

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**OIL AND GAS DOCKET NO. 06-0299489**

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**ENFORCEMENT ACTION AGAINST RWJ OPERATING LLC (OPERATOR NO. 739805) FOR VIOLATIONS OF STATEWIDE RULES ON THE REPUBLIC INSURANCE CO. (05173) LEASE, WELL NO. 3, QUITMAN (DERR) FIELD, WOOD COUNTY, TEXAS**

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**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 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 the delivery 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 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 March 1, 2014, approved May 7, 2014.
8. A Commission District inspection report made on September 18, 2015, for the Republic Insurance Co. (05173) Lease, indicated the presence of approximately 2 barrels of free standing oil inside the tank battery affecting a 15' x 20' area and oil-affected soil around the wellhead of Well No. 3 measuring approximately 6' x 6'. Follow-up inspection reports made on October 6, 2015, and November 3, 2015, showed the pollution remained and had not been cleaned. An inspection conducted on February 23, 2016, showed the polluted areas have been cleaned.
9. 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.
10. 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.
11. Commission District inspection reports made on September 18, 2015, October 6, 2015, and November 3, 2015, on the Republic Insurance Co. (05173) Lease showed tall, dead vegetation around Well No. 3 and inside the tank battery, which is a fire hazard. An inspection conducted on February 23, 2016, showed the vegetation has been removed.
12. Failure to remove trees and vegetation from within the fire wall creates a fire hazard.
13. 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 8(d)(1) and 21(i). 16 TEX. ADMIN. CODE §§ 3.8(d)(1) and 3.21(i).
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 8(d)(1), which prohibits the discharge of oil and gas waste without a permit.
7. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 21(i), which requires that any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least 150 feet from the vicinity of any well, tank, or pump station. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard.
8. 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.
9. An assessed administrative penalty in the amount of THREE THOUSAND ONE HUNDRED AND SIXTY-EIGHT DOLLARS (\$3,168.00) is justified considering the facts and violations at issue.
10. 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:

RWJ Operating 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 **THREE THOUSAND ONE HUNDRED AND SIXTY-EIGHT DOLLARS (\$3,168.00)**.

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