

**OIL & GAS DOCKET NO. 01-0249369**

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**ENFORCEMENT ACTION AGAINST SHWJ OIL & GAS CO., INC. (OPERATOR NO. 779245) FOR VIOLATIONS OF STATEWIDE RULES ON THE P. A. STYLES (03332) LEASE, WELL NOS. 1 AND 2, LULING-BRANYON FIELD, CALDWELL COUNTY, TEXAS, AND THE R. E. BROWN, JR. ET UX (05605) LEASE, WELL NO. 1, SALT FLAT FIELD, CALDWELL COUNTY, TEXAS**

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**APPEARANCES:**

**FOR MOVANT:**

Christopher S. Hotchkiss

**MOVANT:**

Enforcement Section  
Railroad Commission of Texas

**FOR RESPONDENT:**

Richard Michael  
Dan Hawkins

**RESPONDENT:**

SHWJ Oil & Gas Co., Inc.

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

**DATE COMPLAINT FILED:**

October 27, 2006

**DATE OF NOTICE OF HEARING:**

January 19, 2007

**DATE OF HEARING:**

May 3, 2007

**HEARD BY:**

James M. Doherty, Hearings  
Examiner

**DATE PFD CIRCULATED:**

June 13, 2007

**STATEMENT OF THE CASE**

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

1. Whether the respondent SHWJ Oil & Gas Co., Inc. ("SHWJ") should be required to plug or otherwise place into compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] the P. A. Styles (03332) Lease, Well Nos. 1 and 2, Luling-Branyon Field, Caldwell County, Texas, and the R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1, Salt Flat Field, Caldwell County, Texas ("subject wells");

2. Whether SHWJ violated Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] by failing to use a wellhead assembly to maintain surface control of the P. A. Styles (03332) Lease, Well Nos. 1 and 2;
3. Whether SHWJ violated Statewide Rule 14(b)(3) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(3)] by failing to perform required H-15 tests (Test on an Inactive Well More than 25 Years Old) on the subject wells;
4. Whether SHWJ violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to plug the subject wells or otherwise place the wells into compliance with Statewide Rules 13(b)(1)(B), 14(b)(2) and 14(b)(3);
5. Whether, pursuant to Texas Natural Resources Code §81.0531, SHWJ should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject wells; and
6. Whether any violations of Statewide Rules 13(b)(1)(B), 14(b)(2), and 14(b)(3) by SHWJ should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A hearing was held on May 3, 2007.<sup>1</sup> Christopher S. Hotchkiss, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel ("Enforcement"). Richard Michael, attorney, and Dan Hawkins appeared representing SHWJ and presented evidence. Enforcement's certified hearing file was admitted into evidence.

#### **APPLICABLE LAW**

Statewide Rule 14(b)(2) requires that a well be plugged after 12 months of inactivity, unless a plugging extension has been obtained. A plugging extension will be approved for a well only if the well is in compliance with all Commission rules and the operator has a good faith claim of right to operate the well.

Statewide Rule 13(b)(1)(B) provides that wellhead assemblies shall be used on a well to maintain surface control of the well. Statewide Rule 14(b)(3) provides that the operator of any well more than 25 years old that becomes inactive shall plug or test such well to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.

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<sup>1</sup> This docket was heard jointly with Oil & Gas Docket No. 01-0248154 involving the same respondent. A separate proposal for decision is being issued in each docket.

## DISCUSSION OF THE EVIDENCE

### *Matters Officially Noticed*

The examiner has officially noticed the Commission's Master Inquiry, Officer/Agent Inquiry, and P-5 Financial Assurance Inquiry databases for SHWJ, which show that SHWJ is a corporation, and its officers are Monte Anderson, President, Mario Lanza, Vice President, and Joseph Lanza, Treasurer. The Form P-5 organization report of SHWJ is active, and SHWJ has financial assurance on file in the amount of \$50,000.

The examiner has also officially noticed the Commission's On-Schedule Lease, Wells, Wellbores by Operator and Wells Subject to Rule 14(b)(2)-Operator Summary Data databases which show that as of June 12, 2007, SHWJ was the record operator of 97 wells, 86 of which were subject to Statewide Rule 14(b)(2). Seventy-seven of the 86 wells subject to Statewide Rule 14(b)(2) had been shut in for more than 36 months. Of the 86 wells subject to Statewide Rule 14(b)(2), plugging extensions had been approved for 44 wells and denied for 42 wells. The examiner has also officially noticed the Commission's Production Data Query database which shows that for the 16 month period January 2006, through April 2007, SHWJ reported total production of 3,403 barrels of oil.

### *Enforcement*

SHWJ designated itself operator of the P. A. Styles (03332) Lease, Well Nos. 1 and 2 by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved October 6, 2004, effective October 1, 2004. SHWJ designated itself operator of the R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1 by filing a Form P-4 approved September 28, 2004, effective September 1, 2004.

District Office inspections of the P. A. Styles (03332) Lease on February 27, May 30, and August 24, 2006, disclosed that Well Nos. 1 and 2 had wellheads which were open to the atmosphere. These same inspections disclosed that the P. A. Styles (03332) Lease, Well Nos. 1 and 2 were inactive and not equipped to produce. No production has been reported to the Commission for these wells since October 30, 2000.

District Office inspections of the R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1 on April 19, May 30, and August 24, 2006, disclosed that the well was inactive and incapable of production. No production has been reported to the Commission for this well since September 30, 2001.

Statewide Rule 14(b)(2) plugging extensions for the P. A. Styles (03332) Lease, Well Nos. 1 and 2, and the R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1 were denied on November 15, 2005, because required H-15 tests for these wells were delinquent. The estimated cost to the State to plug the subject wells is \$6,800 for the P. A. Styles (03332) Lease, Well Nos. 1 and 2 and \$6,100

for the R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1.

The subject wells are more than 25 years old and are subject to the testing requirements of Statewide Rule 14(b)(3). The P. A. Styles (03332) Lease, Well No. 1 was completed on December 14, 1965. The P. A. Styles (03332) Lease, Well No. 2 was completed on October 1, 1975. The R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1 was completed on July 23, 1977. Required H-15 tests were due for all of the subject wells in May 2004 and were not performed then or thereafter.

On seven separate occasions between May 8, 2006, and August 29, 2006, the District Office sent SHWJ correspondence, notices, or copies of memoranda requesting voluntary compliance with Commission rules with respect to the subject wells, but SHWJ did not achieve compliance.

A certification of the Commission's Secretary dated May 2, 2007, states that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved, and no plugging extensions are in effect, for the subject wells.

An affidavit of Keith Barton, P.E., Field Operations, states that a well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged in order to prevent pollution of usable quality surface or subsurface waters. Any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

The Barton affidavit states further that open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution and safety hazards because of the possibility of surface run-off entering the wellbore and the possibility of fluids flowing out of the wellbore. The affidavit also states that any well that is greater than 25 years old must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. Casing leaks and/or fluid levels above the base of usable quality water indicate a possible pollution hazard. Without the H-15 test required by Statewide Rule 14(b)(3), the Commission cannot determine if the well poses a threat to natural resources.

In January 2007, SHWJ entered into a settlement agreement with Enforcement regarding this docket. However, SHWJ did not comply with the settlement agreement by paying the prescribed settlement amount and bringing the subject wells into compliance.

Enforcement recommends that SHWJ be ordered to pay a penalty of \$14,000, calculated on the basis of two Rule 13(b)(1)(B) violations at \$1,000 each, three Rule 14(b)(2) violations at \$2,000 each, and three Rule 14(b)(3) violations at \$2,000 each.<sup>2</sup> Enforcement also recommends that SHWJ be ordered to bring the subject wells into compliance with Commission rules.

**SHWJ**

SHWJ made the claim that the subject wells were transferred to SHWJ by a previous operator with a similar name, SHWJ Oil & Gas Company, that was under different management. SHWJ claimed that it believed the former operator, who had been swabbing the wells, would “continue to maintain” the wells, but the former operator did not do so. SHWJ asserted that no one in its current management knew where the wells were until its attorney started to look for them in 2006.<sup>3</sup>

SHWJ also claimed that about seven weeks prior to the hearing, SHWJ placed caps on the P. A. Styles (03332) Lease, Well Nos. 1 and 2, so that these wells are no longer open to the atmosphere. Apparently, no recent inspection of these wells has been made by the District Office to confirm this.

SHWJ believes that the subject wells are of no further value and should be plugged and abandoned. SHWJ claimed that it had contacted a certified well plugger to plug the wells, and the schedule for plugging had twice been postponed due to rainy weather. SHWJ hopes that plugging of the wells can be accomplished in the next 30-60 days. No Forms W-3A (Notice of Intention to Plug and Abandon) have yet been filed. SHWJ makes no claim that it now possesses any effective oil and gas leases covering the properties on which the subject wells are located.

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<sup>2</sup> Enforcement originally sought a total penalty of \$15,000, which included a \$1,000 enhancement for one prior violation. However, there being no prior final order finding such a prior violation, Enforcement agreed to forego the enhancement.

<sup>3</sup> The P. A. Styles (03332) Lease, Well Nos. 1 and 2 were transferred to SHWJ effective October 1, 2004, and the previous operator was Excalibur E & P, LLC. Excalibur had also become operator effective October 1, 2004, and apparently made a same day transfer to SHWJ. Excalibur had acquired the wells from SHWJ Oil & Gas Company, which had been operator since March 1, 2002. The R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1 was transferred to SHWJ effective September 1, 2004, and SHWJ Oil & Gas Company had been the previous operator since March 1, 2002. The most recent Form P-5 organization report for SHWJ Oil & Gas Company, filed September 25, 2003, showed that this company was a partnership, and its partners were Monte Anderson, Mario A. Lanza, and Joseph Lanza, who are SHWJ’s current President, Vice President, and Treasurer, respectively. By executing the Forms P-4 that transferred the subject wells to SHWJ, Richard Michael, SHWJ’s attorney, certified that SHWJ was acknowledging responsibility for the regulatory compliance of the subject leases and wells, including plugging of wells pursuant to Statewide Rule 14.

**EXAMINER'S OPINION**

Enforcement proved that the alleged violations of Statewide Rules 13(b)(1)(B), 14(b)(2), and 14(b)(3) were committed, and SHWJ is the responsible operator. The remaining issues are: (1) the amount of administrative penalties that should be imposed; and (2) the nature of compliance that should be ordered.

In determining the amount of the penalty to be imposed against SHWJ, the Commission is required by Texas Natural Resources Code §81.0531 to consider the operator's previous violations, the seriousness of the violations, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. According to Enforcement's complaint in this docket, SHWJ has no history of prior final enforcement orders entered against it for violations of Commission rules. On the other hand, the involved violations are serious, and presented a hazard to the health and safety of the public, because of the threat of pollution of usable quality water presented by inactive, untested, and unplugged wellbores.

SHWJ has not demonstrated good faith because it failed to respond satisfactorily to requests of the District Office for voluntary compliance. The subject wells have been out of compliance with Statewide Rule 14(b)(3) since at least May 2004. These same wells have been out of compliance with Statewide Rule 14(b)(2) since at least November 15, 2005. Even if SHWJ is credited with placing caps on the P. A. Styles (03332) Lease, Well Nos. 1 and 2, so that these wells are no longer open to the atmosphere, the testimony reflects that this step was taken about seven weeks prior to the hearing, and the wells had been open to the atmosphere since at least February 27, 2006.

The penalty recommended by Enforcement conforms to the recommended standard penalty schedule for enforcement cases, and the examiner agrees that this penalty is appropriate. Accordingly, the examiner recommends that a penalty of \$14,000 be imposed against SHWJ, for two violations of Statewide Rule 13(b)(1)(B), three violations of Statewide Rule 14(b)(2), and three violations of Statewide Rule 14(b)(3).

In addition, the examiner recommends that SHWJ be ordered to plug the subject wells. These wells are more than 29-41 years old, have been inactive for more than 5-6 years, and have not been fluid level tested or tested for mechanical integrity. Although SHWJ has been the operator responsible for the regulatory compliance of the subject wells for at least 2 ½ years, it apparently did not even know where the wells were located until its attorney investigated the locations last year. SHWJ does not possess a good faith claim of right to operate the wells, and has conceded that the wells are of no further value and are in need of plugging and abandonment.

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

**FINDINGS OF FACT**

1. SHWJ Oil & Gas Co., Inc. (“SHWJ”) was given at least ten (10) days notice of this hearing by certified mail addressed to SHWJ’s most recent Form P-5 organization report address. SHWJ appeared at the hearing and presented evidence.
2. SHWJ is a corporation. Its officers are Monte Anderson, President, Mario Lanza, Vice President, and Joseph Lanza, Treasurer. These officers were persons in a position of ownership or control of SHWJ at the time the violations involved in this docket were committed.
3. The violations involved in this docket were violations of Commission rules related to safety and the prevention or control of pollution.
4. SHWJ’s Form P-5 organization report is active, and SHWJ has approved financial assurance on file with the Commission in the amount of \$50,000.
5. SHWJ designated itself operator of the P. A. Styles (03332) Lease, Well Nos. 1 and 2 by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved October 6, 2004, effective October 1, 2004. SHWJ designated itself operator of the R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1 by filing a Form P-4 approved September 28, 2004, effective September 1, 2004.
6. District Office inspections of the P. A. Styles (03332) Lease on February 27, May 30, and August 24, 2006, disclosed that Well Nos. 1 and 2 had wellheads which were open to the atmosphere.
7. The subject wells have been inactive for more than twelve months, do not have Statewide Rule 14(b)(2) plugging extensions, and have not been plugged.
  - a. District Office inspections of the P. A. Styles (03332) Lease on February 27, May 30, and August 24, 2006, disclosed that Well Nos. 1 and 2 were inactive, not capable of producing, and not plugged.
  - b. District Office inspections of the R. E. Brown, Jr. Et Ux (05605) Lease on April 19, May 30, and August 24, 2006, disclosed that Well No. 1 was inactive, not capable of producing, and not plugged.
  - c. No production for the P. A. Styles (03332) Lease, Well Nos. 1 and 2 has been reported to the Commission since October 31, 2000.

- d. No production for the R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1 has been reported to the Commission since September 30, 2001.
  - e. Statewide Rule 14(b)(2) plugging extensions for the subject wells were denied on November 11, 2005, because required H-15 tests (Test on an Inactive Well More than 25 Years Old) for all the wells were delinquent. The subject wells have not had a plugging extension since November 11, 2005.
  - f. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the subject wells.
8. SHWJ does not possess currently effective oil and gas leases covering the properties where the subject wells are located.
  9. The estimated cost to the State to plug the subject wells is \$6,800 for the P. A. Styles (03332) Lease, Well Nos. 1 and 2 and \$6,100 for the R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1.
  10. SHWJ conceded at the hearing that the subject wells have no value and should be plugged and abandoned.
  11. The subject wells are more than 25 years old and are subject to the testing requirements of Statewide Rule 14(b)(3). The P. A. Styles (03332) Lease, Well No. 1 was completed on December 14, 1965. The P. A. Styles (03332) Lease, Well No. 2 was completed on October 1, 1975. The R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1 was completed on July 23, 1977. Required H-15 tests were due for all of the subject wells in May 2004 and were not performed then or thereafter.
  12. On seven separate occasions between May 8, 2006, and August 29, 2006, the District Office sent SHWJ correspondence, notices, or copies of memoranda requesting voluntary compliance with Commission rules with respect to the subject wells, but SHWJ did not achieve compliance.
  13. Open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution and safety hazards because of the possibility of surface run-off entering the wellbore and the possibility of fluids flowing out of the wellbore.
  14. A well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged in order to prevent pollution of usable quality surface or subsurface waters. Any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded

access to the surface.

15. Any well that is greater than 25 years old must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. Casing leaks and/or fluid levels above the base of usable quality water indicate a possible pollution hazard. Without the H-15 test required by Statewide Rule 14(b)(3), the Commission cannot determine if the well poses a threat to natural resources.
16. No prior final enforcement orders have been entered against SHWJ for violations of Commission rules.
17. SHWJ has not demonstrated good faith because it did not timely achieve voluntary compliance with Statewide Rules 13(b)(1)(B), 14(b)(2), and 14(b)(3) in response to requests of the District Office for such compliance.

#### **CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. SHWJ Oil & Gas Co., Inc. ("SHWJ") was and is the operator of the P. A. Styles (03332) Lease, Well Nos. 1 and 2, Luling-Branyon Field, Caldwell County, Texas, and the R. E. Brown, Jr. Et Ux (05605) Lease, Well No. 1, Salt Flat Field, Caldwell County, Texas, as defined by Statewide Rules 14, 58, and 79 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, SHWJ had the primary responsibility for complying with Statewide Rules 13(b)(1)(B), 14(b)(2), and 14(b)(3) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.13(b)(1)(B), 3.14(b)(2), and 3.14(b)(3)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject wells.
4. SHWJ violated Statewide Rule 13(b)(1)(B) by failing to use a wellhead assembly to maintain surface control of the P. A. Styles (03332) Lease, Well Nos. 1 and 2. These wells were out of compliance with Statewide Rule 13(b)(1)(B) from at least February 27, 2006, until at least August 24, 2006.

5. SHWJ violated Statewide Rule 14(b)(2) by failing to plug the subject wells within one year after operations ceased and by failing otherwise to bring the wells into compliance with Statewide Rule 14(b)(2). The subject wells have been out of compliance with Statewide Rule 14(b)(2) since at least November 15, 2005.
6. SHWJ violated Statewide Rule 14(b)(3) with respect to the subject wells by failing successfully to conduct required H-15 tests (Test on an Inactive Well More than 25 Years Old) on the wells. The wells have been out of compliance with Statewide Rule 14(b)(3) since at least May 2004.
7. The documented violations committed by SHWJ constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
8. SHWJ did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
9. As officers of SHWJ at the time SHWJ violated Commission rules related to safety and the prevention or control of pollution, Monte Anderson, Mario Lanza, and Joseph Lanza, and any organization subject to the Commission's jurisdiction in which they, or any of them, may hold a position of ownership or control, are subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

**RECOMMENDATION**

The examiner recommends that SHWJ be ordered to pay a penalty of \$14,000 for two violations of Statewide Rule 13(b)(1)(B), three violations of Statewide Rule 14(b)(2), and three violations of Statewide Rule 14(b)(3). The examiner further recommends that SHWJ be ordered to plug the subject wells.

Respectfully submitted,

James M. Doherty  
Hearings Examiner