if the complainants do not comply with said orders they will cause them to be arrested and prosecuted under paragraph c, Section 9, of the National Recovery Act, which prescribes a fine of $1,000.00, or imprisonment for not to exceed six months, or both, for each violation, and unless enjoined, both the State and Federal officers will institute and prosecute such actions, both civilly and criminally, against the complainants, which will result in irreparable injury and damage to complainants, for which they have no adequate remedy at law.

XV

Complainants further allege that while the State officers claim to be attempting to enforce the Conservation Act, and the Federal officers claim to be engaged in regulating interstate commerce, as a matter of fact, they are jointly engaged in a conspiracy to curtail production of crude oil in Texas, and throughout the United States, as ordered [fol. 18] by the Secretary of the Interior; that all their

acts and orders are in furtherance of said conspiracy, and are illegal, unwarranted, arbitrary, unjustified, null and void, and constitute an illegal, unwarranted and unnecessary interference with the rights, liberty and property of complainants, and result in depriving them of their property without due process of law, causing them irreparable loss and damage, for which they have no adequate remedy at law.

XVI

Complainants allege that the orders of the Railroad Commission of Texas, and the orders of the Honorable Franklin D. Roosevelt, President of the United States, and the Honorable Harold L. Ickes, Secretary of the Interior, are illegal, null and void, and the acts of the defendants in enforcing or attempting to enforce said orders illegal, unwarranted and a mere usurpation of power and authority for the following reasons:

1

The National Recovery Act is null and void, and particularly Section 9 thereof, because—

(a) It is an attempt by Congress to delegate its legislative powers to the President.

(b) It is an attempt by Congress to vest in the President the powers of a supreme dictator, contrary to the National Constitution, and contrary to our Republican form of government.

[fol. 19] (c) It authorizes the President to exercise police powers not granted to the National Government by the several statutes of the Union, and is in violation of the 10th Amendment to the National Constitution.

(d) It deprives complainants of their natural and inherent rights contrary to the 9th Amendment to the National Constitution.

(e) It deprives complainant of their property without due process of law, in violation of the 5th Amendment to the National Constitution.

(f) It violates both the 4th and 5th Amendments to the National Constitution, in that it attempts to give the Fed-

eral Government the right to compel the complainants and others to produce their papers and effects, compel them to give evidence against themselves, and deprives them of liberty and property without due process of law.

(g) It is contrary to the 8th Amendment to National Constitution in that it imposes excessive fines and cruel and unusual punishment.

2

Neither orders of the President nor the orders of the Secretary of the Interior, nor the acts of the defendants, are authorized by the National Recovery Act.

3

Section 9, of the National Recovery Act, is void because it is an attempt by Congress to delegate to the President the power to regulate and curtail the production of crude oil under the guise of regulating interstate commerce, [fol. 20] whereas Congress cannot delegate its power to regulate interstate commerce, and Congress itself has no power to curtail production of oil.

4

(a) The orders of the Railroad Commission are not authorized by the Conservation Act or any other law.

(b) They were made without notice and without a hearing.

(c) They are arbitrary, confiscatory and discriminatory for the reasons hereinabove set forth.

(d) The enforcement of said orders deprives these complainants of their property without due process of law, deprives them of their liberty of contract, and the equal protection of the law, in violation of the 14th Amendment to the National Constitution.

5

(a) The Conservation Act is void because its operation and effect deprives complainants and others affected thereby of their propery without due process of law, and

denies them the equal protection of the law, contrary to the 14th Amendment to the National Constitution.

(b) Its operation and effect burdens interstate commerce in violation of the Commerce Clause of the National Constitution.

(c) It is so vague, indefinite and uncertain that its meaning is not ascertainable.

(d) It is an attempt by the General Assembly of Texas [fol. 21] to delegate the power to curtail and regulate the production of oil when the General Assembly itself has no such power, and if it did have, it could not delegate it.

XVII

Complainants specifically plead that the penalty provisions of the National Recovery Act are null and void for the following reasons:

The penalties prescribed are so excessive and disproportionate to the offense for which they are assessed that they are in violation of the 7th Amendment to the Constitution of the United States prohibiting excessive fines and cruel and unusual punishment; and, for the further reason that they are so extreme and drastic as to be calculated to affright those affected thereby from resorting to the Courts to test the validity of the act, to ascertain their rights thereunder and knowing them dare maintain them, and for the further reason that the terms and provisions of said Act are so vague, indefinite and uncertain that it is impossible for those affected thereby to form any standard of conduct whereby they can safely know when they are or are not violating the terms of said Act.

XVIII

For all of the reasons above set forth, and for the further reason that their enforcement is in violation of the 14th Amendment to the Constitution of the United States, the penalty provisions of the Conservation Act of the State of Texas, as well as Act No. — of the 43rd Legislature of the State of Texas, 1933, page 422, Chapter 165, (Title 14, Article 1112 B, Vernon's Annotated Revised Civil and

[fol. 22] Criminal Statutes of the State of Texas, October, 1933, Cumulative Pamphlet) are null and void.

Wherefore, complainants pray:

1: That a three-judge court be convened as provided in Section 380 of the U. S. C. A.;

2: That the Acts and orders of the defendants, and each of them hereinabove complained of, be held to be null and void;

3: That an interlocutory injunction be granted, enjoining the defendants, and each of them, their assistants, agents, representatives, servants and employees, from enforcing or attempting to enforce any of the aforesaid orders, and from doing any of the unlawful acts and things herein complained of, and from in any manner interfering with the complainants in producing, handling and disposing of the oil from their properties herein described, and from in any manner interfering with the complainants in the lawful operation of said properties; and that they be further enjoined from enforcing or attempting to enforce, either through civil action or criminal prosecution, any of the fines and penalties prescribed by either of the acts herein complained of;

4: That upon a final hearing said injunction be made permanent;

5: For costs, and such other, further and general relief as complainants may be entitled to.

W. T. Saye, Saye, Smead & Saye, Solicitors for Complainants.

[fol. 23] *Duly sworn to by W. T. Saye. Jurat omitted in printing.*

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER OF THE DEFENDANTS, ARCHIE D. RYAN, S. D. BENNETT AND PHIL E. BAER—Filed Dec. 12, 1933

Come now the defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer separately and severally, and for answer

separately and severally to the Bill of Complaint in this cause say:

[fol. 24] (1) There is a misjoinder of parties complainant in that it affirmatively appears from the averments of the bill that the complainants have no joint cause of action against these defendants and the facts averred in the Bill do not constitute a joint cause of action against these defendants.

(2) There is a misjoinder of causes of action in the Bill in that the facts averred therein do not constitute a joint cause of action in the complaints against these defendants and two or more separate, several and distinct causes of action are improperly joined in the bill.

(3) There is no equity in the bill against these defendants for the reason that it affirmatively appears from the averments thereof that in the performance of the acts therein complained of these defendants have been and are engaged in the execution and performance of orders and functions of the President of the United States or the Secretary of the Interior acting directly in the place of the President, and one so acting is not subject to restraint or injunction.

(4) This court is without jurisdiction to enjoin these defendants in this case for the reason that, in respect of all the matters and things herein complained of, they have been and are engaged in the performance of functions delegated to them by the President of the United States or by the Secretary of the Interior acting directly in the place of the President and one so acting under powers conferred by the Congress upon the President may not be restrained or enjoined.

(5) There is a nonjoinder of parties defendant for that [fol. 25] the Secretary of the Interior is an indispensable party. The Defendant Ryan is now, and was at all times referred to in the bill, a Special Agent of the Secretary of the Interior assigned to the Division of Investigations of the Department of the Interior and all acts that he has committed in connection with the matters and things referred to in the bill were committed by him solely and exclusively in his capacity as such Special Agent of the Secretary of the Interior and not otherwise, and this bill therefore is

not maintainable against the defendant Ryan in the absence of the Secretary of the Interior as a party for the reason that the defendant Ryan was acting as a subordinate of the Secretary of the Interior in respect of the matters and things herein complained of.

(6) Further answering the bill these defendants say that it affirmatively appears from the averments thereof that these defendants, with respect to all the matters and things therein complained of, were carrying out and performing orders of the President of the United States and the Secretary of the Interior, and these defendants say therefore that the bill is not maintainable against them in the absence of the said superior officials as whose subordinates it is alleged in the bill they were acting as aforesaid.

(7) There is no equity in the bill against these defendants for the reason that the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the executive orders of the President of the United States issued thereunder and the said regulations are in all respects valid and constitutional.

[fol. 26] (8) Further answering the bill, these defendants say that on, to-wit, July 11, 1933, the President of the United States, by virtue of authority vested in him by the National Industrial Recovery Act, issued and promulgated an executive order prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State, a true copy of the said executive order, marked Exhibit 1, being attached hereto and made a part hereof; that on, to-wit, July 14, 1933, the President of the United States, by virtue of authority vested in him by the National Industrial Recovery Act, in order to effectuate the intent and purpose of the Congress as expressed in Section 9 (c) of the said Act and for the purpose of securing the enforcement of the said executive order of July 11, 1933, authorized the Secretary of the Interior to exercise all the powers vested in the President for the purpose of enforcing Section 9 (c) of the said Act and the said

executive order of July 11, 1933, including full authority to designate and appoint such agents, and set up such boards and agencies as he might deem necessary, a true copy of the said executive order, marked Exhibit 2, being attached hereto and made a part hereof; that on July 15, 1933, July 25, 1933, August 2, 1933 and August 21, 1933, the Secretary of the Interior, by virtue of the power and authority vested in him by the National Industrial Recovery Act and the said executive orders of the President, approved and promulgated certain regulations, a true copy thereof, marked Exhibit 3, being attached hereto and made a part hereof; that with respect to all the matters and things complained of in the bill, the defendant Ryan has [fol. 27] been and is acting as a Special Agent of the Secretary of the Interior in carrying out and performing the said executive orders of the President and the said regulations, and these defendants aver that this bill for an injunction will not lie against them for the reason that neither the President of the United States nor his agent in performing functions delegated to him by the President is subject to restraint or injunction.

(9) Answering the first unnumbered paragraph of the bill, these defendants say that they are without knowledge with respect to whether the complainant, Amazon Petroleum Corporation, is a corporation existing under the laws of Delaware, or whether it is qualified to do business in Texas or whether its office and principal place of business are located in Henderson, Rusk County, Texas, and demand strict proof thereof insofar as such averments are material; that they are without knowledge as to whether the complainants Barney Cockburn and E. J. Boase are citizens and residents of the State of Oklahoma temporarily residing in Rusk County, Texas, and demand strict proof thereof insofar as such averments are material; that they are without knowledge as to whether the complainant Charles M. Cope is a resident of Kilgore, Gregg County, Texas and demand strict proof thereof, insofar as such averment is material; that they are without knowledge as to whether the complainant W. C. Turnbow Petroleum Corporation is a corporation existing under the laws of the State of Colorado or whether it duly qualified to do business in Texas, or whether its office and principal place of business are in Longview, Gregg County, Texas, and

demand strict proof thereof, insofar as such averments are material.

Further answering the said unnumbered paragraph of the bill, these defendants admit that the Railroad Com- [fol. 28] mission of Texas is an agency of the State of Texas duly and regularly created and existing under the laws of Texas with its principal office in Austin, Texas; that the defendants Lon A. Smith, C. V. Terrell, and E. O. Thompson are the duly elected, qualified, and acting members of the Railroad Commission in Texas; that the said Lon A. Smith resides in Henderson, Rusk County, Texas; that the defendant C. V. Terrell resides in Austin, Travis County, Texas; that the defendant E. O. Thompson resides in Amarillo, Potter County, Texas; that the defendant James V. Allred is the duly qualified and acting Attorney General of Texas; that the defendant H. H. Welborn is the duly qualified and acting District Attorney of Rusk County, Texas, and resides in Henderson, Texas; that the defendant Milton Molhusen is the duly qualified and acting District Attorney of Gregg County, Texas, and resides in Longview, Texas; that the defendant Nat Gentry is the duly elected, qualified and acting County Attorney of Smith County, Texas, and resides in Tyler, Texas. These defendants deny that the defendant Ryan is Special Agent in Charge of the Division of Investigations of the United States Department of the Interior, but admit that he is a Special Agent of the Division of Investigations of the United States Department of the Interior, that as such Special Agent he is in charge of the office of the said Division of Investigations in Tyler, Texas, that he is a nonresident of Texas, and that he is temporarily residing in Tyler, Texas; the defendants admit that the defendant J. Howard Marshall is a Special Assistant to the Attorney General of the United States and that he is a nonresident of the State of Texas, but deny that he is temporarily residing in Tyler, Texas. These defendants admit that S. D. Bennett is United States Attorney for the Eastern District of Texas and resides in Beaumont, Texas, and that Phil E. Baer is United States Marshal for the Eastern [fol. 29] District of Texas and resides in Paris, Texas.

(10) These defendants are without knowledge as to any of the facts averred in paragraph I of the bill and demand strict proof thereof insofar as such averments are material.

(11) Answering paragraph II of the bill, these defendants say that they are without knowledge as to the ownership by the complainants of the leases and properties therein referred to and demand strict proof thereof insofar as such averment is material. These defendants deny that the complainants are entitled to the exclusive control and possession of the said properties and that they have an absolute right to produce therefrom all the oil and gas which the said properties are capable of producing. These defendants aver that on the contrary, the rights of the complainants to produce oil and gas from the said properties are subject to valid existing orders and regulations of the State of Texas and the United States and their duly authorized governmental agencies and officials. These defendants deny that wells located on the said properties are capable of producing without waste or injury of any kind at least one-half of their capacity, or that there is a market demand for quantities of oil far in excess of the amounts which the complainants are allowed to produce under any acts and orders of these defendants, or that if it were not for the said acts and orders the complainants could produce, handle, and dispose of large quantities of oil which they are being deprived of producing by reason of the said acts and orders.

Further answering paragraph II of the bill, these defendants aver that the Railroad Commission of Texas, in issuing orders fixing the allowable production of oil from said properties has been duly and legally authorized by [fol. 30] statutes of the State of Texas to consider both underground and surface waste and has been so authorized to eliminate and prevent waste caused by contribution from the manner in which all the producing properties in the State of Texas and other States in the United States are operated and produced as well as to eliminate and prevent waste that may result from the manner in which a particular well or property is operated and produced, and that said Railroad Commission of Texas in entering the orders herein complained of has properly considered and acted to eliminate waste as thus defined by the statutes of Texas.

Further answering paragraph II of the bill, the defendants say that if, as the complainants aver in paragraph VI of the bill, the potential producing capacity of the East

Texas Oil Field is 100,000,000 barrels of oil per day and if the owners of all oil producing properties therein produced therefrom at least one-half of their capacity as the complainants claim to have a right to do, the amount of oil thus produced from the said East Texas Field alone would aggregate approximately twenty-three times the total amount necessary from all sources to satisfy the requirements of all consumers of petroleum and its products in the United States, and great and unnecessary waste would therefore result.

(12) Answering paragraph III of the bill, these defendants admit that the defendants referred to as State officers in the bill insofar as they are acting at all in respect of the matters and things therein complained of, are acting under and by authority of statutes of Texas and valid orders of the Railroad Commission of Texas issued thereunder, but these defendants deny that the defendants designated State officers are acting or purporting to act under and by virtue of the authority of the National Industrial [fol. 31] Recovery Act. These defendants admit that, insofar as they have acted and are acting in respect to the matters and things complained of in the bill, they are acting under authority of the National Industrial Recovery Act and valid orders and regulations issued thereunder and the Code of Fair Competition for the petroleum industry, but they deny that they are trespassers in any respect whatsoever.

(13) Answering paragraph IV of the bill, these defendants say that they are without knowledge as to the motives or purposes by which the Railroad Commission of Texas has been actuated in issuing the orders therein referred to or as to the objectives of the said orders, and these defendants demand strict proof thereof, insofar as such averments are material, but these defendants aver that it does not appear from the averments of the said paragraph IV that any order therein referred to is now in force and effect, that for aught that appears to the contrary from the averments of the said paragraph, none of the said orders complained of or the alleged agreement is now in force and effect, and that all the allegations of the said paragraph IV are wholly irrelevant and immaterial and are not pertinent to any material issue involved in this

cause. These defendants deny that any order of the Railroad Commission of Texas now in force and effect by which the allowable daily production of oil in Texas is determined was issued pursuant to any agreement between the said Railroad Commission and conservation boards in other oil producing States and that any such order was issued for the purpose of creating an artificial demand for oil and of reducing the supply of oil below the actual consumptive demand so as to maintain a high price for oil. The defendants deny that the allowable production fixed by any such order was arbitrarily determined with a view to limiting the production of oil in Texas to approximately 900,000 barrels per day, and deny that the [fol. 32] said allowable production was fixed without regard and consideration for the producing capacity of wells and for the market outlet; but they aver that all such orders that are material herein were legally and validly issued to the end that waste as defined in the pertinent statutes of Texas might be prevented and with due consideration for the public necessity of conserving oil as a natural resource. These defendants deny that the requirements of the complainants and their facilities for handling and disposing of oil produced by them are in any respect material. These defendants aver that the total allowable production of oil for the State of Texas and the amount of production allocated to various wells of the complainants were determined by the said Railroad Commission upon the basis of the current reasonable market demand for oil in the State of Texas and the potential producing capacities of the various wells of the complainants in accordance with and with due regard for the methods prescribed by the statutes of the State of Texas.

(14) Answering paragraph V of the bill, these defendants admit that on or about April 22, 1933, the Railroad Commission of Texas issued and promulgated an order prohibiting production of oil by any well in the East Texas Oil field in any one day in excess of 15% of its hourly potential capacity as determined by the said Railroad Commission, but these defendants deny that the said order was issued and promulgated in furtherance of the alleged plan referred to in the said paragraph V or in furtherance of any plan not authorized and required by law and they aver that it was in all respects legal and valid. These

defendants admit that on June 13, 1933, the said order of April 22, 1933, was so amended by the said Railroad Commission as to reduce the allowable production per well per day to not in excess of 10% of its hourly potential produc- [fol. 33] ing capacity as determined by the said Railroad Commission; that on or about September 30, 1933, the said order of April 22, 1933, was further amended by the said Railroad Commission so as to reduce the allowable production per well per day provided by the said order of June 13, 1933, by 26% of its hourly potential producing capacity as determined by the said Railroad Commission; and that on or about October 18, 1933, the said order of September 30, 1933, was amended by the said Railroad Commission so as to reduce the allowable productions per well per day as provided in said order of September 30, 1933, by 4% of its hourly potential producing capacity as determined by the said Railroad Commission.

The defendants deny that the allowable production of wells of the complainant has been in fact reduced to .002 11/12 per cent of their true and actual potential producing capacity and that the allowable production thereof is so small as to be virtually confiscatory or is smaller than is required by public necessity.

(15) Answering paragraph VI of the bill, these defendants admit that the oil field known as the East Texas Oil Field comprises approximately 125,000 acres of land, but they have no knowledge as to the actual potential producing capacity of the said East Texas Oil Field and demand strict proof thereof insofar as such averment is material. These defendants admit, insofar as it is material, that the East Texas Oil Field is capable of furnishing the total supply of oil for the United States for several years, and that some of the wells located therein flow without the aid of artificial lifting power and can supply oil at less cost than stripper fields and fields that have passed their period of flush production. The defendants deny the existence of the plan referred to in said paragraph VI; they deny that [fol. 34] the purpose of effect of any statute, order or regulation under which these defendants have been and are acting is arbitrarily to curtail the production of oil in the said East Texas Oil Field so as to enable persons engaged in the production of oil elsewhere to compete with the com-

plainants and others producing oil in the East Texas Oil Field; they deny that any such statute, order, or regulation penalizes the complainants for the benefit of producers less favorably situated, and they deny that any such statute, order, or regulation, or any act of these defendants has resulted in the denial to the complainants of the equal protection of the law.

Further answering paragraph VI of the bill, these defendants say that if the wells in the East Texas Oil Field were permitted to flow to the extent necessary to supply the total requirements of consumers of oil in the United States not only would irreparable loss and waste result therefrom through the shutting in and closing down of stripper wells contrary to the public policy of the State of Texas, as expressed in its statutes, the purpose of which is to conserve stripper wells, but also the rapid rate of flow necessary to satisfy consumer requirements of the United States from the East Texas Oil Field would result in the wasteful dissipation of the reservoir energy of the said Field and would greatly reduce the total ultimate recovery of oil therefrom.

(16) Answering paragraph VII of the bill, these defendants deny that the orders of the Railroad Commission of Texas therein complained of are not and do not purport to be conservation measures and bear no relation to the prevention of waste, and they deny that the purpose of the said Railroad Commission in issuing the said orders was to carry into effect any program other than that authorized by law.

The defendants aver that the Railroad Commission of [fol. 35] Texas has been properly authorized by statutes of the State of Texas to make and enforce such rules, orders and regulations as may be necessary to prevent waste of crude petroleum oil in drilling and producing operations and in the storing, piping and distribution thereof; that the statutes of Texas have made unlawful the production, storage, or transportation of crude petroleum oil in such manner and in such amount and under such conditions as to constitute waste which is therein defined to include underground waste, however caused, physical waste incident to and resulting from so drilling and operating wells as to reduce the total ultimate recovery of oil from any

pool, waste incident to or resulting from inefficient, excessive, or improper use of the reservoir energy, including gas energy or water-drive in any well or pool, surface waste, and the production of oil in excess of transportation and marketing facilities or reasonable market demand. These defendants further aver that the said Railroad Commission is authorized and required by the statutes of Texas to hold hearings to inquire into the production, storage, or transportation and the market demand for oil in order to determine whether waste exists or is imminent; that pursuant to such statutory authorization and requirement, a hearing was held and the order herein complained of was issued by the said Railroad Commission and that the said order is a proper and valid exercise of the powers granted to the said Railroad Commission to prevent the waste of crude oil, and that the said order is sustained by sufficient evidence introduced at the said hearing, and that it in fact purports to be and in truth is an order intended to prevent waste and that it will in fact do so.

The defendants aver that the order of the Railroad Commission of Texas restricting the allowable production of oil to the reasonable market demand in Texas is a true con- [fol. 36] servation measure and will prevent waste of oil and its products in that it will prevent unnecessary and wasteful storage of oil produced in excess of the market demand, and will prevent the premature abandonment of stripper wells and will insure a market outlet for all wells in the State, thereby insuring the ratable taking of oil from all wells in any common source of supply, which can not be accomplished by any other standard of restriction, with the result that the wasteful consequences of unratable taking in any common source of supply will be prevented, to-wit: channeling and coning and water infiltration in the producing strata in areas of excessive production, the wasteful depletion of the reservoir energy and a reduction in the total amount of oil recoverable therefrom.

(17) Answering paragraph VIII of the bill, these defendants, admit that on July 14, 1933, the President of the United States issued an executive order authorizing the Secretary of the Interior to exercise the powers vested in the President for the purpose of enforcing Section 9 (c) of the National Industrial Recovery Act and the executive

order of the President issued thereunder on July 11, 1933, including full authority to designate and appoint such agents and to set up such boards and agencies as the Secretary of the Interior might see fit, and to promulgate such rules and regulations as he might deem necessary, and admit that on August 19, 1933, the President of the United States approved a Code of Fair Competition for the Petroleum Industry, but these defendants deny that the President was without authority in any respect and aver that each said executive order was and is in all respects legal and valid.

Further answering paragraph VIII these defendants allege the Congress of the United States, in a great national emergency declared by the Congress, enacted the National Industrial Act (Public No. 67, 73rd Congress); and pursuant to its provisions, the President of the United [fol. 37] States, on August 19, 1933, approved a Code of Fair Competition for the Petroleum Industry, which is now in full force and effect with certain amendments lawfully adopted on September 13, 1933. Each of these defendants in all of their dealings with the plaintiffs herein have acted pursuant to the provisions of said law, said Code and the Rules and regulations validly issued by the Secretary of the Interior under the provisions of the aforesaid law and by lawful authority delegated to him by the President of the United States. The United States of America has an interest in the proper and reasonable conservation of petroleum and its products; such is an irreplaceable natural resource, necessary and essential for the common defense of the nation in time of war. More than 80% of the whole volume of petroleum and its products move in the channel of interstate and foreign commerce, and so intermixed, intermingled and interwoven have become the interstate and intrastate operations of the industry as that the former cannot be properly regulated without those necessary regulations prescribed by Amended Code of Fair Competition and the rules promulgated by the Secretary of the Interior by authority of the President, pursuant to provisions of Section 9 (c) and 10 (a) of Title One of the National Industrial Recovery Act, each of which are valid and lawful regulations; and all of said regulations and Code provisions, as well as the Act of Congress authorizing same, are a valid exercise of the Federal

powers, and such tend to accomplish and are accomplishing the purposes set forth in Section One, Title One of the aforesaid law.

(18) Answering paragraph IX of the bill, these defendants deny that they are acting under color of authority and aver that, insofar as they are acting at all in respect of the matters and things complained of in the bill, they are acting and have acted under and pursuant to valid orders [fol. 38] of the President of the United States, the Secretary of the Interior, the Acts of Congress and the aforesaid Petroleum Code. The defendants aver that the defendant Ryan has demanded of the complainants that they furnish to the Division of Investigations of the Department of the Interior reports setting forth substantially the information referred to in paragraph IX of the bill, but these defendants aver that in so demanding of the complainants the defendant Ryan was acting as a subordinate of the Secretary of the Interior for the purpose of carrying out and enforcing the regulations prescribed by the Secretary of the Interior in conformity with the National Industrial Recovery Act and the said executive orders of the President of the United States issued pursuant thereto, all of which the defendants aver are legal and valid.

(19) Answering paragraph X of the bill, the defendants say that under the provisions of the National Industrial Recovery Act the President of the United States on August 19, 1933, approved a Code of Fair Competition for the Petroleum Industry and thereafter on September 13, 1933, the President, in accordance with the said Act, approved certain modifications of the said Code; that a true copy of the said Code as modified as aforesaid, marked Exhibit 4, is attached hereto and made a part hereof; that on August 28, 1933, the President by virtue of the authority vested in him by Section 2 (b) of the National Industrial Recovery Act, and Section 2 of Article I and Section 1 (b) of Article VII of the said Code designated and appointed, for the petroleum industry, the Secretary of the Interior to be the Administrator and the Department of the Interior to be the Federal Agency to exercise all the functions and powers vested in the President or in any Federal Agency by the said Act and Code, a true copy of the said executive order, marked Exhibit 5, being attached hereto and made

[fol. 39] a part hereof; that thereafter the Department of the Interior has at intervals estimated the required production of crude oil to balance consumer demand for petroleum products and determined the consumer demand and thereafter the same was equitably allocated among the several states, as provided by Article III of the said Code; and recommended a figure which fairly represented the net reasonable market demand for petroleum products in Texas and each producing State; that under the Constitution and statutes of the State of Texas the said Railroad Commission has duly and legally, after hearing, and in compliance with the statutes of Texas, and in order to prevent waste, fixed and determined the market demand for oil produced in the State of Texas after due consideration of all evidence, including the recommendation of the Secretary of the Interior as to the market demand of petroleum produced in Texas; that prior to the approval of the said Code as modified and prior to any estimate of market or consumer demand, certification thereof and recommendation to the Railroad Commision of Texas by the Department of the Interior as aforesaid, the said Railroad Commission of Texas, in Compliance with the laws of Texas, on April 22, 1933, and on June 13, 1933, made and issued valid orders of allowable production of oil by wells in the said East Texas Oil Field and since the said dates vast quantities of petroleum and products thereof have been and are now stored in the said East Texas Oil Field, which petroleum was produced in violation of the said orders of the Railroad Commission of Texas.

Further answering paragraph X of the bill, these defendants admit that in accordance with the directions of the Secretary of the Interior, the defendant Ryan has demanded and is demanding that the complainants furnish to the Division of Investigations of the Department of the In-[fol. 40] terior certain information necessary in the proper and orderly enforcement of the National Industrial Recovery Act and of the said executive order of the President thereunder. The defendants aver that the information demanded of the complainants is necessarily within their knowledge and is such only as is reasonably calculated to aid in preventing transportation in interstate commerce of crude oil and the products thereof produced in violation of the laws of the State of Texas and valid orders of the

Railroad Commission of Texas applicable thereof, and that the information thus demanded is necessary to the proper and orderly enforcement of Section 9 (c) of the National Industrial Recovery Act and the said executive order of the President thereunder, and the information and reports demanded of the complainants by the defendant Ryan have been and are being demanded by him as a Special agent of the Secretary of the Interior under or pursuant to the said executive order and the said regulations promulgated by the Secretary of the Interior. The defendants Bennett and Baer have not demanded or are not demanding information or reports from the complainants.

Further answering paragraph X of the bill, defendants aver that, with respect to the Code provisions therein set forth, the plaintiffs have not shown any injury to their business of such a nature as to entitle them to injunctive relief; but in this connection the defendants allege that each of said provisions of the Code enumerated in said paragraph are valid provisions for each and all of the reasons set forth in paragraph Seventeen (17) hereof; that for the period of the emergency declared by Congress, such regulations are a valid exercise of the Federal powers heretofore mentioned and they serve to accomplish and are effecting, the declared purposes of the National Industrial [fol. 41] Recovery Act which is a valid law of Congress under the provisions of which each and all of said regulations were issued.

(20) Answering paragraph XI of the bill, these defendants say that on July 11, 1933, the president of the United States, by virtue of the authority vested in him by the National Industrial Recovery Act, issued and promulgated an executive order prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of a State. These defendants admit that they are attempting to enforce the said executive order of the President. The defendants say that they are without knowledge as to whether the complainants are engaged in shipping oil and as to whether they are engaged solely in

the business of producing and marketing oil, and demand strict proof thereof insofar as such averments are material. The defendants aver that they are without knowledge as to where oil sold by the complainants is sold by them and are without knowledge as to when the title to such oil passes from complainants, and demand strict proof thereof insofar as such averments are material. The defendants deny that the orders of the Railroad Commisssion of Texas referred to are void.

Further answering paragraph XI of the bill, the defendants aver that the regulations pursuant to which information is sought from the complainants are reasonable, proper and necessary in the enforcement of the said executive order of the President issued under and pursuant to Section 9 (c) of the National Industrial Recovery Act and that such information is sought from the complainants as [fol. 42] an essential and necessary incident to the enforcement of such executive order and the accomplishment of the purposes of the Congress in the enactment of the said Section 9 (c) and the defendants aver that the said executive order cannot be effectively enforced without the said information sought from the complainants and others similarly situated and that sources of petroleum and the products thereof illegally produced and cannot be otherwise discovered.

Further answering paragraph XI of the bill, the defendants aver that oil and gas are natural resources of a unique character; that when consumed or wasted they can never be replaced; that the maintainance of an adequate supply of crude oil and the refined products thereof is essential to the national well-being during times of peace and is a vital necessity for national defense during times of war; that the conservation of these natural resources is a matter of grave national as well as local concern; that there are only a few sources of supply of crude oil in the United States where the production is in excess of local consumer requirements; that the excess of supply over local or State consumer requirements from these sources moves, and must of necessity move, in interstate and foreign commerce; that all oil produced whether it actually moves in interstate commerce or not is commingled with oil that is moving in interstate commerce and enters into the flow or current of interstate commerce in such manner as directly

to affect the same and renders it necessary to control and regulate all production in order to preserve the orderly and proper movement of oil in interstate commerce; that the orderly movement of such production from these sources of excessive supply into interstate commerce is necessary for the proper preservation and protection of commerce between the States; that excessive production [fol. 43] from any one source of supply must be dumped upon the interstate market and leads to the demoralization of the orderly movement and of normal flow of oil and its products in interstate commerce, disrupting the industry in other localities and adversely burdening and effecting interstate commerce, and causes the wasteful shutting of thousands of wells throughout the nation and closing down of refineries, and is attended by wide-spread unemployment and destruction of property, values and aggravates the existing economic depression.

The defendants further aver that the production of oil is of such a unique character that it is not amenable to the ordinary law of supply and demand; that if one producer from a common source of supply has a market outlet for his production all the other producers from the same common source of supply must of necessity produce the oil from under their properties in order to protect them from drainage regardless of whether these producers have a market outlet for their production; that this fact causes the production and building up in certain localities of excessive stocks of petroleum and its products far in excess of consumer requirements and leads to waste of oil by evaporation in storage, and the waste that necessarily attends dumping of this excessive supply on the market. And the defendants aver that there are at this time enormous quantities of oil in storage in the East Texas Oil Field and elsewhere in the United States and that the potential capacity of the various sources of supply in this country is many times the amount required to satisfy the current needs of consumers and that unless withdrawals from storage are regulated and unless production is restricted so as not to exceed current consumption tremendous waste will result and the oil industry will be thrown into a chaotic condition [fol. 44] and interstate commerce in oil and its products will be demoralized.

The defendants further aver that the conservation of this natural resource requires that it be produced only to the extent that production is necessary to satisfy current consumer requirements; that any production in excess of this amount inevitably leads to waste and the demoralization of interstate commerce; that such restriction of production cannot be accomplished by the individual action of the various producing States but can be accomplished only by the action of the National Government in restricting the production from all sources of supply within the nation; and that only through such restriction by the National Government as provided in Section 9 (c) of the Recovery Act and Amended Article III of the Petroleum Code can the channels of commerce among the States and with foreign countries be kept and maintained open and free from demoralization.

(21) Answering paragraph XII of the bill, the defendants say that the averments of the said paragraph are so vague and indefinite that it is impossible for them to know therefrom to what order of the Secretary of the Interior the said paragraph refers or to what order of the Railroad Commission of Texas the said paragraph refers. The defendants aver that the operation and effect of the order of the said Railroad Commission now in force and effect is to prevent waste and to conserve oil, and they deny that the operation and effect of such order was or is solely to curtail the production of oil within the State of Texas, and they further deny the Secretary of Interior ordered the Railroad Commission of Texas to fix any allowable or make any allocation but allege that he only did and performed those duties imposed upon him under authority [fol. 45] of the President by Amended Section III of Article III of the Petroleum Code; and that the order of the Railroad Commission represents a valid determination by that body of the allowables set forth in the order of said Commission.

(22) Answering paragraph XIII of the bill, the defendants admit that the Secretary of the Interior heretofore issued an order effective December 1, 1933, promulgating certain price schedules applicable to petroleum and the products thereof, but they aver that the effective date of the said order has been extended by the Secretary of the Interior to January 1, 1934, and that said order provides

for hearings upon the said schedules of prices therein before the effective date hereof, at which hearings the complainants will be afforded an opportunity to object to the said order as a whole or in part. The defendants aver also that, in respect to the said order referred to in paragraph XIII of the bill, the complainants are not in any event entitled to injunction against these defendants, or any one of them and that the Secretary of the Interior is an indispensable party. The defendants aver also that sufficient facts are not alleged in the bill to show that the complainants have been or will be injured by the said order of the Secretary of the Interior. And the defendants aver that sufficient facts are not averred in the bill to entitle the complainants to any injunction on account of the said order relating to the fixing of prices. The defendants further aver that the said order of the Secretary of the Interior relating to the fixing of prices is in all respects legal and valid and avers that the complainants have not in any respect alleged its invalidity.

(23) Answering paragraph XIV of the bill, the defendants say that they are without knowledge as to whether the defendants referred to therein as State officers have informed the complainants that unless they comply with the [fol. 46] said orders of the Railroad Commission of Texas the said State officers will institute and prosecute against the complainants suits to recover penalities of $1,000.00 a day for each day that said orders are violated and will file information and cause the complainants to be arrested and prosecuted and will attempt to have fines and prison sentences inflicted on the complainants, and the defendants demand strict proof thereof insofar as such averments are material.

The defendants admit that they will perform their official duties with respect to violations by the complainants of Section 9 (c) of the National Industrial Recovery Act and the said executive orders of the President issued thereunder. They deny that irreparable injury will result to the complainants from any act of these defendants and deny that the complainants have no adequate remedy at law, and deny that they will institute and prosecute any civil or criminal action against the complainants except for violations by the complainants of a statute of the United

States or a valid order or regulation issued thereunder. The defendants deny that the defendant Ryan will institute or prosecute any action civil or criminal against the complainants, the institution and prosecution of such actions not being within the scope of his official duties.

(24) Answering paragraph XV of the bill, the defendants deny that they are engaged in a conspiracy to curtail the production of crude oil in Texas and the United States and deny that they have been so ordered by the Secretary of the Interior, and deny that any acts on their part or any orders referred to in the said bill are in furtherance of any conspiracy and deny that any such acts and orders are illegal, unwarranted, arbitrary, unjustified, null and void, and deny that any such acts and orders constitute an illegal, unwarranted, and unnecessary interference with the rights, liberty and property of the complainants, and [fol. 47] deny that any such acts will result in depriving the complainants of their property without due process of law or will cause the complainants irreparable loss or damage for which they have no adequate remedy in law.

(25) Answering paragraph XVI of the bill, the defendants say that the averments thereof are so vague and indefinite that it is impossible for them to know therefrom to which specific orders reference is made therein, but they deny that any orders of the Railroad Commission of Texas or of the President of the United States or of the Secretary of the Interior herein involved are invalid, illegal, null and void, and deny that any acts of the defendants in enforcing or attempting to enforce any such orders are illegal or unwarranted or a mere usurpation of power and authority.

Further answering subdivision (1) of paragraph XVI of the bill, the defendants deny that the National Industrial Recovery Act is null and void and denies that section 9 thereof is null and void upon any of the grounds averred to in the said paragraph or upon any other grounds.

Further answering subdivision (2) of paragraph XVI of the bill, the defendants aver that the orders of the President and the Secretary of the Interior herein involved are authorized by the National Industrial Recovery Act.

Further answering subdivision 3 of paragraph XVI of the bill, the defendants deny that Section 9 of the National

Industrial Recovery Act is void upon the grounds averred by the complainants or upon any other grounds.

Further answering subdivision 4 of paragraph XVI of the bill, the defendants say that averments thereof are so [fol. 48] vague and indefinite that it is impossible for them to determine to what orders reference is therein made. The defendants deny that any order of the Railroad Commission of Texas by its terms now in force and effect is unauthorized by law and deny that any such order was made without notice and without a hearing and deny that any such order is arbitrary, confiscatory and discriminatory, and deny that the enforcement of any such order deprives the complainants of their property without due process of law or of liberty of contract and deny that any such order deprives the complainants of the equal protection of the law in violation of the 14th Amendment of the Constitution of the United States.

Further answering subdivision 5 of paragraph XVI of the bill, the defendants deny that the statute of Texas therein referred to is void because of its operation and effect deprives the complainants and others affected thereby of their property without due process of law or because it denies to them the equal protection of the law contrary to the 14th Amendment to the Constitution of the United States, and deny that the operation and effect of the said statute of Texas is to burden interstate commerce in violation of the commerce clause of the Constitution of the United States, and deny that the said statute is so vague, indefinite, and uncertain that its meaning is not ascertainable, and denies that the said statute is invalid as an attempt by the Legislature of Texas to delegate power to regulate and curtail the production of oil, and deny that the said statute of Texas is void upon any ground.

(26) Answering paragraph XVII of the bill, the defendants deny that the penalty provisions of the National Industrial Recovery Act are null and void, and deny that the penalties prescribed therein are so excessive and dispro- [fol. 49] portionate to the offense to which they are assessed that they are a violation of the 14th Amendment to the Constitution of the United States, and deny that the said penalties are so extreme and drastic as to be calculated to affright those affected thereby from resorting to

the Courts to test the validity of the said Act, and deny that the terms and provisions of the National Industrial Recovery Act are so vague, indefinite and uncertain that it is impossible for those thereby affected to form any standard whereby they can safely know when they are violating the terms of the said Act; and the defendants aver that the National Industrial Recovery Act is in all respects legal and valid.

(27) Answering paragraph XVIII of the bill, the defendants deny that the penalty provision of the statute of Texas therein referred to and the Act of the 43rd Legislature of the State of Texas therein referred to are null and void for any reason therein set forth or otherwise.

(28) Further answering the bill, the defendants say that none of the orders of the Railroad Commission of Texas complained of in the bill and the enforcement of which is sought to be restrained and enjoined is now in force and effect, the said orders having been superseded by an order or orders issued by the said Railroad Commission subsequently to the date when this bill was filed, and the defendants aver therefore that with respect to the said orders complained of the complainants are not entitled to the relief prayed for.

(29) Further answering the bill, the defendants aver that, with regard to the orders of the Railroad Commission of Texas complained of, the complainants are not entitled to the relief sought for the reason that the statutes of Texas afford to the complainants the right to apply to a Court of [fol. 50] competent jurisdiction in Travis County, Texas, for a review of the said orders, and it does not appear from the averments of the bill that the complainants have exhausted the remedies thus afforded to them.

(30) Further answering the bill, the defendants aver that the complainants are not entitled to the relief sought against these defendants for the reason that sufficient facts are not averred to show that irreparable injury will result to the complainants from any of the matters and things complained of against these defendants.

(31) Further answering the bill, the defendants aver that the allegations thereof as a whole and in their entirety are so vague, indefinite, uncertain and redundant that

the defendants cannot ascertain therefrom with reasonable certainty the basis of the claim of the complainants for the relief sought against these defendants, and the defendants aver that a further and better statement of the nature of the said claim and further and better particulars of the complainants' alleged causes of action against these defendants ought to be ordered and the defendants pray that the Court so order.

And now having fully answered the said bill, these defendants separately and severally move that the bill and each separate paragraph thereof be dismissed and that these defendants be allowed to go hence with their reasonable costs in this behalf expended.

(Signed) Archie D. Ryan, (Signed) S. D. Bennett, (Signed) by Chas. I. Francis, (Signed) Phil E. Baer, (Signed) by Chas. I. Francis, Special Assistant to the Attorney General of the United States.

[fol. 51] Attorneys: Charles Fahy, First Assistant to the Solicitor of the Department of the Interior. Douglas Arant, Special Assistant to the Attorney General. Chas. I. Francis, Special Assistant to the Attorney General.

Duly sworn to by Archie D. Ryan. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 52] EXHIBIT 1 TO ANSWER

Executive Order

Prohibition of Transportation in Interstate and Foreign Commerce of Petroleum and the Products Thereof Unlawfully Produced or Withdrawn from Storage

By virtue of the authority vested in me by the Act of Congress entitled "An Act To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933, (Public No. 67,

73rd Congress), the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order, prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State, is hereby prohibited.

(Sgd.) Franklin D. Roosevelt.

The White House, July 11, 1933.

EXHIBIT 2 TO ANSWER

Executive Order

Prohibition of Transportation in Interstate and Foreign Commerce of Petroleum and the Products Thereof Unlawfully Produced or Withdrawn from Storage

[fol. 53] By virtue of the authority vested in me by the Act of Congress entitled "An Act to Encourage National Industrial Recovery, to Foster Fair Competition, and to Provide for the Construction of Certain Useful Public Works, and for Other Purposes," approved June 16, 1933, (Public No. 67, 73rd Congress), in order to effectuate the intent and purpose of the Congress as expressed in Section 9 (c) thereof, and for the purpose of securing the enforcement of my order of July 11, 1933, issued pursuant to said act, I hereby authorize the Secretary of the Interior to exercise all the powers vested in me, for the purpose of enforcing Section 9 (c) of said act and said order, including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary.

(Signed) Franklin D. Roosevelt.

The White House, July 14, 1933.

EXHIBIT 3 TO ANSWER

United States Department of the Interior

Office of the Secretary, Washington

The following general rules and regulations are prescribed in conformity with the requirements of the Act of Congress of June 16, 1933, known as the "National Industrial Recovery Act" (Public No. 67, 73rd Congress), and the orders of July 11 and July 14 of the President of the United States issued pursuant to such legislation.

[fol. 54] Regulations

I

Under the terms of the aforesaid act and orders petroleum or the products thereof is in interstate and foreign commerce (1) when petroleum or any of the products thereof is in the course of shipment or transportation by rail, pipe line, water, truck, or any other means of conveyance from any State, Territory or District of the United States to any other state, Territory or District of the United States, or to a foreign country, or (2) when petroleum or any of the products thereof is in any quantity or in any manner commingled with petroleum or the products thereof some part of which is in the course of such shipment or transportation, regardless of how much commingling occurs during the various processes of shipment or refining. Excess production of petroleum or the products thereof under said act and orders includes petroleum produced in excess of proration quotas, oil-gas ratio requirements or any other purported conservation measure which tends to limit, directly or indirectly, the production of petroleum or the products thereof.

II

Any producer, operator, lessee, royalty owner, or other person, natural or artificial, having an interest in any petroleum producing property, or possessing any right, title, or interest in petroleum or the products thereof, who shall ship, transport, or deliver to another for shipment or transportation or shall acquiesce in the procuring or con-

spire with any other persons, natural or artificial, to procure the transportation in interstate or foreign commerce of any petroleum or the products thereof; or any person, natural or artificial, who shall receive for shipment or [fol. 55] transportation in interstate and foreign commerce, or shall purchase for shipment in interstate and foreign commerce any petroleum or the products thereof, with the knowledge that such petroleum was produced or withdrawn from storage in violation of any law, or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of a State, shall be deemed to have violated the provisions of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the orders and regulations thereunder and shall be subject to the penalties prescribed in the Act. And each transaction shall be deemed a separate offense.

III

Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon interstate and foreign commerce of petroleum and the products thereof moving in intrastate commerce, it is essential and hereby required for the proper enforcement of the provisions of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the orders and regulations issued thereunder, that there shall be furnished the Division of Investigations of the Department of the Interior such information as respects production, purchases and shipments as is hereinafter required, regardless of whether such production, purchases and shipments are in interstate and foreign commerce or in intrastate commerce.

IV

Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifth day of each and every [fol. 56] calendar month, beginning with the period ending August 5, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following:

1. Residence and post-office address of producer.

2. Location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both the property and wells.

3. The daily production in barrels produced from each property and well.

4. A report of all sales showing the names of purchasers and transporting agencies, their places of business, and the quantity involved in each sale or shipment.

5. A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

V

Every purchaser, shipper, and refiner of petroleum or the products thereof, shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifth day of each and every calendar month beginning with the period ending August 5, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more [fol. 57] frequent intervals by the Division, which statement shall contain the following:

1. Residence and post-office address of purchaser, shipper, or refiner.

2. Place and time of receipt and the amount received, of petroleum and the products thereof.

3. The disposition of petroleum and the products thereof, including the place and time of sales, the amount sold, the destination and consignee.

4. A declaration that upon information and belief none of the petroleum and the products thereof handled has been produced or withdrawn from storage in excess of the

amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

VI

No transporting agency, whether by rail, pipe line, water, truck, or any other means of conveyance shall receive for transportation any petroleum or the products thereof unless the shipper shall furnish and the transporting agency shall receive in good faith an affidavit, sworn to before any duly authorized State or Federal officer, which shall contain the following:

1. Residence and post-office address of both the producer and the shipper.

2. A declaration that none of the petroleum shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or [fol. 58] other duly authorized agency of the State in which the petroleum was produced.

3. A recital of supporting facts including the number of barrels included within the shipment, a designation by wells or otherwise of the wells producing the petroleum shipped, the time during which such petroleum was produced and the rate of daily production during this period, together with the amount of production allowed by State law or regulations thereunder during this period of production.

4. Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior, for the proper enforcement of these orders and regulations.

Provided, however, That carriers may receive from other carriers for such transportation and may transport any petroleum or the products thereof without requiring such affidavit and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same.

The affidavits required by this regulation shall be filed and kept subject to inspection by the Division of Investigations of the Department of the Interior.

VII

All persons, natural or artificial, embraced within the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the Executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigation of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

[fol. 59]

VIII

All reports required by these regulations shall be filed with the Division of Investigations of the Department of the Interior in Washington, D. C., or with such regional agencies as may be from time to time designated by the Division of Investigations.

IX

Each and every false declaration in any statement under oath required by these orders and regulations, or each and every failure to file reports or to keep and maintain adequate records, as required by these orders and regulations, and any participation by any officer or agent of a corporation in any acts of commission or omission in performing the duties prescribed by these orders and regulations shall constitute a violation under the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress).

X

These regulations may be suspended in whole or in part by the Secretary of the Interior in any region, area, field, pool, or as applied to any particular properties or wells whenever, in his discretion, he deems their application unnecessary for the proper enforcement of the said act or orders issued thereunder, but no such suspension shall relieve any person, natural or artificial, from the duty of complying with the aforesaid act and orders; these regulations

may be by him at any time amended or changed in whole or in part.

Approved and promulgated this 15th day of July, 1933.

Harold L. Ickes, Secretary of the Interior.

[fol. 60] Copy

United States Department of the Interior

Office of the Secretary, Washington

The following changes, amendments and additions are hereby made in and to the regulations of July 15, 1933, prescribed to aid in the enforcement of the orders of July 11 and 14 of the President of the United States, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof, produced or withdrawn from storage in violation of State law or valid regulation issued thereunder:

1. Regulation IV is hereby amended to read as follows:

"Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:

(1) The residence and post office address of the producer.

(2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State Agency for both property and wells.

[fol. 61] (3) The daily production in barrels produced from each property and well.

(4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees

or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced."

2. Regulation V is hereby amended to read as follows:

"Every purchaser of petroleum, shipper (other than a producer) of petroleum, and refiner of petroleum (including all persons engaged in the processing of petroleum in any manner), shall file a statement under oath sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the purchaser, shipper, refiner or processer.

[fol. 62] (2) The place and date of the receipt, the names and business address of the producers and/or other parties from whom the petroleum was received, the amount received of such petroleum and the amount of petroleum held in storage or otherwise on the last day of the calendar month next preceding the period covered by the report.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of the consignees to whom delivered, the transporting agencies, and the amount of petroleum held in storage or otherwise at the end of said calendar month.

(4) A declaration that to the best of the information and belief of the affiant, none of the petroleum received and/or disposed of was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or duly authorized agency of the State in which the petroleum was produced."

3. Regulation VI is hereby amended to read as follows:

"No transporting agency whether by rail, pipe line, water, motor vehicle, or any other means of conveyance shall receive for transportation any petroleum or the products thereof unless the respective shippers and producers hereinafter described shall each furnish, and, the transporting agency or agencies shall receive in good faith, and without reasonable grounds for believing that any fact stated is untrue, affidavits sworn to before any duly au- [fol. 63] thorized State or Federal officer setting forth the information required by this regulation for the respective shippers or producers.

The following rules and classifications shall govern the furnishing of affidavits under this regulation:

Class "A" Shipments

Any shipment of petroleum, offered for shipment to any transporting agency, in the area where produced.

Class "A" shipments shall be supported by affidavits of both the shipper and the producer containing the following:

(a) The residence and post-office address of both the producer and the shipper.

(b) A declaration that none of the petroleum shipped has been produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

(c) A recital of supporting facts, including the number of barrels included within the shipment, a designation of the properties producing the petroleum shipped, the time during which such petroleum was produced and the rate

of daily production during this period, together with the amount of production allowed by State law or regulations thereunder during this period of production, and wherever the State law or regulations thereunder limiting production apply to individual wells, then a designation of the wells from which such petroleum was produced and the number of barrels contained in the shipment produced from each well, together with the daily production of each well [fol. 64] during the period when such shipment was produced.

(d) Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior, for the proper enforcement of these orders and regulations.

Provided, however, That if the petroleum offered for shipment was produced on or before July 11, 1933, and such petroleum has been acquired from any other shipper and/or producer and has been purchased or otherwise acquired from many sources and areas and has been so commingled that it is impossible for the shipper to furnish the facts required in sub-paragraph (c) above, the recital of facts required in such sub-paragraph (c) may be omitted and the following statement submitted in lieu thereof:

"(c) The date and place of each transaction involving the acquisition of petroleum so commingled subsequent to June 16, 1933; the name and business addresses of the producers and/or shippers from whom such petroleum was acquired and the amount of petroleum involved in each transaction.

(c2) A statement setting forth the reasons why the information requested in subparagraph (c) above can not be furnished."

Class "B" Shipments

Any shipment of the products of petroleum when such products are, after processing or refining, offered for shipment to any transporting agency, in the area where the petroleum, which has been processed or refined, was produced.

Class "B" shipments shall be supported by an affidavit of the shipper containing the following:

[fol. 65] (a) The residence and post-office address of the shipper.

(b) A declaration that the shipper did not acquire such petroleum or the products thereof with the knowledge that such petroleum had been produced in violation of any State law, rule or regulation or aid or abet any other person in so producing the same, and that to the best of his information and belief the products of petroleum shipped have not been derived from petroleum produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer or other duly authorized agency of the State in which the petroleum was produced.

(c) Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior for the proper enforcement of these orders and regulations.

Class "C" Shipments

Shipments of petroleum or the products thereof, when such shipments are made from a point outside the area where the petroleum was produced.

Class "C" shipments need not be supported by affidavit.

Provided however, That under this regulation, carriers outside of the State where such petroleum was produced may receive from other carriers for such transportation and may tansport any petroleum or the poducts thereof [fol. 66] without requiring such affidavits and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same.

Provided, further, That the provisions of this regulation shall not apply to shipments of the products of petroleum by rail in less than carload lots.

Provided, further, That where shipments of petroleum or the products thereof are offered for shipment in intrastate commerce and are subsequently in any manner diverted into interstate commerce, in whole or in part, the interstate carrier may not accept for shipment such petroleum or such products unless the provisions of this regulation are complied with.

Provided further, That the term "area where produced" as used in this regulation, when applied to the East Texas field, shall comprise the area included within an 80-mile radius of Kilgore, Texas and when applied to the Oklahoma City field shall comprise the area included with a 35-mile radius of Oklahoma City, Oklahoma.

The affidavits required by this regulation shall be filed by the transporting agency and kept subject to inspection by the Division of Investigations of the Department of the Interior.

4. The following additional regulation is hereby prescr-bed to be known as Regulation XI:

"In order to carry out the purposes of said Executive orders of July 11, and July 14, 1933, and of these regulations, the word 'petroleum' when used in these regulations, singly, and separate and apart from 'the products thereof' shall be understood to mean petroleum in its crude form; and the 'products or product of petroleum' or 'petroleum product or products' shall be understood to mean such [fol. 67] products of petroleum as are ordinarily shipped or transported by pipe line, tank car, tanker, tank trucks and gasoline, naphtha, fuel oil, kerosene, distillates, road oil, gas oil, blended gasoline, refined oil, and lubricating oil."

5. The following additional regulation is hereby prescribed to be known as Regulation XII:

"Such pipe lines and gathering systems as serve areas in which producers and/or shippers are required to furnish an affidavit or affidavits with the tender for shipment of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer not later than the fifteenth day of each and every calendar month beginning with Aug. 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month;

(1) The residence and post-office address of the pipe line or gathering system.

(2) The place and date of all receipts of petroleum, the names and business addresses of the producers and consignors (principals and agents) from whom petroleum was received, and the amount received of such petroleum from each producing property properly identified.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of consignees to whom delivered, and the amount of petroleum held in storage or otherwise at [fol. 68] the beginning and end of said calendar month."

6. The following additional regulation is hereby prescribed to be known as Regulation XIII:

"When an affidavit and/or other sworn statement under oath is required by these regulations to be tendered or filed by any person, such affidavit and/or statement must be tendered or filed by the real party in interest owning, producing, purchasing, shipping, refining or otherwise dealing with the petroleum or the products thereof involved -n the transaction or transactions which are the subject of such affidavit or statement.

Provided however, That such affidavit or statement may be tendered or filed by a duly authorized agent of such real party in interest, when proof of such authorization has been filed with the Division of Investigations of the Department of the Interior on or before the date of the making or filing of said affidavit or statement."

Approved and Promulgated this 25th day of July, 1933.
Harold L. Ickes, Secretary of the Interior.

United States Department of the Interior

Office of the Secretary, Washington

Having determined that the enforcement of the Executive orders of July 11 and July 14, 1933, prohibiting the transportation in interstate and foreign commerce of petro- [fol. 69] leum and the products thereof illegally produced or withdrawn from storage, does not require the complete application of the regulations prescribed July 15, as amended July 25, 1933, pursuant to such orders, except in certain regions, the operation of such regulations is hereby limited and extended as follows:

1. Regulation VI is hereby suspended except in so far as it affects shipments of petroleum or its products from the East Texas and Oklahoma City areas, as hereinafter defined, when such petroleum has been produced in whole or in part in such areas or such products have been derived in whole or in part from petroleum produced therein.

2. The affidavits required by Regulation VI shall be furnished in duplicate.

3. The first general proviso to Regulation VI is hereby amended to read as follows:

Provided, however, That under this regulation, carriers outside of the State where such petroleum was produced may receive from other carriers for such transportation and may transport any petroleum without requiring such affidavits and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same; provided, further, That with respect to the products of petroleum any carrier or carriers may receive from other carriers for such transportation such products if the affidavit required for Class "B" shipments is furnished to the originating carrier and due endorsement of its receipt is stamped upon the shipping papers.

4. The last general proviso to Regulation VI is hereby amended to read as follows:

[fol. 70] Provided further, That the term "area where produced" as used in this regulation, for the East Texas and Oklahoma City fields, respectively, shall include:

1. For the East Texas field, the counties of Upshur, Smith, Gregg, Cherokee, Rusk and Harrison in the state of Texas, and that portion of the State of Louisiana adjoining Harrison County which is included within the area described as follows (including boundary points named): Beginning at a point on the Louisiana-Texas State Line opposite the northeast corner of Harrison County, Texas, east to Mooringsport on the Kansas City Southern Ry.; thence southeast to Cash Point on the Texas and Pacific Ry. Co.; thence east to Vanceville on the St. Louis Southwestern Ry. Co.; thence southeast to Adner on the Louisiana and Arkansas Ry. Co.; thence south to Bodeau on the Illinois Central R. R.; thence southwest to Courtis on

the Louisiana Arkansas and Texas Ry. Co.; thence Southwest to Lucas on The Texas and Pacific Ry. Co.; thence west to Forbing on the Kansas City Southern Ry.; thence southwest to Keithville on the Southern Pacific Lines on The Texas and Pacific Ry. Co.; thence northwest to the southeastern corner of Harrison County at the Louisiana-Texas State Line; and thence to the point of beginning.

2. For the Oklahoma City field, the area within a 15-mile radius of Oklahoma City, Oklahoma.

5. Regulation IV is hereby suspended except in States, fields or areas in which reports are required each month from producers of petroleum under a regulation or regulations issued by any Board, Commission, Officer, or other [fol. 71] duly authorized agency of the State acting under a State proration law.

6. Regulation V is hereby suspended except in so far as it affects purchasers, shippers and refiners of petroleum, deriving such petroleum in whole or in part from the East Texas and Oklahoma City areas.

7. Regulation XII is hereby suspended except in so far as it affects pipe lines or gathering systems serving the East Texas and Oklahoma City areas.

This order shall not affect any shipment in interstate or foreign commerce of petroleum or the products thereof, produced or withdrawn from storage in violation of State law or valid regulations issued thereunder, and the penalties prescribed by these regulations and the orders of July 11 and July 14, 1933, of the President of the United States issued pursuant to the authority vested in him by section 9(c) of the act of June 16, 1933, known as the "National Industrial Recovery Act", shall remain in full force and effect.

Approved and promulgated this 2nd day of August, 1933.

Harold L. Ickes, Secretary of the Interior.

United States Department of the Interior

Office of the Secretary, Washington

Regulation V of the regulations of July 15, 1933, as amended July 25, 1933, prescribed to aid in the enforce-

ment of the orders of July 11, 1933, and July 14, 1933, of [fol. 72] the President of the United States, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in violation of State law or valid regulation issued thereunder, is hereby amended by the addition of the following sub-paragraph to follow sub-paragraph (4) in the regulation as amended:

"(5) Such other detailed information, necessary to identify properly the source of the petroleum or its products received, as may be required from time to time by the Division of Investigations of the Department of the Interior for the proper enforcement of these rules and regulations."

Approved and promulgated this 21st day of August, 1933.

(Sgd.) Harold L. Ickes, Secretary of the Interior.

EXHIBIT 4 TO ANSWER

Executive Order

Code of Fair Competition for the Petroleum Industry

An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Petroleum Industry, and hearings having been held thereon and the Administrator having rendered his report together with his recommendations and findings with respect [fol. 73] thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of the said Act have been met:

Now, therefore, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations and findings of the Admin-

istrator and do order that the said Code of Fair Competition be and it is hereby approved.

Franklin D. Roosevelt.

Approval Recommended.

Hugh S. Johnson, Administrator.

The White House, August 19, 1933.

EXHIBIT 5 TO ANSWER

Executive Order

Administration of the Petroleum Industry

Pursuant to the authority vested in me by Section 2 (b) of Title I of the Act of June 16, 1933, known as the "National Industrial Recovery Act." (Public No. 67, 73rd Congress), and in accordance with Section 2 of Article I and Section I (b) of Article VII of the Code of Fair Competition adopted by the petroleum industry and approved by me August 19, 1933, I hereby designate and appoint, for the Petroleum industry, The Secretary of the Interior to be Administrator and the Department of the Interior [fol. 74] to be the Federal Agency, as provided by the aforesaid Act and Code of Fair Competition, to exercise on my behalf and in my stead all the functions and powers vested in me, or in any Federal Agency, by such Act and such Code of Fair Competition.

(S.) Franklin D. Roosevelt.

The White House, Aug. 28, 1933.

IN UNITED STATES DISTRICT COURT

AMENDMENT AND SUPPLEMENT TO ORIGINAL BILL—Filed Dec. 5, 1933

Amending and supplementing their original bill herein, the complainants allege as follows:

I

Since the filing of the original bill, the Railroad Commission of Texas has made, issued, promulgated and put into effect additional orders whereby they have reduced the allowable production for the East Texas oil field to

such an extent that it is only permitted to produce each day 5.4 per cent of what its capacity is in an hour. Complainants allege as a matter of fact that while said orders purport to be based on the potential producing capacity of the wells, as a matter of fact no accurate test of the potentials of the wells has actually been made, the potential used by the Commission being an estimate which was arbitrarily fixed at a figure far below the actual potential producing capacity of the wells for the purpose of enabling the Commission to more effectively execute its program of curtailment.

[fol. 75] II

Paragraph numbered III of the original bill is amended to read as follows:

In doing the acts and things and carrying into effect the orders herein complained of, the defendants, and each of them, claim to be acting under authority of and pursuant to powers conferred upon them by the Conservation Act of the State of Texas, and also under and by virtue of authority conferred by the National Recovery Act, but as a mat*e*r of fact they and each of them are acting without any authority whatever, and without any intent or purpose of executing the aforesaid laws, or either of them, and they are mere trespassers attempting to enforce compliance with a scheme of proration hereinafter fully defined.

III

Paragraph IV of the original bill is amended by further alleging that at the time said agreement was entered into the Railroad Commission of Texas was composed of the Honorable C. V. Terrell, the Honorable Pat M. Neff and the Honorable Lon A. Smith. Since that time, the Honorable Pat M. Neff has been succeeded by the Honorable E. O. Thompson, but the said Thompson, has adopted the aforesaid agreement and joined with the said Terrell and Smith, and is aiding and assisting them in attempting to carry said agreement into effect.

IV

Complainants further allege that the aforesaid agreement embodies a program adopted by the Oil States Advisory Committee of the American Petroleum Institute,

and that if these complainants are mistaken in their allegation that the Railroad Commission of Texas, and the individual members thereof, expressly entered into an agree-
[fol. 76] ment to carry said program into effect, nevertheless they adopted said program, and in doing the acts and things herein complained of it has been their intent, and is now their intention, to carry said program into execution, without regard to the Conservation Laws of the State of Texas.

V

Further complaining, these complainants say that another purpose of said scheme of proration, as shown by its actual operation and effect, is to eliminate all competition in the mining, transportation, sale and distribution of petroleum and the products thereof, and by reason of the fact that the oil industry is now controlled by a few integrated companies, or associated groups of companies, the result of carrying said scheme into effect is to create an absolute monoply of the oil business in the hands of a group of integrated companies, which enables said monopoly to control the market demand and, as a consequence thereof, the amount of production, the price to be paid therefor, and also the distribution of the products of petroleum, as well as the price at which said products are sold to the consuming public, all of which is contrary to public policy, in violation of the Anti-Trust laws of the State of Texas and the United States.

The purpose and also the operation of said scheme has resulted in the destroying and eleminating of all foreign markets for crude oil produced in the United States, and particularly in the East Texas oil field, thereby depriving these complainants of a large market outlet which would otherwise be available. Said plan has also resulted and is now resulting in forcing independent refineries out of business, because it prevents those engaged in purchasing and
[fol. 77] refining oil from exercising their liberty of contract to purchase oil in such quantities and at such prices as to enable them to operate at a profit, further destroying and depriving these complainants of markets and outlets for their oil which would otherwise be available.

A further purpose of said scheme of proration, as shown by its actual operation and effect, is to curtail the production of these complainants and all others similarly situated

to such an extent that it is impracticable for them to utilize the numerous railroads serving the East Texas oil field as mediums of transportation for transporting their oil to market, thus compelling these complainants, and all other individual and independent producers, to depend upon the aforesaid monopoly for their sole market outlet, and depriving them of a large market outlet which would otherwise be available to them.

These complainants allege as a matter of fact that the entire scheme of proration herein complained of is a plan adopted by the aforesaid monopoly to enable it to acquire complete control and domination of the oil industry in the United States, and to eliminate all competition in said industry, and that the defendants herein named are being used as mere tools of said monopoly to carry said scheme or plan into effect, and that the claim of the defendants that they are attempting to enforce the Conservation Laws of the State of Texas is a mere pretense and subterfuge, because said scheme has no relation whatever to the conservation of the natural resources or preventing waste of any kind or character. In addition to not being authorized by the Conservation Laws of the State of Texas, said scheme is directly opposed to the provisions of that Act, which require the Railroad Commission of Texas, in promulgating and enforcing any orders, to take into considera-
[fol. 78] tion the detriment or benefits that will accrue to the consuming public, for the reason that the maintaining of said monopoly is depriving the public of the benefits which they would receive as the result of free, open and fair competition, and the public is being filched and robbed of enormous sums of money because it is required to pay prices far in excess of the value of the products of petroleum.

VI

Complainants further allege that as another part of said plan of proration, the defendants Railroad Commission of Texas have prohibited all purchasers of crude oil and all pipeline companies from purchasing or transporting any oil produced by complainants in excess of the amount allowed by its order, and, unless enjoined from so doing, even though it should be held by this honorable court that the orders of the said Commission restricting the production of these complainants was void, and the defendants

were enjoined from enforcing the said orders against these complainants, the complainants would obtain no relief because of the fact that the defendants would prohibit purchasers and pipeline companies from taking any additional oil from the complainants.

Wherefore, these complainants pray as set forth in their original bill, and, further, that the defendants, and each of them, their assistants, agents, servants and employees, be enjoined from interfering with any purchasers or pipeline companies, or other transportation companies, in purchasing, taking and transporting oil produced by these complainants.

Saye, Smead & Saye, W. T. Saye, Solicitors for the Complainants.

[fol. 79] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER TO AMENDMENT AND SUPPLEMENT TO ORIGINAL BILL —Filed Dec. 12, 1933

Come now the defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer, separately and severally, and for answer separately and severally to the Amendment and Supplement to the Original Bill herein filed in this cause, say:

(1) These defendants admit that since the filing of the Original Bill the Railroad Commission of Texas has made, issued, promulgated and put into effect an additional order regulating and controlling the production of the East Texas oil field, and in this connection these defendants allege that such order is a valid and lawful order under the laws of the State of Texas; that these defendants deny that said order is an arbitrary order fixed pursuant to any agreement or program for curtailment, as alleged in the Original Bill of Complaint herein filed, or in the supplement thereto, which is contrary to the laws of the State of Texas.

[fol. 80] (2) Answering paragraph II of the said Amendment and Supplement to the Original Bill, these defendants admit that they are acting under authority of and pursuant

to powers conferred upon them by the National Industrial Recovery Act, the regulations of the Secretary of the Interior thereunder, pursuant to the Presidential authority and the Code of Fair Competition for the petroleum industry, but deny that they are acting or purporting to act under and by virtue of any authority conferred upon these defendants by any laws of the State of Texas, and these defendants specifically deny that they are without any authority under the aforesaid law, regulations and Code, and deny that they are trespassers in seeking to enforce compliance with said National Industrial Recovery Act, said regulations and the Code of Fair Competition promulgated for the petroleum industry.

(3) Answering paragraph III of said Amendment and Supplement to the Original Bill, these defendants demand strict proof of each and all of the allegations therein contained, insofar as same are material, and say that they have no knowledge of any such agreement as is therein mentioned.

(4) Answering paragraph IV of said Amendment and Supplement to the Original Bill, these defendants deny that any such agreement was made and demand strict proof of said allegations.

(5) Answering paragraph V of said Amendment and Supplement to the Original Bill, these defendants deny that the purpose of the said Railroad Commission in the promulgation of the aforesaid order is to eliminate all competition in the mining, transportation, sale and distribution of petroleum and the products thereof, and deny that such proration order tends to create an absolute monopoly of the oil business in the hands of a group of integrated com- [fol. 81] panies, and deny that the effect of such proration order is to enable any monopoly of the oil business to control market demand, the amount of production, the price to be paid therefor and the distribution of the products of petroleum, as well as the price at which said products are sold to the consuming public, and these defendants further deny that the said order of the Railroad Commission of Texas is contrary to public policy or in violation of the anti-trust laws of the State of Texas and the United States, and further deny that the purpose and effect of said order has been to destroy and eliminate all foreign markets for

crude oil produced in the United States and particularly in the East Texas oil field, and they deny that such order has unlawfully deprived complainants of any large market outlet which would otherwise be available but for said order, and further deny that said plan has resulted in forcing independent refineries out of business, but on the contrary, allege that except for said regulations there would be such unregulated and uncontrolled production of oil as that a condition would be created whereby all competition in the oil business would be eliminated, except among the strongest and best financed companies in the industry, as small producers and refiners would be unable to compete in a market where the production of oil exceeded all consumers demands.

Further answering the allegations contained in said paragraph V, these defendants further deny that the purpose and effect of said proration order is to curtail the production of complainants and others similar- situated to such an extent as that it is impracticable for them to utilize the numerous railroads serving the East Texas oil field as mediums of transportation for transporting their oil to market, and said defendants further deny that complain- [fol. 82] ants have been deprived of any large market outlet which would otherwise be available to them; and these defendants further deny that said order is any part of a scheme of proration, the purpose and effect of which is to bring under the control and domination of a monopoly the oil industry of the United States, and these defendants deny that it is the purpose and effect of said order to eliminate all competition in said industry, and deny that these defendants have been used as a mere tool of said monopoly to carry said scheme or plan into effect, and they deny that the effort of these defendants to enforce the Federal law, rules and regulations and the Petroleum Code is a mere pretense and subterfuge, and deny that said regulations have no relation to the conservation of natural resources; and they further deny that they are acting in any scheme to circumvent the purposes of the Texas Conservation Act, and deny that their actions are a detriment to the consuming public, as alleged in said paragraph.

(6) Answering paragraph VI of said Amendment and Supplement to the Original Bill, these defendants admit that they are endeavoring to enforce the provisions of

Section 9 (c) of the National Industrial Recovery Act and valid orders and regulations issued thereunder and the Code of Fair Competition for the petroleum industry, but deny any knowledge of the vague and indefinite allegations contained in said paragraph VI.

Further answering the said Amendment and Supplement to the Original Bill as a whole and each paragraph thereof separately and severally, these defendants make their answer to the Original Bill a part hereof.

And now, having fully answered the aforesaid Bill and Amendment and Supplement thereto, these defendants, separately and severally move that said Bill as amended and supplemented, and each paragraph thereof, be dis- [fol. 83] missed and that these defendants be allowed to go hence with their reasonable costs in this behalf expended.

(Signed) Archie D. Ryan, S. D. Bennett, Phil E. Baer, by (Signed) Chas. I. Francis, Special Assistant to the Attorney General.

Attorneys: Charles Fahy, First Assistant to the Solicitor of the Department of the Interior. Douglas Arant, Special Assistant to the Attorney General. Chas. I. Francis, Special Assistant to the Attorney General, Assistant to the Solicitor of the Department of the Interior.

Duly sworn to by Archie D. Ryan. Jurat omitted in printing.

[fol. 84] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AMENDMENT AND SUPPLEMENTAL BILL—Filed Jan. 25, 1934

Come the complainants and by leave of the court file this their supplemental bill and amendment to their original bill, and for cause state:

That since the filing of their last supplemental bill, and since this case was tried and submitted to the court, the Railroad Commission of Texas, under date of December 28, 1933, issued, promulgated and put into effect another cur-

tailment order, whereby the allowable production for the State of Texas was reduced to not to exceed 884,000 barrels, and the allowable for East Texas was reduced to approximately 402,000 barrels, and the allowable for complainants' wells fixed at five per cent of their hourly potential producing capacity; that this order, like all previous orders complained of by the complainants, was issued pursuant to and in furtherance of the illegal plan set forth in com-[fol. 85] plainants' bill, the purpose of said additional curtailment being to further restrict the production in East Texas in order that it will not exceed the figure fixed for East Texas by the Oil States Advisory Committee, and in order that the plan and scheme set forth in the original petition may be continued.

These complainants allege that this order is arbitrary and void for all of the reasons set forth in their original bill, and by way of amendment to their original bill they further allege as follows:

I

That each of the complainants deraign title to their respective properties set forth in the bill of complaint by mesne conveyances from the State of Texas; that under and by virtue of title granted to their predecessors in title, and which is now vested in complainants, the State of Texas has conveyed and these complainants have acquired title to all of the oil, gas and other minerals in, under and upon the lands covered by said conveyances, and under the terms and conditions of their muniments of title and the laws of the State of Texas they are the absolute owners of all the oil, gas and other minerals in and under said lands, and have the right to all of the oil and gas that can be produced and taken from said lands, and that the enforcement of the Conservation Laws of the State of Texas as they are now being enforced by the Railroad Commission impairs the obligation of contract, and deprives the complainants of their property without due process of law, contrary to the Constitution of the State of Texas and the Constitution of the United States.

II

Section g of Subdivision 1 of paragraph XVI of the original bill is amended to read as follows:

[fol. 86] "It is contrary to the eighth amendment to the National Constitution in that it imposes excessive fines and cruel and unusual punishments."

III

Complainants further allege that the attempted enforcement of the penalty provisions of the Conservation Act, and particularly Article 6036 of Vernon's Annotated Texas Statutes, and House Bill 844, Laws of 1933, 43rd Legislature (page 422, Chapter 165, Article 1112 B, Section 9, page 120, of Vernon's Annotated Revised Civil and Criminal Statutes of Texas, October 1933 Cumulative Pamphlet), and the acts of the defendants in compelling the complainants to make reports and give information and facts to be used as evidence to prosecute them, is in violation of Section 9, Article 1, Bill of Rights, Texas Constitution, and Section 10, Article 1, of the Bill of Rights of the Texas Constitution.

Wherefore, complainants pray as set forth in their original bill, and specifically for an injunction permanently enjoining the defendants from enforcing or attempting to enforce its order of December 28, 1933, and for general relief.

Saye, Smead & Saye, W. T. Saye, Attorneys for Complainants.

[File endorsement omitted.]

[fol. 87] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO ISSUES, ETC.—Filed March 7, 1934

It is hereby stipulated and agreed by and between the attorneys for all of the parties in the above entitled action as follows:

(1) That the issues tried and determined in said above styled and numbered causes were those fixed by the pleadings of the complainant Amazon Petroleum Corporation, and the replies thereto by the defendants Archie D. Ryan, S. D. Bennett and Phil E. Baer.

(2) That all of the evidence introduced by any one of the complainants should be considered as though introduced by each of them within the issues framed as described in Paragraph (1) above and that all evidence introduced by the defendants with reference to any one of the complainants should be considered with like force and effect as though introduced with reference to all of them.

(3) That said above styled and numbered causes were submitted before a Statutory Three-Judge Court under pleadings wherein said above named defendants were joined with certain State officials and at the time said cause was heard on application for temporary injunction it was stipulated that if it should be determined that said Statutory Three-Judge Court had no jurisdiction of the said named Federal defendants, the issues as between complainants and said named Federal defendants should be determined by United States District Judge Bryant upon the evidence introduced before said Statutory Three-Judge Court.

(4) That the evidence offered in affidavit form on the hearing for a temporary injunction should be considered by the Court having jurisdiction of said cause as the tes- [fol. 88] timony of the respective witnesses offered in evidence by the parties for the final determination of said cause on its merits.

In witness whereof, the attorneys of record have hereunto signed their names this 15 day of March, A. D. 1934.

(Signed) Saye, Smead & Saye, F. W. Fisher, Attorneys for Complainants. Edward Lee, Atty. Intervenor M. E. Trap. Chas. I. Francis, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 89] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

In Equity No. 652

and

Consolidated Equity Cases Nos. 667, 505, 595, 621, 657 and 665

AMAZON PETROLEUM CORPORATION, BARNEY COCKBURN, E. J. BOASE, CHARLES M. COPE and W. C. TURNBOW PETROLEUM CORPORATION, Complainants,

vs.

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER, Defendants

Statement of Evidence Under Equity Rule No. 75—Filed April 2, 1934

Be it remembered that the cause above styled and numbered, together with the above numbered causes consolidated therewith, came on regularly for trial before the above Court sitting in equity on the 14th day of December, 1933, upon the issues formed by the Bill of Complaint and the Answer thereto, and thereupon came the complainants in equity cause No. 652, Amazon Petroleum Corporation, a corporation, Barney Cockburn, E. J. Boase, Charles M. Cope and W. C. Turnbow Petroleum Corporation, a corporation, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 667, Trans-State Corporation, A. H. Tarver, Pelican Natural Gas Company, Dimham Oil Corporation, Oriental Oil Company, K. E. Merren, Canico Oil Company, Adco Oil Company, Laco Production Company, Lexena Oil Corporation, and E. J. Moran, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 505, Ortiz [fol. 90] Oil Company, Inc., and Deere Creek Oil Company, with their attorney, F. W. Fischer; and came also complainants in equity No. 657, A. F. Anding, Southport Petroleum Company, a corporation, Ironrock Oil Corporation, a corporation, Independent Producers, a corporation, and W. Holloway, with their attorney, F. W. Fischer; and

came also complainants in equity cause No. 595, Imperator Oil Corporation, Overton Refining Company, Kilgore Refining Company, K. W. P. Witt, O. L. Hastings, A. N. Landers, W. M. McVey, T. W. Owen, J. Curtis Sanford, Roy Howell, Yandell Rogers, E. J. Bartels, W. H. Wilson, T. J. Whitesides, George T. Thaggard, Arrow Refining & Producing Company, Double L Oil Company, P. D. Bolen, Carl Dunham, J. M. Lapin, G. A. Franklin, and R. S. Harper, with their attorney, F. W. Fischer; and came also complainants in equity cause No. 621, M. E. Trapp and McMurrey Corporation, with their attorneys, F. W. Fischer and W. Edward Lee; and came also complainants in equity cause No. 665, Coffman Production Company, a corporation, and Cemo Production Company, a corporation, with their attorney, F. W. Fischer; and came also the defendants, Archie D. Ryan, Special Agent of the Division of Investigations, Department of the Interior, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil E. Baer, United States Marshal for the Eastern District of Texas, with their attorneys, and announced ready for trial.

All of the evidence was introduced under a stipulation that all of the evidence introduced by any one of the complainants should be considered as though introduced by each of them within the issues framed by the pleadings in Amazon Petroleum Corporation, et al., vs. Archie D. Ryan, et al., No. 652, and that all of the evidence introduced by the defendants with reference to any one of the complain- [fol. 91] ants should be considered with like force and effect as though introduced with reference to all of them.

Complainants' Case

Offers in Evidence

Complainants introduced in evidence various orders of the Railroad Commission of Texas, which provided a proration schedule for the production of oil from wells in Texas. The most recent of these orders was dated November 28, 1933, and limited the total production of oil in the State of Texas to 888,000 barrels per day and the wells in the East Texas Field to 5.4 per cent of their hourly poten-

tial producing capacity as determined by the Commission.

Complainants introduced various certificates of the Secretary of Interior certifying to the Railroad Commission of Texas the allowable production for the United States under the Code of Fair Competition for the Petroleum Industry, and also certifying to the Commission the proportion of the production allocated to the State of Texas. These allocations were certified by the Secretary of the Interior to the Commission beginning August 19, 1933, and continued down to the date of trial, the last allocation for the State of Texas being 880,000 barrels, and certified to the Commission on November 23, 1933. The complainants offered in evidence in the nature of letters and telegrams from the Secretary of the Interior to the Commission requesting and urging the Commission to put these allocations into effect and requesting the cooperation of the Commission in fixing as the total Texas allowable production the figure certified as a recommendation by the Secretary of the Interior as Administrator of the Code of Fair Competition for the Petroleum Industry.

Complainants offered in evidence exchange of correspondence and telegrams between the Commission and the [fol. 92] Secretary of the Interior and the orders of the Commission showing that beginning with August 19, 1933, and continuing up to the date of the trial, the Railroad Commission adopted as the total Texas allowable production a figure which was the same as the allocation certified by the Secretary of the Interior and the Commission made its orders in conformity therewith.

Complainants introduced in evidence statements by W. C. TURNBOW, president of the W. C. Turnbow Petroleum Corporation; K. E. MERREN, S. D. HUNTER for the Pelican Natural Gas Company; GEORGE G. MOORE, District Manager of the Dimham Oil Corporation; CLAUDE KAVANAUGH, D. S. READ, president of the Amazon Petroleum Corporation, and W. R. SMITH, Chairman of the Board of Directors of the Oriental Oil Company, who stated that they, or the companies for which they spoke, are producers of oil in the East Texas oil field; that their wells are capable of producing many times their present allowable without any injury

to the properties or the surrounding properties and without any waste of any kind whatsoever; that more oil could ultimately be obtained from their properties by operating on the best oil-gas ratio than under the present allowables; and that they have a present market demand for greater quantities of oil than they are at present permitted to produce. Mr. Smith also stated that the Oriental Oil Company, in addition to its producing properties, owns a refinery and nineteen filling stations; that the refinery is unable to obtain sufficient crude oil to operate it more than one fourth capacity due to the proration order; and that it will be forced to close down and discharge from employment one hundred and twenty-five employees unless it obtains relief within a reasonable time.

[fol. 93] Complainants introduced in evidence a statement by J. H. BUCKLIN and E. S. WELDON, who stated that they are employed by the Amazon Petroleum Corporation, one of the complainants, and the Niagara Oil Company; that on or about November 11th Mr. Behrens and Mr. Parrish, representing themselves to be agents of the United States Department of the Interior, Division of Investigations, appeared in the office of the above mentioned corporation and stated that they wanted and had been directed to secure from the file of said corporation, the records of all oil shipped by railroad from June 1, 1933 to July 15, 1933, with a statement of whether or not it was produced in accordance with the rules and regulations of the railroad commission; that said Mr. Behrens and Mr. Parrish made memoranda from the records of the destination and cost price of the oil handled during this period of time; that on a later visit said Messrs. Behrens and Parrish asked further information and wished to see vouchers or canceled checks for the payment of the oil shipped during this period; and that it was noticed that said Messrs. Behrens and Parrish had made note of the price which the above companies had paid for one of the shipments of oil, although said persons had been requested not to make any record of that price, since it represented a trade secret and although said persons had agreed not to use that information and to treat it strictly in confidence.

Complainants introduced in evidence a statement by MARK HARE, who stated that he is an employee of the Amazon Petroleum Corporation; that on various occasions, since December 1, 1933, one Mr. McGrath, who represented himself to be in the employ of A. D. Ryan and the Department of the Interior, has frequently entered upon the lease of the Amazon Petroleum Corporation; that many of these [fol. 94] visits have been in the day time and many at night; that on each visit he has appeared without permission and has gauged the tanks and inspected the lines and connections; and that said Mr. McGrath has also interrogated the lease man as to the potential tests, as to whether the wells are making b. s. and water, whether the same has been run through a centrifugal machine, and whether the tank of water on the lease was produced from the wells on said lease, all of the foregoing acts being without permission.

Complainants introduced in evidence a statement by L. B. MANLEY, J. H. BUCKLIN and E. S. WELDON, who stated that on October 10, 1933, L. B. Manley conversed with A. D. Ryan on the telephone, while J. H. Bucklin and E. S. Weldon listened at extension telephones to the conversation; that Mr. Manley asked Mr. Ryan if the Department of the Interior was assuming the police power in the East Texas Oil Field; that Mr. Ryan replied that he was cooperating with the Railroad Commission of Texas in such action; that Mr. Manley then asked if the Department of the Interior was assisting the Railroad Commission in gauging tanks and intimidating the men on the leases. Mr. Ryan denied the intimidation, but stated that he had the right to gauge the tanks without permission of the owner or owners and that he was do-ng that and would continue to do so; that Mr. Ryan also stated that he had two charges of overproduction on the lease operated by Mr. Manley and that he intended to turn the information over to the Railroad Commission, even though Mr. Manley plainly stated to Mr. Ryan that the well in question had been in the hands of a State receiver for some months and that he had nothing to do with the lease during that time; that Mr. Ryan further stated that though the total production for the period was under the Railroad Commission allowable, he had records of overproduction on certain days; that Mr. Manley ex-

[fol. 95] plained that this was caused by having to swab the well as a result of the poor operation of the property at the hands of the State receiver; and that at Mr. Manley's request, Mr. Ryan agreed to have his men desist from using abusive language to the men on the leases.

Complainants introduced in evidence a certified copy of the Code of Fair Competition for the Petroleum Industry and modifications thereto, and a certified copy of certain regulations promulgated by Harold L. Ickes on July 15, 1933, and amendments thereto, promulgated July 25, 1933 and August 2, 1933, which regulations are the same as those affixed to the Defendants' Answer as Exhibit 3.

Complainants introduced in evidence a letter from Archie D. Ryan to Sabinas Oil Corporation as follows:

"United States Department of the Interior.

Division of Investigations, Post Office Box 146, Tyler, Texas

October 30, 1933.

Sabinas Oil Corporation, P. O. Box 226, Longview, Texas.

GENTLEMEN: This office is in receipt of your E-B report for the month of September, 1933, filed with this office under Regulation IV of the Regulations issued by the Secretary of the Interior under dates of July 15, and 25, 1933.

This report shows an overproduction in excess of the proration laws of the State of Texas in the amount of 33.01 [fol. 96] barrels. Immediately advise this office in affidavit form your reasons for permitting this overproduction to occur.

Yours very truly, Archie D. Ryan, Special Agent in Charge."

Complainants introduced in evidence a letter from Archie D. Ryan to Mr. O. G. Murphy, Trustee, as follows:

"United States Department of the Interior

Division of Investigations, Post Office Box 146, Tyler, Texas

October 30, 1933.

Mr. O. G. Murphy, Trustee, Route No. 6, Longview, Texas.

DEAR SIR: This office is in receipt of your E-B report for the month of September, 1933, filed with this office under

Regulation IV of The Regulations issued by the Secretary of the Interior under dates of July 15, and 25, 1933.

This report shows an overproduction in excess of the proration laws of the State of Texas in the amount of 176 barrels. Immediately advise this office in affidavit form your reasons for permitting this overproduction to occur.

Yours very truly, Archie D. Ryan, Special Agent in Charge."

[fol. 97] Complainants introduced in evidence a letter from Archie D. Ryan to D. B. Read Pipe Line Company, as follows:

"United States Department of the Interior

Division of Investigations, Tyler, Texas

August 15, 1933.

D. B. Read Pipe Line Company, c/o D. B. Read, First National Bank Bldg., Henderson, Texas.

GENTLEMEN: Advise me fully as to the pipe lines owned and controlled by you or the extent of interest claimed by you in any pipe lines or gathering systems serving any connections in the East Texas Oil Field showing the names of the lines and the amount of stock owned by you in any corporation or company, giving the names and date that such corporation took over the properties from the other owners or corporation.

Yours very truly, Archie D. Ryan, Special Agent in Charge."

On request of the complainants, counsel for the defendants made the following admission for the record:

"Yes, I admitted at the outset and now admit that each and all of the parties defendant here and Mr. Ryan in particular, are carrying out as against these plaintiffs and will [fol. 98] carry out each and all of the duties imposed upon them under and by virtue of the regulations of the Department of the Interior that have been introduced in evidence. I admit that if we find violations from among any of these parties here, and that we have found some among them, of Article 3 of the Code, that we intend to prosecute them for violation of those sections of the Code which provide that if

one produces above the allowable production that is fixed or allocated to him by the State Railroad Commission and the evidence justifies it and the United States District Attorney thinks that the evidence does justify a case, he is going to prosecute him. We have evidence that most of these people here are violating them and we intend to start some prosecutions. * * * Now, in addition to that, we are also requiring a system of reports from producers and refiners, as is set out in order that we may get therefrom information with which to enforce the provisions of Section 9C, which is the transportation act."

Complainants introduced in evidence a statement by R. J. McMURREY, President of The McMurrey Corporation, one of the complainants, who stated that The McMurrey Corporation is the owner and operator of twenty-three producing oil wells in Rusk and Smith Counties; that said corporation sells and delivers the oil produced in tanks located upon the leases and has no control whatsoever over said oil after the same is gauged in the tanks and run into the pipe lines of the purchasers connected to its tanks. He further stated that A. D. Ryan has demanded reports from The McMurrey Corporation, as called for in Regulations IV; that said corporation has failed and refused to make such reports and to keep its books open for inspection by the [fol. 99] Agents of the Department of the Interior; that the Department of Justice has instituted criminal proceedings against him, which are now pending, and that Chas. I. Francis, has threatened and intends to prosecute him under the complaints already filed and has threatened and intends to file additional complaints against him if the said corporation continues to fail or refuse to comply with said Regulations. He further stated that Chas. I. Francis has threatened and intends to prosecute said corporation and him as its President for the violation of penal provisions of the Petroleum Code if the said corporation produces from any well on any day more oil than it is permitted to produce from such well under the orders of the Railroad Commission. He further stated that the defendant A. D. Ryan and his agents have heretofore gone upon the oil leases of the McMurrey Corporation without the consent of said corporation, or any of its officers, or agents and over their objec-

tion and protest, and have inspected its property and gauged its tanks for the purpose of ascertaining whether or not said corporation is producing more oil than that allocated to it by the Railroad Commission; that defendant Ryan has threatened to continue such acts; and that if evidence is found by said visitations and inspections that the plaintiff is producing more oil than is allocated to it by the Railroad Commission, Chas. I. Francis has threatened that he will use such evidence upon which to predicate a criminal complaint for the violation of the provisions of the National Industrial Recovery Act and the Petroleum Code.

Complainants introduced in evidence statements by A. H. TARVER, E. J. MORAN and BARNEY COCKBURN, who stated that they are producers of oil in the East Texas Oil Field; that their wells are capable of producing many times their present allowable without any injury to the properties or to the surrounding properties, or to the reservoir; that [fol. 100] more oil could ultimately be obtained from their properties by operating on the best gas-oil ratio than under the present allowables; and that they have a present market demand for greater quantities of oil than they are permitted to produce.

Complainants introduced in evidence a statement by J. H. WRIGHT, who stated that he is employed by T. O. Wright on the Amazon Petroleum Corporation's T. O. Wright lease as a royalty gauger; that from time to time persons representing themselves to be agents of the Department of the Interior, Division of Investigations, have been to see him and demanded that he submit to them his reports and records, regardless of the dates which they covered, as to the oil runs made from the wells on the above described leases; that on December 12, 1933, an Agent of the Department of the Interior, Division of Investigations, demanded that he bring said reports and records to the office of A. D. Ryan and that on doing so he was questioned by Agents of the said Department as to the various oil runs made from the aforesaid lease and wells and was particularly questioned as to the price paid for said oil, especially

as to the interest and transactions of the Amazon Petroleum Corporation.

Complainants introduced in evidence a statement by M. E. TRAPP, an intervenor in this action, who stated that he is a producer of oil in the East Texas Oil Field; that all of his production is sold in tanks on the respective leases where it is produced; that no oil is produced under contract for transportation in interstate commerce and that all deliveries are made from storage tanks on the respective leases. He further stated that he has obeyed all of the orders and regulations of and made all reports required by the Railroad Commission.

Complainants introduced in evidence statements that the [fol. 101] following producers flow the oil produced from their wells into stock tanks upon their leases and from those tanks into the lines of the Pipe Line Companies or purchasers who purchased the oil and that title to the oil passes from the producers to the purchasers as and when the oil is delivered to the pipe line companies and that the producing company has nothing to do with the transportation or disposition of the oil after it has been delivered to the purchasers.

Statement by	Producer
Fred J. Adams	Adco Oil Company
W. C. Turnbow	W. C. Turnbow Pet. Corp.
Chas. M. Cope	Chas. M. Cope
A. H. Tarver	A. H. Tarver
Barney Cockburn	Barney Cockburn and E. J. Boase
W. R. Smith	Oriental Oil Co.
Claude Kavanaugh	Trans-State Corp.
S. D. Hunter	Pelican Natural Gas Co.
George C. Moore	Dimham Oil Corporation
K. E. Merren	K. E. Merren
D. B. Read	Amazon Pet. Corp.
J. O. Ehlinger	Canico Oil Company
George W. Lyles	Laco Production Co.
Sam Cook	Lexena Oil Corp.

Defendants' Case

The defendants introduced in evidence a statement by Victor Von Szeliski, who stated that he is Assistant Chief and Chief Statistician of the Division of Economic Research & Planning of the National Recovery Administration; that he received the Bachelor of Arts degree from the University of Wisconsin in 1921; that he attended the graduate schools of the Catholic University of Washington, D. C. (1921-22) of the University of Wisconsin (1922-23) [fol. 102] and of Columbia University (1923-25) and that he has been employed by the United States Rubber Company, Federal Reserve Bank of New York and Lehman Corporation, being in each case engaged in commercial and economic research. He further stated that the National Industrial Recovery Administration was necessitated by the serious national emergency confronting the country in 1932 and 1933; that in the emergency the railroads handled 250 billion ton-miles of freight in the twelve months preceding March, 1933, compared with 450 billion tons in 1929; that the banking system was closed down because its assets became frozen; that at least 25% (12 million) of those employed in 1929 were out of work in 1933; that wage rates decreased, prices dropped and bankruptcies occurred; that public and private relief programs amounted to over one billion dollars in 1932; and that, though certain industries held up, in others wage rates and prices went lower in a self-regenerating chain of cause and effect, the so-called "descending spiral." He further stated that during the depression wages fell so that in February and April, 1933, many sections of American industry paid less than $12.50 a week ($650.00 per year), for example: food manufacturing industries $12.18; a large branch of the Textile Industries $9.89; another branch of the Textile Industry $12.06; a third branch $11.69; one branch of the clothing industry $9.47; another branch $9.16; one branch of the metal products industry $12.18; another branch $12.22; one industry making household articles $11.96; one branch of the house furnishing industry $12.60; one branch of forest products industry $10.39; another industry closely allied to lumber products $10.28. He further stated that the purposes of the National Industrial Recovery Administration are:

First: "To remove obstructions to the free flow of inter- [fol. 103] state and foreign commerce which tend to dimin-

ish the amount thereof; * * * to promote the fullest possible utilization of the present productive capacity of industries; * * * to increase the consumption of industrial and agricultural products by increasing purchasing power; to reduce and relieve unemployment."

Second: To reform, rehabilitate and reorganize industry, or, in the words of the Act,

"To provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups; to induce and maintain united action of labor and management under adequate governmental sanctions and supervision; to eliminate unfair competitive practices; * * * to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

Third: By implication to restrict production in the few instances where it may be desirable, this implication being drawn from the following words in the Act:

"To avoid undue restrictions of production (except as may be temporarily required)."

He further stated that though it is a commonly accepted theory that overproduction is adequately controlled by a fall in prices which automatically reduce production, this is not true in certain industries, as in the petroleum industry, for the following reasons:

First: A large number of independent competitors strive to secure enough business to keep their plants in operation when prices fall, thus adding to the production rather than reducing it.

Second: Fixed charges on the investment and the fact [fol. 104] that oil must be taken from the ground in order to prevent others from taking it, result in price not being a controlling factor in the production of petroleum.

Third: A drop in the price of oil does not result in an increase in demand to any extent.

Fourth: Other factors besides price, such as national income and the physical requirements of motor vehicle transportation, determine the demand for petroleum products; and that it is therefore necessary for there to be gov-

ernment regulation of petroleum production in order to prevent overproduction.

He further stated that the wage scale in the petroleum industry cannot successfully be raised unless overproduction is curbed so that producers can receive an adequate return on their investment.

The defendants introduced in evidence the statement of SOLOMAN BARKIN, who stated that he received the degree of Bachelor of Social Science from the College of the City of New York in 1928, the degree of Master of Arts from Columbia University in 1929; that he has been an instructor in Economics at the College of the City of New York since 1928; that he was Assistant Director of Research for the New York Commission on Old Age Security in 1929-30 and Assistant Research Director on the Continuation Committee for the New York Commission on Old Age Security; that he was Special Consultant on the President's Committee on Special Trends in 1932 and that he has been Technical Labor Adviser of the National Recovery Administration in 1933; that he is the author of two books on Old Age Security, namely "Old Age Dependency" and "Older Workers in Industry"; and that, through this experience, he has become fully conversant with the problems of labor [fol. 105] and with prevailing conditions prior to and during the administration of the National Recovery Administration. He further stated that the collapse of the industrial structure and unbridled competition resulting in profitless production and excessive losses had brought about an increasing inability on the part of industry to maintain the work force and an increasing demand to lower the return to labor; that as the depression continued, unemployment increased to an estimated number of 3,200,000 in 1930; that in March, 1933, only 55% of those employed in the manufacturing industry in 1926 remained on the pay roll; and that in the following industries employment in 1933 amounted to the following percentages of those employed in 1929:

Industry	Percentage of 1929 employment	Months in 1933 used as measure
Anthracite Coal	40%	June
Bituminous Coal	61.2	May
Quarrying	34.8	February
Crude Petroleum Producing	56.5	March
Telephone & Telegraph	68.1	August
Power & Light	76.9	March
Motor Bus & Elec. Railroad	69.1	May
Wholesale Trade	73.1	March
Retail Trade	71.4	March
Hotels	71.9	April
Canning & Preserving	33.2	March
Laundries	73	March
Dyeing & Cleaning	70.9	February

He further stated that total unemployment reached an estimated number of 13,689,000 upon whom millions of others depended for sustenance and maintenance; that many of those retaining employment were very irregular so that the average number of hours per week dropped [fol. 106] from 49.1 hours in the first quarter of 1929 to as low as 33.2 hours per week; that at the same time workers were employed for unlimited and unregulated numbers of hours per day resulting in sweat shop conditions and reducing the high standards of working conditions of American labor. He further stated that hourly rates of wages between 1929 and 1932 were reduced, according to the United States Bureau of Labor Statistics, some 20% and, according to other estimates, from 20 to 30%, and that in some cases wages have fallen to as low as 5¢ an hour, or 50¢ for a full day's work of ten hours; and that the weekly earnings of workers in the manufacturing industries averaged $27.50 in 1929 and $15.87 in March of 1933. He further stated that one of the chief purposes of the National Recovery Administration is to restore the position of the worker.

The defendants introduced in evidence a statement by J. HOWARD MARSHALL, who stated that he is a member of the Petroleum Administrative Board of the Department of the Interior; Assistant Solicitor of the Department of

the Interior, and a member of the Stabilization Committee of the Petroleum Division of the American Institute of Mining and Metallurgical Engineers; that he is the author of articles dealing with the petroleum industry and has been engaged for the past four years in making a special study of the economic and legal aspects of proration as applied to the oil industry; and that he is the author of special studies on the legal and economic aspects of oil proration. He further stated that interstate commerce in petroleum and its products is carried on between all of [fol. 107] the State of the United States and between the United States and foreign nations; that the petroleum industry is the nation's third largest industry, employing over a million men and having a capital investment of from twelve to fifteen billion dollars; that the entire industrial system of the United States literally runs on oil; that petroleum is a wasting asset, limited in amount and for which there is no known substitute; that crude petroleum is produced in large quantities in eighteen states, but principally in the States of California, Texas and Oklahoma; that petroleum is produced by piercing the cap rock which has trapped confined crude petroleum, usually together with natural gas and water; that in the early stages of production of a well the natural pressure brings the oil to the surface, but that the well changes from a "flush" well to a "pumper" or "stripper" well when the pressure decreases and it becomes necessary to raise the oil to the surface by the use of pumps. He further stated that oil in the underground reservoir is fugitive in nature and may be brought to the surface through wells drilled in various parts of the pool so that one well drains from all parts of the reservoir; that the oil is further commingled when it is brought to the surface and shipped through common pipe lines or mixed with other oil by truck, rail or water carrier; that refining centers are connected with a number of sources of supply and commingle the oil received from such sources; that many petroleum products are moved from refining center to refining center and the products further intermingled; that petroleum products are further intermingled during distribution and consumption; and that there is practically no point in the entire process of movement from well to consumer anywhere in the United States which is not physically interconnected and

interrelated with a whole series of other points in the [fol. 108] chain of commerce of petroleum and its products between the States and with foreign nations. He further stated that at least 90% of all the petroleum and products thereof produced in the United States is produced with the expectation and is actually shipped into interstate and foreign commerce, and that it is almost never possible, after petroleum leaves the well, to ear-mark the ultimate destination of all the many products which will ultimately be refined from it.

He further stated that in addition to the physical interconnection existing between wells within a pool, pools and fields within a state, and states as between states, there is an economic interconnection and interrelation, due to the fact that 60% of the petroleum and products thereof sold to the ultimate consumer in the United States is brought to the market by integrated companies which produce, transport, refine and market petroleum and its products; and that the action of any ostensible local unit of the industry directly affects the economic position of these large intergrated companies operating in the said trade area and is transferred throughout those companies so as directly to affect commerce in petroleum in and between all the various states in which those companies operate. He further stated that the fact that drainage can and does take place as between different operators in all of the various oil pool distinguishes the production of oil from all other mining operations since any single operator has the power to set the rate of taking for all other operators draining from the same source of supply in order that they may acquire their fair share of the oil in the common pool; that this leads to a wild scramble on the part of all producers from a common source of production; that with the discovery of the new pools near Oklahoma City, the Kettleman Hills Field in California and the enormous pool in East Texas, the potential production of petroleum ex- [fol. 109] ceeds by many millions of barrels the consumptive demand thereof; that geologists and petroleum engineers all agree that the flush condition from these pools will decline and that the large potentials are abnormal and of temporary duration; that the control of the individual well is the focal point for the purpose of protecting the normal movements of commerce in petroleum and the prod-

ucts thereof, and that when the control over the individual wells breaks down, as it has in the past in Oklahoma and East Texas, interstate commerce in petroleum is disrupted and the normal flow from other states is impeded.

He further stated that whether an individual operator produces oil which moves in interstate commerce or not, he affects interstate commerce when he refuses to abide by curtailment, for there are always those in any large field who do and must move the product of their wells in interstate commerce, and these operators must either abide by curtailment and see their lands drained or they must violate the curtailment program and place on the interstate market their excess production; that unless the integrated companies are limited in their production of oil, they will be able to produce from their own wells all of their crude oil requirements, thus eliminating the present market which many small producers have in sales to the integrated companies; and that conditions in the East Texas Field during the past year have showed that uncontrolled production leads to monopoly and hardship to small producers. He further stated that any production of oil in excess of normal consumptive requirements exerts a demoralizing effect upon interstate commerce in petroleum, even though such excess production does not move beyond the confines of the State, since it makes its appearance on the market as "distress" gasoline, compelling competitors [fol. 110] to seek markets in other states by price cutting or dumping; that excess oil production during the last few years in one or two fields in Texas and Oklahoma has demoralized the markets for petroleum and gasoline as far West as the Pacific Coast, as far North as Chicago and as far East as New York and that the chaotic condition and other demoralization of the oil industry existing just prior to the adoption of the Code of Fair Competition reacted adversely upon the flow of interstate commerce and the industry generally by decreasing purchasing power and throwing out of employment many of those in and related to the industry. He further stated that the restriction of production to balance consumptive demand has restored the normal flow of interstate commerce in petroleum and that without the maintenance of such control there is grave danger that uncontrolled production from

any of the flush fields in Texas, Oklahoma or California might completely prevent the flow of interstate commerce from any one or all of the other states.

He further stated that uncontrolled production results not only in disruption of the free flow of interstate commerce, but also in physical waste because it results in inefficient refining methods which extract only 20 to 25% of the gasoline content from crude oil, in the abandonment of wells and fields of settled production in other oil producing states and in the loss of natural gas and natural gasoline. He further stated that the events of the past few years have demonstrated that the states alone cannot embark upon a proper conservation program, since any one of the large producing states can absorb the portion of the national market which restrictions on production in the other states leave open; that when enforcement broke down in the East Texas Field it completely demoralized the conservation program in Oklahoma City; and that it is essential from a national point of view that a program of con-
[fol. 111] servation be carried out, since there is but ten years of known supply of crude petroleum and not only commerce but also the national defense depend upon this supply.

The defendants introduced in evidence a statement by W. B. Hamilton, who stated that he has been engaged in the oil business for about eighteen years; that he is interested in production and leases in the East Texas Field—22 wells in Conroe—four wells, and in the South Texas, North Texas, Panhandle and Central West Texas Field; that he also owns producing royalties in East Texas, South Texas, North Texas and the Panhandle; that he was formerly President of the Texhoma Oil and Refining Company, a large independent oil refinery; that he was Vice President of the Texas Division of the Mid-Continent Oil and Gas Association for many years and also Vice President of the Western Petroleum Refiners Association; that he is a graduate of the University of Texas and held a graduate fellowship and taught in the Government Department of the University of Texas; that while President of the West Texas Chamber of Commerce he made a careful study of production in West Texas, with reference to conservation,

and as Chairman of the Oil & Gas Committee he has made a careful study of marketing of crude petroleum and gasoline, particularly with relation to West Texas; that he has operated in many of the major pools of the Southwest and is familiar with the production, transportation, refining and marketing of oil; and that he is familiar with the theory and practice of petroleum engineering.

He further stated that the Petroleum Industry is one of the large industries in the United States, with an investment of approximately twelve billion dollars; that in 1932 eight hundred million barrels of oil were produced and four [fol. 112] hundred million barrels of gasoline; that there were about three hundred twenty-five thousand producing wells scattered over four million acres of oil lands in nineteen states; that there were four hundred refineries and approximately three hundred and twenty-five thousand marketing outlets; that oil is a vital factor in the economic and social life of the United States in supplying over twenty-five million motor vehicles, as well as warships and airplanes; that its products find their way into the manufacture of many commodities necessary in the daily life of the people; and that petroleum is as essential to national defense so that the entire nation is concerned with its conservation.

He further stated that about twenty integrated companies, whose activities encompass the entire industry, produce about fifty per cent of the crude oil, control sixty-three per cent of the refining capacity and ninety per cent of the pipe line systems, and either own, lease or control the greater part of the market outlets; and that there is the fiercest sort of competition throughout the industry, particularly in the retail end of the industry. He further stated that ninety-five per cent of the country's crude oil is produced from the states of Texas, California, Kansas, Oklahoma, Louisiana, and the states bordering the east of the Rocky Mountains; that a large part of the western production is transported to the large consuming areas in the East, where it is refined and where seventy per cent of the gasoline produced in the country is consumed; that the northeastern states consume about thirty-six per cent of petroleum products and that in many instances where oil is refined in Texas and Oklahoma, the refining operation is not completed there, but the oil shipped East for additional refining into various by-products.

He further stated that only fifteen per cent of the oil produced in Texas is consumed there, while eighty-five per [fol. 113] cent of the petroleum, or the products thereof originating in Texas, move in interstate commerce; that to the stream of commerce almost every producer and refiner in Texas contributes to some extent; that for practical purposes it is nearly impossible in the petroleum business to separate strictly interstate transactions from those intrastate in nature, because the whole is interrelated so that it can truthfully be said that the petroleum business is a national one whose bounds go beyond state lines; that conditions existing in a particular field immediately and directly affect producing, refining and marketing in widely scattered areas over many different states, for example, excess production from flush wells in Texas causes the abandonment of stripper wells in Oklahoma; that the business of marketing petroleum and its products is so interrelated that an unbalanced supply in any area immediately reacts and reflects upon reproducing and refining and marketing movements in many states; that it is definitely proved that the prohibition of excess oil from transportation in interstate commerce, as provided by Section 9 (c) of the National Industrial Recovery Act, is not only beneficial to the industry as a whole, but is necessary as a regulation of interstate commerce if overproduction is to be stopped; that a central authority to ascertain national consumptive demands for controlling products as povided by Article III Section 4 of the Code, is necessary to stabilizing commerce, since it is impossible for the individual states to divide national consumptive demands among them without supervision, and that when a state's fair share of the market is determined and submitted to the state regulatory body for consideration in fixing the allowables for the state, a fair method is used by which the orderly flow of interstate commerce is insured.

He further stated that there has been widespread waste [fol. 114] of the oil reserves due to lack of correlation between the states' conservation policies and to the fact that oil is of a fugitive nature leading to a race for capture regardless of demand or price; that such competition for production occurs in every field and that eventually the states themselves indulge in the same race for capture of the nation's demand; that oil thus wasted is forever lost; that

stripper wells are abandoned; and that Section 9 (c) of the National Recovery Act and Article III of the Petroleum Code are measures which will regulate the business in such away as to prevent such disruption of interstate commerce and waste of a national resource.

He further stated that overproduction results in lowering the price structure; that in recent years prices have twice dropped from a high of $1.40 to $.25 a barrel; that in the East Texas Oil Field the price reached as low as $.10; that such overproduction resulted in "distress" gasoline being placed upon the market at prices far below actual cost; that overproduction beyond consumer demand causes price cutting, rebates, and unfair marketing practices in general throughout the nation; that overproduction is usually followed by under-production because of depletion of the pools with resulting high prices to the detriment of the public; that price fluctuations exert an abnormal influence on interstate commerce; that restricting production to market requirements benefits both producers and consumers, promotes the orderly flow of interstate commerce, and conserves natural resources; and that the provisions of Article III of the Petroleum Code are effective as a means of regulating and controlling the disastrous conditions above outlined.

He further stated that the large integrated companies are better able to weather final price fluctuations than small [fol. 115] producers, refiners and marketers and that therefore unregulated production tends to produce monopoly.

He further stated that "hot" oil is ordinarily secretly delivered to refineries in the locality where produced and at a price substantially below the established posted price for crude oil in the locality, for example $.40 per barrel, while the posted price is $1.00 per barrel; that refiners, purchasing "hot" oil have been able to manufacture gasoline at a much less cost than the cost of the legitimate refiner and can, therefore, undersell legitimate refiners in the market; that such underselling leads to a nation-wide price cutting spreading from community to community and from state to state; that gasoline from "hot" oil by East Texas refineries has depressed the tank wagon price of gasoline in North Texas and in Oklahoma to a point below the cost of production; that gasoline can be refined from crude oil with a plant requiring the investment of a very

small sum of money, but that the output of such plant can disrupt the entire price structure throughout the country; that a tender for sale of not more than five cars of gasoline by a refiner in North Texas at "distress" prices has in the past broken the tank car market throughout the mid-continent area, and that Section 9 (c) of the National Industrial Recovery Act and Article III of the Petroleum Code are effective means for preventing the above mentioned evils.

He further stated that he knows of no way to check these sources of "hot" oil except by a series of reports from producers and refiners and that this method is a certain, useful, practical and reasonable method of locating the origin of "hot" oil, and its products which move in interstate commerce.

He further stated that a fair and reasonable method of fixing the total allowable production for the State of Texas [fol. 116] is to fix the maximum at the figure recommended by the Department of the Interior since such figure, in his opinion, represents a fair allocation of the Texas proportion of the national consumptive demand; that the provisions of the Petroleum Code are fair and reasonable regulations of a business which is essentially national in its nature and that it is — alleviate the economic distress which has befallen the oil industry and the nation as a whole; and that it has helped prices, decreased unemployment and added to consumers' purchasing power.

The defendants introduced in evidence a statement by Roy B. Jones, who stated that he is President of the Panhandle Refining Company; that he has been engaged in the business of producing, transporting, refining and marketing crude oil and its products for about twenty-one years; that he is familiar with the various oil fields of Texas and the usual methods of developing such fields and by which the oil is thereafter transported, refined and marketed; and that in addition to his practical experience he has made a careful study of the oil business throughout the United States and has served upon numerous committees of various local, state and national associations and in such capacity has acquired detailed knowledge of the conditions ex-

isting in various branches of the oil business and the problems arising in connection therewith, and he further stated in substance the same matters which are found in the statement of Mr. W. B. Hamilton, outlined above.

The defendants introduced in evidence a statement by J. S. BRIDWELL, who stated that he is the President of the [fol. 117] North Texas Oil-Gas Association composed of independent oil operators of North Texas; that he owns the Bridwell Oil Company, which has production in East, North and Southwest Texas and Southern Oklahoma; that he has been engaged in the oil business for about fifteen years; that he has served on special committees of various oil associations for many years, engaged in the study of the problems of the oil business; that he is now producing on his holdings about 1,500 barrels of oil per day; and that he has acquired a rather detailed knowledge of the conditions existing in the various branches of the oil business and the problems arising in connection therewith. He further stated, in substance, the same matters which are found in the statement of Mr. W. B. Hamilton, outlined above.

The defendants introduced in evidence a statement of C. L. THOMPSON, who stated that he is a graduate mining engineer; that from 1914 to 1917 he did general geological work in structural mapping of prospective oil structures; that in 1917 he began drilling contracting and has personally drilled and supervised the drilling of some sixty-five wells in various states and has been connected with producing, refining and operation of oil properties in various states; that he is now engaged in producing oil in the East Texas Field, operating 19 wells; and that by his study and experience, he has acquired a rather detailed knowledge of the conditions existing in the various branches of the oil business and the problems arising in connection therewith. He further stated in substance the same matters which are found in the statement of Mr. W. B. Hamilton, outlined above.

[fol. 118] The defendants introduced in evidence a statement by J. D. COLLETT, who stated that he is President of the O'Keefe & Collett Corporation, an oil producing company; that he is also operating as an individual producer; that he first became active in the oil business in 1901; that since 1917 he has devoted his entire time to and has been continuously interested and active in the management of oil properties; that during the past fifteen years he has had access to the current statistical reports conditions and has been a student of conditions pertaining to the oil business and that by his study and experience he has acquired a rather detailed knowledge of the conditions existing in the various branches of the oil business and the problems arising in connection therewith.

He further stated in substance the same matters as are found in the statement of Mr. W. B. Hamilton, outlined above.

The defendants introduced in evidence a statement by WIRT FRANKLIN, who stated that he has been engaged in various branches of the oil industry for twenty years and has been for six years an official of the Wirt Franklin Petroleum Corporation, a corporation engaged in the producing, refining and marketing divisions of the industry; and that he is particularly familiar with the production and marketing of crude oil and with the refining and marketing of refined products thereof.

He further stated that for the past twenty years new oil fields of large production have been discovered from time to time; that the production from such fields has been [fol. 119] practically unrestrained; that the invariable result of bringing in a new field has been that within a short time the price of crude oil has been materially reduced with unfavorable reactions upon the production, marketing and sale not only of crude oil, but also of the refined products; and that the following are a few of the large number of instances where new fields have resulted in drastic reductions in the price of crude petroleum:

First: In 1913 and 1914 the Cushing and Healdton pools in Oklahoma reduced the posted price of crude oil from $1.05 per barrel to 30¢ per barrel for Healdton crude and 40¢ per barrel for Cushing crude and further resulted in such oil being sold below the posted prices.

Second: In 1922 the Mexia and Powell Fields of Texas resulted in a reduction of the price of Mid-Continental crude from $3.50 a barrel to as low as $1.00 a barrel.

Third: In 1923 the Signal Hills at Santa Springs Fields in California resulted in a reduction from $2.00 to $1.00.

Fourth: In 1927 the Seminole Fields in Oklahoma resulted in a reduction from $1.90 to $1.28 per barrel.

Fifth: In 1931 the East Texas Field caused a drop in the price from 95¢ to a posted price as low as 18¢ per barrel. In the latter part of 1932 and in 1933 the restraints placed upon the East Texas Field were largely relaxed and excess production resulted in a drop in the posted price from 92¢ to 25¢ and many companies withdrew all posted prices and bought in the open market for as low as 5¢ a barrel.

He further stated in each of the cases above outlined the cheap oil from the flush fields absorbed a great portion of the markets of the United States, causing the older fields [fol. 120] to be without a market outlet and forcing them to sell their oil, if at all at less than the cost of production; and that this resulted in abandonment of thousands of "stripper" wells, with the result of permanent loss of a source of supply because many of the abandoned wells became flooded with water to such an extent as to make the wells useless.

He further stated that petroleum is produced in the United States from approximately 330,000 wells in about twenty states and that approximately 300,000 of these wells produce 5 barrels or less, while 250,000 produce an average of 1 barrel per well per day; that there are a number of large fields in the United States the production of which, if unrestrained, would cause a great decrease in the market price of oil; and that among these is the East Texas Field, which could supply at very low cost the entire United States market with the result of absorbing the markets of other fields to a very great extent, compelling the shutting in of stripper wells, the disruption of interstate commerce, great increase in unemployment and the temporary abandonment and shutting down of many refineries and pipe lines.

The defendants introduced in evidence a statement by RALPH T. ZOOK, who stated that he has been engaged in the oil business for twenty years; that he has been engaged in manufacturing natural gasoline, in owning and leasing tanks cars, and in the production and refining of crude oil; that he is associated with a company known as Sloan & Zook, one of the largest producers of Pennsylvania Grade Crude oil; and that the following statements are based [fol. 121] upon his experience and knowledge of conditions which prevail in the industry. He further stated that when fields are first brought in, they produce for a period of time as "flush" wells, without the necessity of raising the oil by pumping; that in recent years the Oklahoma City pool and the East Texas pool have been of this type so that great difficulty has existed for State authorities to control their production because of competitive drilling; that in August, 1931, the East Texas Field had a reported daily output of over 1,000.000 barrels, while the Oklahoma City pool was producing hundreds of thousands of barrels per day; that when a flush field is allowed to overproduce and monopolize the market, it over-supplies the market and forces all of the other wells, where the unit cost of production is higher, to be shut in or completely abandoned. He further stated that when a well is abandoned or shut down, its oil is at least temporarily removed from the channels of trade and often completely lost because of water intrusion. He further stated that of the 350,000 producing wells in the United States 192,000 are located East of the Mississippi River, with an estimated reserve of 1,500,000,000 barrels; that these Eastern wells employ many thousands of men and supply many refineries; that the major portion of such wells are owned by individuals of moderate means who cannot afford to produce them when the cost of lifting oil exceeds the price of crude oil; that according to Report No. 30 of the United States Tariff Commission, dated March 3, 1931, the production cost per barrel for 1930 for these States east of the Mississippi was as follows:

[fol. 122] United States Tariff Commission Production Cost

Pennsylvania	$2.77
West Virginia	1.83
New York	3.06
Kentucky	1.51
Ohio	1.98
Illinois	1.25
Indiana	1.74
Weighted Average	2.11

He further stated that during the month of July, 1931, when production from East Texas was out of control, the price of oil in Pennsylvania was $1.55, the lowest quoted price for more than ten years; that during the month of May, 193-, when production in the East Texas Field had increased to over 1,000,000 barrels a day, the price of Pennsylvania crude was reduced to the extreme level of $1.22 per barrel; that the prices for crude oil in other Eastern producing areas were correspondingly affected. He further stated that there is a definite relationship between the price of crude produced in the flush areas and the price of crude produced in settled areas; that price changes generally originate in the West and travel East; and that the price relationship which has existed between the quoted price for 36 gravity Mid-Continent and the States of Pennsylvania, West Virginia and Kentucky is as follows:

Western Kentucky

	Average price	Mid-Continent 36° gravity	Diff.
1929	$1.69	$1.37	$ .32
1930	1.49	1.23	.26
1931	.77	.63	.14
1932	1.00	.89	.11
1933 (8 Mos)	.62	.45	.17

[fol. 123] Pennsylvania-Bradford District

	Average price	Oklahoma 36° gravity	Diff.
1928	$3.36	$1.31	$2.05
1929	3.95	1.37	2.58
1930	2.60	1.23	1.37
1931	2.02	.63	1.39
1932	1.88	.88	1.00

West Virginia

	Average price	Oklahoma 36° gravity	Diff.
1925	$3.37	$1.87	$1.50
1926	3.36	2.13	1.23
1927	2.75	1.38	1.37
1928	2.91	1.31	1.60
1929	3.52	1.37	2.15
1930	2.24	1.23	1.01
1931	1.55	.63	.92
1932	1.53	.88	.65
Average	2.65	1.35	1.30

That these schedules show plainly the differential which existed during the period of controlled production, compared to that which existed during the periods of flush field production. He further stated that crude oil from the Gulf Coast points is shipped to the Atlantic Seaboard where it is refined and the products come in competition with the crude produced in New York, Pennsylvania, West Virginia and Kentucky and that Mid-Continent crude is transported by pipe line to Pennsylvania, Ohio and Indiana, where it is refined and the products placed in competition [fol. 124] with the refined products from the crude products in those states. He further stated that the average production per well in the states of New York, Pennsylvania, Kentucky, West Virginia, Illinois, Indiana and Ohio is less than one barrel per well daily; that during the period from 1930 to the middle of 1933, it had not been possible to find a market for all of this production, due to the pressure of oil from other areas; that because of low prices prevailing in the industry, only 6,788 wells were drilled in settled fields in 1931, whereas, there were 11,640 wells completed in 1930, while approximately 22,000 in settled areas were abandoned; that, in his judgment, due to the oil produced in settled areas moving in interstate commerce, a shutting down of these wells interferes with the customary flow of oil in interstate commerce; that numerous refineries depend upon the production from these wells and the refined products from these refineries move in interstate commerce; and that the shutting down of the wells and the refineries and numerous allied industries which supply them would throw out of work many employees.

The defendants introduced in evidence a statement by JOSEPH G. STANLEY, who stated that he is an attorney engaged in the practice of law in Washington, D. C.; that he is one of the counsel for the planning and Co-ordinating Committee provided for under the Oil Code and that the following statements and figures are compiled from data contained in the report of the United States Bureau of Mines for 1932 and 1933. He further states that total domestic production of crude oil in the United States for 1932 amounted to 781,845,000 barrels; that 41,500,000 were pro- [fol. 125] duced in states East of the Mississippi River; that the States of California, Oklahoma and Texas provide over 84 per cent of the total; that in the area East of the Mississippi River there exists 70 per cent of the population of the country, 70 per cent of the automobile registrations and 70 per cent of the gasoline consumption, and that in 1932, 300,000,000 barrels of domestic crude oil, or 38 per cent of the total production, was refined in these states. He further stated that in 1932 the State of Texas produced over 311,000,000 barrels of crude oil and received from other states 23,000,000 barrels; that it delivered 143,000,000 barrels, or 46 per cent of the total production to states East of the Mississippi; that Texas produced 96,000,000 barrels of gasoline, or 22 per cent of the total amount of gasoline refined in the United States; and that it delivered $78,000,000 barrels of gasoline, or 80 per cent of its total gasoline production to other states.

He further stated that the following statements are taken from the report on Pipe Lines, House Report No. 2192, made by the Committee on Interstate and Foreign Commerce to the House of Representatives; that there has been a great waste of natural resources in the United States through competition to "skim the cream"; that the oil industry is particularly vulnerable to such waste; that oil lying under the properties of competing operators is fugitive and leads to a race between owners to take as much oil from their own and adjacent holdings as is possible; that this situation leads to unseemly haste in drilling and operation; that as a result, numerous wastes occur through the escape into the air of oil and natural gas and the production of oil in excess of market demand; that overproduction leads to unnaturally low prices and the waste which always accompanies the utilization of commodities sold at

an unnaturally low price; and that unrestricted competition [fol. 126] in the East Texas Field illustrates this waste; that during 1931 Texas showed an increase of production of 36,217,000 barrels, so that production in Texas rose from 48 per cent of the production of all other states in 1930 to 63 per cent in 1931; that this overproduction led to a fall in the price of oil to a low level of 13c a barrel, or lower; and that from the standpoint of conservation this waste is a matter of great concern.

The defendants introduced in evidence a statement by E. J. SULLIVAN, who stated that he had been engaged in the production and marketing of crude oil for the last 18 years in Wyoming and also in Montana; that he is familiar with the production, refining, transportation and marketing of crude oil in both of these states; that a large portion of the oil produced in said states prior to 1931 had a market in Canada, approximately 30 per cent of the entire production of Montana and approximately 10 per cent of the oil produced in Wyoming being shipped to Canada; that this market has been established over a period of years and it is customary and normal commerce in crude oil; and that during the flush production from East Texas in 1931, East Texas oil was reduced in price to as low as 15¢ a barrel and took from Montana and Wyoming their entire Canadian market for crude. He further stated that when the production of crude oil in East Texas was controlled, Wyoming and Montana gradually regained their Canadian market, but that early in 1933 when East Texas oil dropped to a price of 10¢ to 25¢ a barrel, it again took away the Canadian market from Montana and Wyoming. He further stated that the reason that the oil from these states cannot [fol. 127] compete with the flush production from East Texas is because the crude in Wyoming and Montana is produced from wells of settled production at a lifting cost of approximately 40¢ per barrel. He further stated that at the present time, due to the control of production in East Texas, the Canadian market is more approximately in a normal condition.

The defendants introduced in evidence a statement by CHAS. F. ROESER, who stated that he has been engaged in

the oil business for 28 years, particularly in the production of oil as an individual producer in Ohio, Oklahoma, Kansas and Texas and that he is thoroughly familiar with the oil busines- in all its branches. He further stated that the production of oil is seldom responsive to market conditions existing at the time of production, due to the fugitive nature of oil and the fact that each owner of property over a common oil pool must drill and produce at the same rate as its competitors in order to obtain his share of the oil; that this condition has led to competitive production in every oil field where conservation laws have not existed or have not been enforced; and that production in excess of market demand leads to ruinous price reductions, demoralizing the industry as a whole and restricting the normal flow of oil and its products in interstate commerce.

He further stated that the development of the East Texas oil field illustrates this condition; that its disorderly development led to a decline in the price of oil from $1.00 a barrel in January, 1931, to 13¢ in August, 1931; that this reduction in price affected the whole country so that Oklahoma oil declined from $1.25 to as low as 25¢ a barrel; that the ruinous reduction in price compelled the shutting in or [fol. 128] abandonment of many wells of small production, the closing down of refineries and a widespread interference with and obstruction of the normal flow of oil. He further stated that the effect of overproduction in East Texas is illustrated by the result on the fields of North Texas and West Central Texas; that the fields of North Texas include 15,000 producing wells of settled production; that these wells produced during the period from 1920 to 1930 an average of about 90,000 barrels per day or about six barrels per well per day; that the cost of lifting the oil to the surface was approximately 40¢ per barrel; that the East Texas production caused the price of oil in North Texas to drop to 22¢ a barrel or lower; that as a result of the low price prevailing during the greater part of the period from 1931 to July, 1933, 1,000 wells were abandoned and the production therefrom, which amounted to 7,000 or 8,000 barrels per day, was entirely lost; that the reserve production from these wells would amount to 4,000,000 barrels of crude oil, which has thus been lost forever; that a large percentage of the production from the North Texas area is transported out of the State of Texas to refineries in other States and

that the abandonment of wells there therefore directly affected and prejudiced the normal flow of oil in interstate commerce.

He further stated that refineries located in Wichita County, Texas, refined during the period from 1920 to 1930 an average of 38,000 barrels per day; that during the period of large production from East Texas, the runs of crude oil on these refineries dropped more than one-half, or to an average of approximately 19,000 barrels per day; that 3 refineries in Wichita County were shut down entirely; that the production from these refineries regularly moved to consuming centers outside of the State of Texas and that the loss of output from these refineries necessarily [fol. 129] reduced the amount of refined products moving out of the area into interstate commerce. He further stated that he is the owner of one-half interest in 321 wells in North Texas and West Central Texas; that these wells were shut down at the time of the flush production from East Texas; and that the product of these wells, which generally moved to points outside of the State, (was taken from the channels of interstate commerce. He further stated that if any one of a number of large fields in the United States were allowed to produce without restraint, it would absorb the market of the fields of settled production and "stripper" wells, of which there are approximately 300,000 in the United States, producing more than 50 per cent of the total supply that such shut-down would not only disrupt the normal flow of interstate commerce, but would in some cases cause the loss of great reserves of crude oil and that the closing down of such wells would throw out of employment thousands of employees, without materially giving further employment in the fields of flush production, and that the employees of many refineries which use oil produced from "stripper" wells would be thrown out of employment.

The defendants introduced in evidence a statement by E. B. Reeser, who stated that he is the President of the Barnsdall Refineries, Inc.; that he has been an officer or employee of such corporation for at least ten years; that he has become thoroughly familiar with the business of the corporation; that said corporation is the owner of re-

fineries in Oklahoma and Kansas, where it is engaged in the business of refining crude oil; that the average number of [fol. 130] barrels of oil refined by said corporation per year is about 4,000,000 and the average number of gallons of gasoline produced is 80,000,000; that one of the important elements in the cost to the refiner manufacturing gasoline is the cost of crude oil; that during the last few years regulation of production of oil has been authorized in the State of Texas and the Texas Railroad Commission has issued orders limiting the amount of oil to be produced; that there have been frequent violations of the orders of the Railroad Commission; that oil produced over the amount allowed by said Commission is known as "hot" oil; that "hot" oil is generally purchased, not by legitimate refiners, but by refiners who know that the same has been produced in violation of law and who purchase it at a lower price than the established price for crude oil; that at various periods during the last three years a large amount of "hot" oil has been produced in the East Texas field; that such "hot" oil has generally been produced secretly and secretly delivered to refiners in the same general locality; that "hot" oil has usually sold at 40¢ a barrel or less, while the posted price of legally produced oil has been $1.00 per barrel; that refiners producing gasoline from "hot" oil sell their products to wholesalers at a lower price than those using legitimate oil; that wholesalers sell such products at a less price to retailers in the various states and that the retailers sell such products to the public at a less price than their competitors dealing in gasoline products from legitimate oil; that their competitors are thereupon compelled to cut prices in order to retain their business; that waves of price cutting frequently extending over entire states and sometimes across state boundaries have resulted and that the price of crude oil and its products throughout the country has, accordingly, been affected by the production of "hot" oil and the sale of its products.

[fol. 131] He further stated that the refinery of which he is the President, has been injuriously affected during the past years by the sale of cheap gasoline produced from "hot" oil and in its St. Louis market has been forced to sell its products at a price below the cost of production in order to retain its customers.