

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 04-0296007

ENFORCEMENT ACTION AGAINST RWJ OPERATING LLC (OPERATOR NO. 739805) FOR VIOLATIONS OF STATEWIDE RULES ON THE SCHOLZ, H.H. (11156) LEASE, WELL NO. 1, CLARA DROSCOLL FIELD, NUECES COUNTY, TEXAS

FINAL ORDER

The Railroad Commission of Texas (“Commission”) finds that after statutory notice the captioned enforcement proceeding was heard by a Commission Administrative Law Judge on August 18, 2016 and that the respondent RWJ Operating LLC, failed to appear or respond to the Notice of Hearing]. Pursuant to § 1.49 of the Commission's General Rules of Practice and Procedure, 16 TEX. ADMIN. CODE § 1.49, and after being duly submitted to the Commission at a conference held in its offices in Austin, Texas, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. RWJ Operating LLC (“Respondent”), Operator No. 739805, was sent the Original Complaint and Notice of Hearing by certified and first class mail, addressed to the most recent Commission Form P-5 (Organization Report) (“Form P-5”) address. Respondent’s manger and registered agent as identified on the Form P-5—John Albert Upton and Roland Baker, were sent the Original Complaint and Notice of Hearing by certified and first class mail, addressed to their last known address.
2. The certified mail envelope containing the Original Complaint and the Notice of Notice of Hearing was received by Roland Baker, Filing Agent, on June 23, 2016. The certified mail envelope containing the Original Complaint and Notice of Hearing was received by John Albert Upton, Manager, on June 23, 2016. The first class mail was not returned. Record of certified mail has been on file with the Commission for more than 15 days, exclusive of the day of receipt and day of issuance. Respondent was given more than 30 days’ notice of the Original Complaint and Notice of Opportunity for Hearing. Respondent has not entered into an agreed settlement order, filed an answer, or requested a hearing.
3. On March 1, 2014, Respondent, a corporation, filed a Form P-5 with the Commission reporting that its officers consist of the following individual: John Albert Upton, Manager.

4. John Albert Upton was in a position of ownership or control of Respondent, as defined in section 91.114 of the Texas Natural Resources Code, during the time period of the violations of Commission rules committed by Respondent.
5. Respondent's Form P-5 is active. Respondent had a \$50,000 cash deposit as its financial assurance at the time of the last Form P-5 annual renewal submission.
6. The violations of Commission rules committed by Respondent are related to safety and the control of pollution.
7. Respondent designated itself to the Commission as the operator of the Republic Insurance Co. (05173) Lease, Well No. 3, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective February 1, 2014, approved August 6, 2014.
8. Commission inspection reports made January 13, 2015 and June 22, 2015 for the Scholz, H.H. (11156) Lease, show that the signs or identification required to be posted at Well Nos. 1 were missing.
9. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rule 3(2), may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergency, which can result in delays in remedying a violation or emergency.
10. Well No. 1, of the Scholz, H.H. (11156) Lease is a permitted injection well. Commission District inspection reports made on January 13, 2015 and June 22, 2015 and either reports filed by Respondent with the Commission reflecting zero injection or the absence of injection reports filed by Respondent with the Commission since becoming the P-4 operator, show the Scholz, H.H. (11156) Lease, Well No. 1 has been inactive for a period greater than one year. Injection into the subject well ceased in March 2006.
11. No work-overs, re-entries, or subsequent operations have taken place on the subject well within the last twelve months; the subject well has not been properly plugged in accordance with Statewide Rule 14, 16 TEX. ADMIN. CODE § 3.14; and no plugging extension is in effect for the subject well as allowed by Statewide Rule 14. The subject well is not otherwise in compliance with Statewide Rule 14.
12. Usable quality groundwater in the area is likely to be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well. Unplugged wellbores, in violation of Statewide Rule 14(b)(2), constitute a cognizable threat to the public health and safety because of the potential of pollution.
13. The total estimated cost to the State for plugging the Scholz, H.H. (11156) Lease, Well No. 1, is \$70,318.00.

14. Commission District inspection reports made on October 23, 2014 for the Scholz, H.H. (11156) Lease indicated several areas affected with oil and gas waste coming from damaged or deteriorated storage tanks. The various areas measured approximately 25' x 10'; 5' x 8'; 4' x 3'; and 36 x 12'. Follow-up inspections conducted on November 24, 2014, and January 13, 2015, show all of the polluted areas remain and have not been cleaned. The January 13, 2015, inspection revealed two additional 400-barrel tanks located to the northeast of Well No. 1 with a 20' x 30' area surrounding the tanks affected by oil and gas waste. An inspection conducted on June 22, 2015, shows another new area affected with oil and gas waste. An inspection conducted on June 22, 2015 shows another new area affected with oil and gas waste measuring approximately 50' x 20' approximately 75 feet northwest of the tank battery. All of the previously referenced areas remain unchanged.
15. Respondent did not have a permit for said discharges, nor were they authorized under Statewide Rules 8(d)(3), 8(e), 9, 46 or 98.
16. Unpermitted discharges of oil and gas waste, in violation of Statewide Rule 8(d)(1), can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution.
17. A Commission review of records for the Scholz, H.H. (11156) Lease shows the subject well had an H-5 Disposal/Injection Well Pressure on December 7, 2011. The test was determined to be inconclusive and the well failed to demonstrate sufficient mechanical integrity. Respondent has since failed to either conduct a successful mechanical integrity test of the well or plug it.
18. Disposal/injection wells must pass a pressure test at least once every five years, or as required by permit, to show that the well is not leaking, that the waste is being confined to the permitted injection interval, and that the usable quality water zones are properly isolated. Any injection of fluid down a wellbore could be a potential source of pollution. Without testing and supporting documentation, as required by Statewide Rule 46(j), the Commission cannot determine if a well poses a threat to natural resources.
19. Respondent has no prior history of violations of Commission rules.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Commission to Respondent and all other appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties have been performed or have occurred.

3. Respondent is responsible for maintaining the subject lease in compliance with all applicable Commission rules and chapters 89 and 91 of the Texas Natural Resources Code.
4. Respondent is in violation of Statewide Rules 3(2), 8(d)(1), 14(b)(2), and 46(j). 16 TEX. ADMIN. CODE §§ 3.2, 3.14(b)(2), 3.8(d)(1) and 3.46(j).
5. The documented violations committed by Respondent constitute acts deemed serious, and a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE § 81.0531(c).
6. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 3(2), which requires that each well site that produces oil, gas, or geothermal resources shall post signs or identification showing the name of the property, name of the operator and the well number.
7. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 8(d)(1), which prohibits the discharge of oil and gas waste without a permit.
8. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 14(b)(2), which requires that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed, unless the operator is eligible for and obtains an extension of the plugging deadline.
9. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 46(j), which requires a passing mechanical integrity test every five years.
10. Pursuant to TEX. NAT. RES. CODE § 81.0531, the Commission may assess administrative penalties against Respondent for the subject violations of up to \$10,000 per day for each violation, with each day such violations continued constituting a separate violation.
11. An assessed administrative penalty in the amount of THIRTEEN THOUSAND AND FIFTY-NINE DOLLARS (\$13,059.00) is justified considering the facts and violations at issue.
12. As a person in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, John Albert Upton, and any other organization in which he may hold a position of ownership or control, are subject to the restriction in section 91.114(a)(2) of the Texas Natural Resources Code.

IT IS ORDERED THAT within 30 days from the day immediately following the date this order becomes final:

1. RWJ Operation LLC (Operator No. 739805) shall plug the Scholz, H.H. (11156) Lease, Well No. 1, and place it in compliance with Statewide Rules 3(2), 14(b)(2), 8(d)(1) and 46(j) and any other applicable Commission rules and statutes.
2. RWJ Operation LLC (Operator No. 739805) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **THIRTEEN THOUSAND AND FIFTY-NINE DOLLARS (\$13,059.00)**.

It is further **ORDERED** that as a person in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, John Albert Upton and any other organization in which he may hold a position of ownership or control, shall be subject to the restriction in section 91.114(a)(2) of the Texas Natural Resources Code for a period of no more than seven years from the date the order entered in this matter becomes final, or until the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed, and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law is hereby extended until 90 days from the date the parties are notified of this order in accordance with TEX. GOV'T CODE § 2001.144.

All requested findings of fact and conclusions of law, which are not expressly adopted herein, are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Noncompliance with the provisions of this order is subject to enforcement by the Attorney General and subject to civil penalties of up to \$10,000.00 per day per violation.

Done this 15th day of November, 2016.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order
dated November 15, 2016)

DAL/pbm