

**OIL & GAS DOCKET NO. 01-0248154**

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**ENFORCEMENT ACTION AGAINST SHWJ OIL & GAS CO., INC. (OPERATOR NO. 779245) FOR VIOLATIONS OF STATEWIDE RULES ON THE POLLOCK GAS UNIT NO. 1 LEASE, WELL NO. 1 (RRC NO. 000227), FASHING (EDWARDS LIME -A-) FIELD, ATASCOSA 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:**

February 28, 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 Pollock Gas Unit No. 1 Lease, Well No. 1 (RRC No. 000227) ("subject well"), Fashing (Edwards Lime -A-) Field, Atascosa County;

2. 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 a required H-15 test (Test on an Inactive Well More than 25 Years Old) on the Pollock Gas Unit No. 1 Lease, Well No. 1 (RRC No. 000227), Fashing (Edwards Lime -A-) Field, Atascosa County;
3. 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 well or otherwise place the well into compliance with Statewide Rules 14(b)(2) and 14(b)(3);
4. 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 well; and
5. Whether any violations of Statewide Rules 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 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. 01-0249369 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 Pollock Gas Unit No. 1 Lease, Well No. 1 by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved October 6, 2004, effective October 1, 2004.

District Office inspections on March 14, April 26, and December 7, 2006, disclosed that the subject well was inactive and unplugged. No production has been reported to the Commission for this well since March 31, 2002. A Statewide Rule 14(b)(2) plugging extension for the well was denied on November 15, 2005, because a required H-15 test (Test on an Inactive Well More than 25 Years Old) for the well was delinquent.

The subject well was completed on January 22, 1959, and is a well more than 25 years old that is subject to the testing requirements of Statewide Rule 14(b)(3). A H-15 test was due for the well in May 2004, and was not performed. On February 7, 2007, SHWJ filed a Form H-15 which represented that a fluid level test of the well had been performed on August 10, 2006. This Form H-15 filing was not approved because no H-15 notification call was made to the District Office, the Form H-15 did not report the depth of the base of usable quality water, and the Form H-15 was not

filed within 30 days of the date of the alleged test.<sup>2</sup> The District Office then instructed SHWJ to perform a mechanical integrity test of the well on or before March 11, 2007. No successful mechanical integrity test has been performed.

On three separate occasions between March 28, 2006, and May 2, 2006, the District Office sent SHWJ correspondence or copies of memoranda requesting voluntary compliance with respect to the subject well. The estimated cost to the State to plug the well is \$21,280.

An affidavit of Keith Barton, P. E., Field Operations, stated 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 stated further 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.

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

Enforcement and SHWJ entered into a settlement agreement in this docket in July 2006, and SHWJ paid \$2,000 to the Commission in contemplation of this settlement. However, SHWJ did not comply with the settlement agreement by bringing the subject well into compliance with Statewide Rules 14(b)(2) and 14(b)(3). Enforcement recommends that a penalty in the amount of \$4,000 be assessed against SHWJ, calculated on the basis of one Rule 14(b)(2) violation at \$2,000 and one Rule 14(b)(3) violation at \$2,000, less the \$2,000 already paid. Enforcement recommends further that SHWJ be ordered to bring the subject well into compliance with Commission rules.

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<sup>2</sup> The District Office inspection report dated March 14, 2006, stated that a seal had been placed on the subject well as of that date. The subject well has been severed since August 6, 2004, based on Form H-15 delinquency.

**SHWJ**

SHWJ asserts that shortly after the settlement agreement with Enforcement was made, a fluid level test was performed on August 10, 2006, on the Pollock Gas Unit No. 1 Lease, Well No. 1. However, filing of Form H-15 with the Commission “fell through a crack.” SHWJ did not realize that compliance had not been achieved until it received notice of the hearing in this docket. The required H-15 test was delinquent when SHWJ acquired the subject well in October 2004. SHWJ did not attempt to cure this delinquency any earlier than August 2006 as the result of “oversight”.

Just prior to the hearing in this docket, on April 30, 2007, SHWJ attempted a mechanical integrity test of the well, but the well failed the test. SHWJ makes the assumption that there are holes in the tubing above the fluid level. Within the next 60-90 days, when a workover rig is available, SHWJ hopes to perform a workover and attempt another mechanical integrity test in anticipation that a Statewide Rule 14(b)(2) plugging extension can be obtained.

SHWJ does not have a currently effective oil and gas lease covering the property where the subject well is located, but has been negotiating with a mineral owner for a new lease, which it believes can be obtained in the next 30-60 days. SHWJ asserts that when the well was last producing, it was making about 200 MCFD, and SHWJ believes that the well is still capable of producing this amount of gas after workover.<sup>3</sup> Drilling a replacement well would cost more than \$2,000,000, and SHWJ does not want to plug the well. SHWJ requests more time to perform a workover and obtain a plugging extension for the well.

**EXAMINER’S OPINION**

The subject well has been out of compliance with Statewide Rule 14(b)(2) since at least November 15, 2005, and out of compliance with Statewide Rule 14(b)(3) since at least May 2004. SHWJ committed the alleged violations of Statewide Rules 14(b)(2) and 14(b)(3), and the only remaining issues are the amount of any penalty to be imposed and the nature of the 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

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<sup>3</sup> Commission records disclose that the well has not produced at all since March 31, 2002. During January-March 2002, the well produced a total of 529 MCF or an average of 5.9 MCFD. During January-December, 2001, the well produced 1,102 MCF or an average of 3.0 MCFD. During January-December 2000, the well produced 1,299 MCF or an average of 3.6 MCFD. The highest producing month for the well at anytime back to 1993 was March 1995, when the well produced 11,607 MCF or an average of 374 MCFD. The well last produced as much as 200 MCFD in August 1997.

Commission rules. On the other hand, the involved violations are serious, and 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. Even if SHWJ is afforded some credit for attempting the fluid level test in August 2006, that could not be approved because of Form H-15 deficiencies and the failed mechanical integrity test in April 2007, the failure to attempt any test of the well between October 2004, when SHWJ become operator, and August 2006, is not mitigated by SHWJ's "oversight" explanation.

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 \$4,000 be imposed against SHWJ, less the \$2,000 already paid.

Whether SHWJ should be ordered to plug the subject well is a close question. The well is about 47 years old, has been inactive for more than 7 years, and has failed a mechanical integrity test. Furthermore, there is no particular reason for great confidence that the subject well will be restored to production in that (1) SHWJ does not presently have an oil and gas lease covering the property on which the well is located; (2) apparently, SHWJ's immediate objective is to qualify the well for a plugging extension, and (3) 89% of SHWJ's wells are subject to Statewide Rule 14(b)(2). Nonetheless, Enforcement stated at the hearing that it does not advocate a "plug only" order, and SHWJ claimed to have reached a "general agreement" with the mineral owner to obtain a new oil and gas lease. For these reasons, and because of the bare possibility that the subject well can be reworked to produce some amount of gas that might not otherwise be produced, the examiner has decided to recommend that SHWJ be ordered to plug the subject well or otherwise place the well into compliance with Commission rules. Barring transfer to another operator, even under the proposed "plug or place in compliance" order, which is appropriately conditioned, the only way for SHWJ to avoid plugging the well will be to: (1) obtain a new oil and gas lease and restore the well to production, or (2) obtain a plugging extension by securing a new oil and gas lease and achieving compliance with all Commission rules, including the performance of a successful mechanical integrity test to demonstrate that the well does not pose a threat of pollution of usable quality water.

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 Pollock Gas Unit No. 1 Lease, Well No. 1 (RRC No. 000227) ("subject well"), Fashing (Edwards Lime -A-) Field, Atascosa County, Texas, by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved October 6, 2004, effective October 1, 2004.
6. The subject well has been inactive for more than twelve months, does not have a Statewide Rule 14(b)(2) plugging extension, and has not been plugged.
  - a. District Office inspections on March 14, April 26, and December 7, 2006, disclosed that the subject well was inactive. The well was sealed on March 14, 2006.
  - b. No production has been reported to the Commission for the subject well since March 31, 2002.
  - c. A Statewide Rule 14(b)(2) plugging extension for the subject well was denied on November 15, 2005, because a required H-15 test (Test on an Inactive Well More than 25 Years Old) for the well was delinquent. The well has not had a plugging extension since that date.
  - d. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the subject well.
7. The subject well was completed on January 22, 1959, and is a well more than 25 years old subject to the testing requirements of Statewide Rule 14(b)(3). A H-15 test on the well was not performed when due in May 2004, and no such test has been performed successfully since that date. On February 7, 2007, SHWJ filed a Form H-15 representing that the well had been tested on August 10, 2006, but this Form H-15 could not be approved because SHWJ made no H-15 notification call to the District Office, the Form H-15 did not state the depth of the base of usable quality water, and the Form H-15 was not filed within 30 days of the alleged test. On April 30, 2007, SHWJ attempted a mechanical integrity test, but the well failed.

8. At the time of the hearing, SHWJ did not possess an effective oil and gas lease covering the property on which the subject well is located. SHWJ claimed, however, to have a general agreement with a mineral owner to obtain a new oil and gas lease, which it hoped to acquire within a month or two following the hearing.
9. SHWJ hoped to perform a workover on the subject well, perform a successful mechanical integrity test, and obtain a Statewide Rule 14(b)(2) plugging extension within 60-90 days following the hearing. SHWJ believes that when worked over, the subject well is capable of producing 200 MCF of gas per day, and does not want to be required to plug the well.
10. The estimated cost to the State to plug the subject well is \$21,280.
11. On at least three occasions between March 28, 2006, and May 2, 2006, the District Office sent SHWJ correspondence or copies of memoranda requesting voluntary compliance with Commission rules respecting the subject well.
12. 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.
13. 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.
14. No prior final enforcement orders have been entered against SHWJ for violations of Commission rules.
15. SHWJ has not demonstrated good faith because it did not achieve voluntary compliance with Statewide Rules 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 Pollock Gas Unit No. 1 Lease, Well No. 1 (RRC No. 000227) (“subject well”), Fashing (Edwards Lime -A-) Field, Atascosa 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 14(b)(2) and 14(b)(3) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §§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 well.
5. SHWJ violated Statewide Rule 14(b)(2) by failing to plug the subject well within one year after operations ceased and by failing otherwise to bring the well into compliance with Statewide Rule 14(b)(2). The subject well has 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 well by failing successfully to conduct a required H-15 test (Test on an Inactive Well More than 25 Years Old) on the well. The well has 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 an administrative penalty in the amount of \$4,000, less \$2,000 already paid. The examiner recommends further that SHWJ be ordered to plug, or otherwise place into compliance with Commission rules, the Pollock Gas Unit No. 1 Lease, Well No. 1 (RRC No. 000227), Fashing (Edwards Lime -A-) Field, Atascosa County, Texas, provided that as a precondition to placing the well into compliance by producing the well or by obtaining a Statewide Rule 14(b)(2) plugging extension, SHWJ shall be required to demonstrate that it possesses a good faith claim of right to operate the subject well and the well has had a successful and approved mechanical integrity test and otherwise has been placed into compliance with all Commission rules.

Very truly yours,

James M. Doherty  
Hearings Examiner