

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 7B-0282869

ENFORCEMENT ACTION AGAINST DWIGHT NORTHCUTT AND CAROLYN KELLY DBA D.N.I. (OPERATOR NO. 221589) FOR VIOLATIONS OF STATEWIDE RULES ON THE J.W. PHILLIPS LEASE (LEASE NO. 142428), WELL NO. 2, THE J.W. PHILLIPS LEASE (LEASE NO. 142429), WELL NO. 3, AND THE J.W. PHILLIPS LEASE (LEASE NO. 11893), WELL NO. 4, J.S. LEWIS (MARBLE FALLS) FIELD, BROWN 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 respondent, 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 J.W. Phillips Lease (Lease No. 142428), Well No. 2, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective October 1, 2008, approved October 10, 2008.
9. Respondent designated itself to the Commission as the operator of the J.W. Phillips Lease (Lease No. 142429), Well No. 3, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective May 1, 2004, approved July 13, 2004.
10. Respondent designated itself to the Commission as the operator of the J.W. Phillips Lease (Lease No. 11893), Well No. 4, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective October 1, 2008, approved October 10, 2008.
11. Commission inspection reports made on January 31, 2013, March 13, 2013, and April 24, 2013, and reports filed by Respondent with the Commission (reflecting zero production) since December 2012 and no reports filed after May 2013, show that the J.W. Phillips Lease (Lease No. 142428), Well No. 2 has been inactive for a period greater than one year. Production from the subject well ceased on or before November 2012.
12. Commission inspection reports made on January 31, 2013, March 13, 2013, and April 24, 2013, and reports filed by Respondent with the Commission since April

2013 show that the J.W. Phillips Lease (Lease No. 142429), Well No. 3 has been inactive for a period greater than one year. Production from the subject well ceased on or before March 2013.

13. Commission inspection reports made on January 31, 2013, March 13, 2013, and April 24, 2013, and reports filed by Respondent with the Commission (reflecting zero production) since January 2013 and no reports filed after April 2013, and production of casinghead gas reported until March 2013, with no reports filed thereafter, show that the J.W. Phillips Lease (Lease No. 11893), Well No. 4, has been inactive for a period greater than one year. Production from the subject well ceased on or before March 2013.
14. No work-overs, re-entries, or subsequent operations have taken place on any of the subject wells within the last twelve months; none of the subject wells have been properly plugged in accordance with Statewide Rule 14, 16 TEX. ADMIN. CODE § 3.14; and no plugging extensions are in effect for any of the subject wells as allowed by Statewide Rule 14. The subject wells are not otherwise in compliance with Statewide Rule 14.
15. Usable quality groundwater in the area can become contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. 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.
16. The total estimated cost to the State for plugging the J.W. Phillips Lease (Lease No. 142428), Well No. 2 is \$15,122.00; for the J.W. Phillips Lease (Lease No. 142429), Well No. 3 is \$15,063.00; and for the J.W. Phillips Lease (Lease No. 11893), Well No. 4 is \$16,278.00.
17. 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 Rule 14(b)(2). 16 TEX. ADMIN. CODE § 3.14(b)(2).
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 leases 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. 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.
8. An assessed administrative penalty in the amount of THIRTEEN THOUSAND EIGHT HUNDRED THIRTY-FIVE DOLLARS (\$13,835.00) is justified considering the facts and violations at issue.
9. 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 J.W. Phillips Lease (Lease No. 142428), Well No. 2, the J.W. Phillips Lease (Lease No. 142429), Well No. 3, and the J.W. Phillips Lease (Lease No. 11893), Well No. 4 in compliance with Statewide Rule 14(b)(2) and any other applicable Commission rules and statutes.
2. 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 **THIRTEEN THOUSAND EIGHT HUNDRED THIRTY-FIVE DOLLARS (\$13,835.00)**.

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