

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 7B-0277535

**ENFORCEMENT ACTION AGAINST DWIGHT NORTHCUTT AND CAROLYN KELLY
DBA D.N.I. (OPERATOR NO. 221589) FOR VIOLATIONS OF STATEWIDE RULES ON
H.A. SHAW LEASE (LEASE NO. 00994), WELL NOS. 2, 3 AND 5, COLEMAN COUNTY
REGULAR FIELD, COLEMAN 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 March 30, 2017 and that the respondents, Dwight Northcutt and Carolyn Kelly dba D.N.I., failed to appear or respond to the Notice of Opportunity for 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. Dwight Northcutt and Carolyn Kelly dba D.N.I. (“Respondent”), RRC Operator No. 221589, was sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to the most recent Commission Form P-5 (Organization Report) (“Form P-5”) address. Respondent’s officers and agents as identified on the Form P-5—Dwight Northcutt and Carolyn Kelly—were each sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to their last known address.
2. The certified mail envelopes containing the Original Complaint and Notice of Opportunity for Hearing addressed to Respondent, Dwight Northcutt and Carolyn Kelly were delivered on February 23, 2017. 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 October 25, 2011, Respondent, representing itself as a sole proprietorship, filed a Form P-5 with the Commission reporting that its officers consist of the following individuals: Dwight Northcutt, Owner and Carolyn Kelly, Owner.

4. Dwight Northcutt 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. Carolyn Kelly 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.
6. Respondent's Form P-5 is delinquent. Respondent had a \$25,000 bond as its financial assurance at the time of Respondent's last Form P-5 annual renewal submission.
7. The violations of Commission rules committed by Respondent are related to safety and the control of pollution.
8. Respondent designated itself to the Commission as the operator of the the H.A. Shaw Lease (Lease No. 00994), Well Nos. 2, 3 and 5, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective July 1, 2008 approved August 1, 2008.
9. Commission inspection reports made on November 18, 2011, January 6, 2012, February 16, 2012, February 23, 2012, and March 30, 2012, and reports filed by Respondent with the Commission (reflecting zero production) since February 2011, show that the H.A. Shaw Lease, Well Nos. 2 and 3 have been inactive for a period greater than one year. Production from the subject wells ceased on or before January 2011.
10. Commission records show that the the H.A. Shaw Lease (, Well No. 5 was permitted as an injection well on October 19, 2010, UIC No. 000006940. Commission inspection reports made on November 18, 2011, January 6, 2012, February 16, 2012, February 23, 2012, and March 30, 2012, and reports filed by Respondent with the Commission (reflecting zero injection) since April 2010, show that the H.A. Shaw Lease, Well No. 5 has been inactive for a period greater than one year. Injection into the subject well ceased on or before March 2010.
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 can become 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 H.A. Shaw Lease, Well Nos. 2, 3, and 5 is \$20,975.00.
14. A Commission inspection report made on November 18, 2011 for the H.A. Shaw Lease shows hydrocarbon soaked soil measuring 3'x3'x1" located at the wellhead of Well No. 2, hydrocarbon soaked soil measuring 4'x4'x1" located at the wellhead of Well No. 3, hydrocarbon soaked soil along with what appears to be white crystals in the soil, measuring 45'x20'x2" at the tank battery and produced water soaked soil measuring 520'x6'x2' from a leak on a 1" produced water transfer line located on the lease road. A follow up Commission inspection report made on January 6, 2012 shows the discharges to be remediated. However, a Commission inspection report made on February 6, 2012 shows hydrocarbon soaked soil measuring 15'x4'x1" at the wellhead of Well No. 2 and what appears to be white crystals measuring 45'x6" running south of the wellhead, and hydrocarbon soaked soil measuring 9'x9'x1" located around the gear box of the pump jack for Well No. 3. Follow up Commission inspection reports made on February 23, 2012, March 30, 2012, and September 26, 2012 show the discharges have not been remediated. A follow up Commission inspection report made on October 5, 2012 show the discharges to be remediated.
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. Commission records indicate no Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the the H.A. Shaw Lease, Well Nos. 2 and 3. The wells were completed in 1965, and an H-15 test was due in May 2009. The wells have not been plugged.
18. Unplugged and inactive wells over twenty-five years old, in violation of Statewide Rule 14(b)(3), may develop holes or leaks in the casing, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface.
19. Commission records reflect that on June 2, 2009, the Commission gave

Respondent notice by certified mail of the alleged facts or conduct of the Respondent in the operation, or production, of oil or gas from the H.A. Shaw Lease that appeared to violate the oil and gas conservation laws of this state, or rules or orders of the Commission adopted under those laws, to warrant the cancellation of the certificate of compliance. Said notice gave Respondent an opportunity to show compliance with all requirements of law for retention of the certificate of compliance.

20. Commission records reflect that Respondent did not timely show compliance with all requirements of law for retention of the certificate of compliance and, as a result, the certificate of compliance for the H.A. Shaw Lease, was cancelled, and Respondent given notice of such cancellation, on July 2, 2009.
21. Production reports filed by Respondent with the Commission for the H.A. Shaw Lease, from April 2010 to January 2011, show Respondent produced an approximate total of 186 bbls from and injected 3,200 bbls into the H.A. Shaw Lease after the certificate of compliance had been canceled and before a new certificate of compliance had been issued. Commission records show the violation has never been resolved, nor the severance fees paid for this severance, thus the certificate of compliance has not been reissued. Commission records show numerous subsequent severances and outstanding severance fees totaling \$9,750.00.
22. 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 14(b)(2), 8(d)(1), 14(b)(3), and 73(i) (16 TEX. ADMIN. CODE §§ 3.14(b)(2), 3.8(d)(1), 3.14(b)(3), and 3.73(i) and TEX. NAT. RES. CODE § 91.706.

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 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.
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(s) in compliance with Statewide Rule 14(b)(3), which requires the operator of any well more than 25 years old that becomes inactive to plug the well or successfully conduct a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.
9. Respondent is responsible for maintaining the subject well in compliance with Statewide Rule 73(i) and TEX. NAT. RES. CODE § 91.706, which requires the operator, upon notice from the Commission that a certificate of compliance has been cancelled, to not produce oil, gas, or geothermal resources until a new certificate of compliance has been issued by the Commission.
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 TWENTY-FIVE THOUSAND FIVE HUNDRED THIRTY-SEVEN DOLLARS (\$25,537.00) is justified considering the facts and violations at issue.
12. As persons in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Dwight Northcutt and Carolyn Kelly and any other organization in which either or both of these individuals 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. Dwight Northcutt and Carolyn Kelly dba D.N.I. shall plug the H.A. Shaw Lease, Well Nos. 2, 3 and 5 in compliance with Statewide Rules 14(b)(2) and any other applicable Commission rules and statutes.
2. Dwight Northcutt and Carolyn Kelly dba D.N.I. shall place the H.A. Shaw Lease, in compliance with Statewide Rules 8(d)(1), 14(b)(3), and 73(i), and any other applicable Commission rules and statutes.
3. Dwight Northcutt and Carolyn Kelly dba D.N.I. shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWENTY-FIVE THOUSAND FIVE HUNDRED THIRTY-SEVEN DOLLARS (\$25,537.00)**.

It is further **ORDERED** that as persons in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Dwight Northcutt and Carolyn Kelly and any other organization in which either or both 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 the Commission's order is signed, unless the time for filing a motion for rehearing has been extended under TEX. GOV'T CODE § 2001.142, by agreement under TEX. GOV'T CODE § 2001.147, or by written Commission Order issued pursuant to TEX. GOV'T CODE § 2001.146(e). If a timely motion for rehearing of an application 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 Commission Order is signed. All pending motions and request for relief not previously granted or granted herein are denied.

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 10th day of May 2017.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master
Order dated May 10, 2017)

JNC/rnf