



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 7B-0298247

ENFORCEMENT ACTION AGAINST REDWOOD OPERATING, INC. (OPERATOR NO. 697137) FOR VIOLATIONS OF STATEWIDE RULES ON THE F.J. HURLBUT LEASE (LEASE NO. 147937), WELL NO. 2, BROWN COUNTY REGULAR FIELD, BROWN COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY: Jennifer Cook – Administrative Law Judge

PROCEDURAL HISTORY:

Notice of Hearing Date: February 1, 2017
Hearing Date: March 16, 2017
Proposal for Decision Issued: May 24, 2017

APPEARANCES:

For Commission Staff –

Kristi Reeve, Attorney
Bill Drury, Legal Assistant
Olin Macnamara, Oil & Gas Division, Field Operations

For Redwood Operating, Inc. –

Richard Millard, President
Roland R. Baker, Consultant

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I. Statement of the Case

This is an enforcement case alleging violations of Commission rules by Redwood Operating, Inc. ("Redwood" or "Respondent"), Operator No. 697137, on the F.J. Hurlbut Lease ("Lease"), Well No. 2 ("Well 2") in the Brown County Regular Field in Brown County.

Railroad Commission ("Commission" or "RRC's") staff ("Staff") initiated this case claiming Redwood is responsible for violation of Statewide Rules 3(3), 8(d)(1), 14(b)(2) and 21(j). The alleged violation of Statewide Rule 3(3) is for failing to have required signage at the tank battery for the Lease. The alleged violation of Statewide Rule 8(d)(1) is for unauthorized discharges of hydrocarbons around the Well and Lease tank battery. Staff alleges that Well 2 is in violation of Statewide Rule 14(b)(2) for failing to comply with inactive well requirements. Staff alleges a violation of Statewide Rule 21(j) for inadequate fire wall protection around the Lease tank battery. Staff seeks a penalty of \$8,674.00 against Redwood and that Redwood be ordered to place the Lease and Well 2 in compliance with applicable Commission regulations. Staff does not seek a penalty or corrective actions for the alleged violation of Statewide Rule 21(j); Staff originally only requested compliance (no penalty) for the Rule 21(j) violation and at the hearing, Staff acknowledged that Redwood is now in compliance with Statewide Rule 21(j).

Redwood does not dispute the violations occurred. Redwood asserts that it hired a third-party contractor to correct the sign, fire wall and discharge violations. In an inspection report for a September 23, 2016 inspection, a Staff inspector documented that the fire wall had been constructed and was in compliance. Redwood claims that after the September 23 inspection, Redwood corrected the sign and discharge violations but Staff has not inspected to confirm compliance. Redwood would like Staff to do an inspection regarding compliance with these violations but has not yet requested the Commission district office to do one; Redwood plans to request a compliance inspection in the future.

The Administrative Law Judge ("ALJ") respectfully submits this Proposal for Decision ("PFD") and recommends the Commission find that the violations of Statewide Rules 3(3), 8(d)(1) and 14(b)(2) have occurred as alleged, assess a penalty of \$8,674.00 against Redwood for the violations and order Redwood to place the Lease and Well 2 in compliance with Commission rules and statutes.

II. Jurisdiction and Notice¹

Sections 81.051 and 81.052 of the Texas Natural Resources Code provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules

¹ The audio file for the hearing in this case is referred to as "Tr. Vol. [volume no.] at [hours:minutes]." Staff's exhibits admitted during its direct case are referred to as "Staff Ex. [exhibit no.]." Redwood's exhibits are referred to as "Respondent Ex. [exhibit no.]."

for governing and regulating persons and their operations under the jurisdiction of the Commission. The Commission has authority to enforce statutes, rules and orders within its jurisdiction.² The Commission expressly has jurisdiction over inactive wells.³

In a Commission enforcement case, Commission rules state that notice of an enforcement hearing with the complaint for the case included is sufficient notice.⁴ The Administrative Procedures Act requires reasonable notice of not less than ten days and that the contents of the notice must include:

- (1) a statement of the time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short, plain statement of the factual matters asserted.⁵

On February 1, 2017, Staff sent Redwood the Second Amended Original Complaint ("Complaint") for this case and a Notice of Hearing ("Notice") setting the hearing for March 16, 2017.⁶ The Notice with the Complaint provided the time, place, and nature of the hearing; statements regarding the legal authority and jurisdiction under which the hearing was to be held; references to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted. Both Staff and Redwood appeared at the hearing.

III. Applicable Legal Authority

Staff alleges violations of Statewide Rules 3(3), 8(d)(1), 14(b)(2) and 21(j).

Statewide Rules 3(3) requires a sign to be posted at or on each oil stock tank and on each remotely located satellite tank.⁷ Staff alleges Respondent failed to have a sign posted at or on the Lease tank battery.

Statewide Rules 8(d)(1) prohibits unauthorized disposal. Specifically, it states:

(d) Pollution control.

(1) Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection, subsection (e) of this section, or § 3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), or

² See, e.g., TEX. NAT. RES. CODE §§ 85.041-.042; see also TEX. NAT. RES. CODE ch. 91.

³ See, e.g., TEX. NAT. RES. CODE §§ 89.041-.042.

⁴ 16 TEX. ADMIN. CODE § 1.49(c).

⁵ TEX. GOV'T CODE §§ 2001.051(1), 2001.052(a).

⁶ See Notice of Hearing dated February 1, 2017.

⁷ 16 TEX. ADMIN. CODE § 3.3.

disposal methods required to be permitted pursuant to § 3.9 of this title (relating to Disposal Wells) (Rule 9) or § 3.46 of this title (relating to Fluid Injection into Productive Reservoirs) (Rule 46), no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.⁸

Staff alleges unauthorized discharges near Well 2 and around the Lease tank battery.

Statewide Rule 14(b)(2) requires the commencement of plugging operations on each inactive well within one year after drilling or operations cease unless the operator obtains an extension of the plugging deadline.⁹ The operator of a well identified on the most recent Commission approved operator designation form ("Form P-4") is responsible for properly plugging that well in compliance with Commission rules and regulations.¹⁰

An inactive well is defined as:

An unplugged well that has been spudded or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.¹¹

Commission rules and statutes require an operator of a well to plug that well if it has been inactive for twelve months, unless the operator obtains a plugging extension from the Commission. Staff alleges that Well 2 has been inactive over twelve months, is not plugged and there are no plugging deadline extensions for the well.

Statewide Rule 21(j) specifies fire wall requirements. Specifically, it states:

(j) Dikes or fire walls shall not be required except such fire walls must be erected and kept around all permanent oil tanks, or battery of tanks, that are within the corporate limits of any city, town, or village; or where such tanks are closer than 500 feet to any highway or inhabited dwelling or closer than 1,000 feet to any school or church;

⁸ 16 Tex. Admin. Code § 3.8(d)(1).

⁹ 16 TEX. ADMIN. CODE § 3.14(b)(2).

¹⁰ 16 TEX. ADMIN. CODE §§ 3.14(c)(1), 3.58(a)(2); see also TEX. NAT. RES. CODE §§ 89.011(a), 89.022.

¹¹ 16 TEX. ADMIN. CODE § 3.15(a)(6); see also TEX. NAT. RES. CODE § 89.002(a)(12).

or where such tanks are so located as to be deemed by the commission to be an objectionable hazard.¹²

Staff alleges that there was an insufficient fire wall surrounding the Lease tank battery.

IV. Discussion of Evidence

Staff presented the testimony of one witness and five exhibits.¹³ Redwood provided testimony of two witnesses and two exhibits.

A. Summary of Staff's Evidence and Argument

Staff's only witness was Olin Macnamara, a geoscientist with the Commission.¹⁴ He has been employed at the Commission since 2001 and works with Commission district offices on technical issues; one of his responsibilities is to review inspection reports.

Redwood's most recent Commission Form P-5 (Organization Report) ("Form P-5") was received on July 28, 2013.¹⁵ The only officer listed is Richard Scott Millard as President and Secretary. Ms. Elisabeth Pardon is listed as a Texas Resident Agent. The Notice and Complaint were sent to Mr. Millard and Ms. Pardon at the addresses provided on the Form P-5.¹⁶

The current Form P-5 status of Respondent is delinquent. The last date a Form P-5 was filed is June 28, 2013.¹⁷ Mr. Macnamara testified that the Form P-5 expired on about May 31, 2014. He further testified that because Respondent does not have an active Form P-5, it is not allowed to operate a well in Texas.¹⁸ Respondent is also non-compliant with "SB639" according to Commission records.¹⁹ Mr. Macnamara testified and Commission records reflect that the non-compliant status is for other inactive well violations in a final order in Oil & Gas Docket No. 20-0285006 which became final on or about December 9, 2013.²⁰

Well 2 is located on the F.J. Hurlbut Lease. Redwood is the current Commission operator of record for the Lease, and has been since May 1, 2010.²¹

¹² 16 Tex. Admin. Code § 3.21(j).

¹³ This case was heard at the same time as two other enforcement cases (O&G Docket Nos. 7B-0294231 and 09-0295358) against Redwood for efficiency. Each exhibit was given a unique exhibit number. Staff's exhibits pertaining to this case are Staff Exs. 1, 9-11 and B. Redwood's exhibits pertaining to this case are Respondent Exs. 1-2.

¹⁴ Tr. Vol. 1 at 00:59-01:52; Tr. Vol. 2 at 00:18-00:27.

¹⁵ Staff Ex. 1 at 1-3.

¹⁶ See Notice of Hearing dated February 1, 2017.

¹⁷ Staff Ex. 1 at 4.

¹⁸ See 16 TEX. ADMIN. CODE § 3.15(e)(2) (allows extensions only for an operator who has a current Form P-5 report).

¹⁹ Staff Ex. 1 at 4.

²⁰ Staff Ex. 1 at 6.

²¹ See Staff Ex. 9 at 1.

The last reported production for the Lease was in May 2008.²² Mr. Macnamara testified that the well has never been plugged.

Mr. Macnamara provided Commission inspection reports dated January 14, 2015; April 6, 2015; August 12, 2015 and September 23, 2015.²³ There was also a February 26, 2015 investigation, yet the inspector was unable to inspect the Lease due to muddy conditions.

Regarding the alleged Statewide Rule 3(3) violation, the inspection reports for the January 14, 2015; April 6, 2015; August 12, 2015 and September 23, 2015 inspections all note that there was no sign at the tank battery on the Lease.

Mr. Macnamara discussed the information in the inspection reports related to the alleged Statewide Rule 8(d)(1) violation. Unauthorized discharges were documented during each of the January 14, April 6, August 12 and September 23 inspections.

In the January 14, 2015 inspection report, the inspector documented observing hydrocarbons around the Lease tank battery with an area of impact of approximately 60' x 35' x 2". The inspector also documented observing hydrocarbon soaked soil near Well 2 with an area of impact approximately 12' x 6' x 2". The inspection report also contained photographs of the contamination at both the tank battery and Well 2. According to the photographs, the discharges did not look fresh and appeared to have been there for an extended period. There was lack of vegetation and portions of the discharge area appeared to be dry, hardening and cracking. In the April 6 and the August 12 inspection reports, the inspector documented that the two discharges noted in the January 14 inspection report were still present and in no better condition. The April 6 and August 12 inspection reports also document the observation of a third discharge. The inspectors observed a new area of hydrocarbon soaked soil around the tank battery with an estimated impacted area of 130' x 4' x 1" at the April 6 inspection and 60' x 4' x 1" at the August 12 inspection. Pictures of the discharges were included in both reports. In the September 23 inspection, the inspector observed substantial remediation of the discharges at the Lease and Well. However, some hydrocarbon soaked soil was still observed. Pictures of the remediation and remaining contaminated soil were included with the report.

Mr. Macnamara discussed the information in the inspection reports related to the alleged Statewide Rule 14(b)(2) violation. Well 2 was non-operational at the original January 14 inspection and the inspector noted in the report that he sealed Well 2. Well 2 was also observed to be non-operational at the April 6 and September 23, 2015 inspections.

²² Staff Exs. 10, 10a.

²³ Staff Ex. 11.

Regarding the alleged Statewide Rule 21(j) violation, the inspection reports for the January 14, 2015; April 6, 2015; and August 12, 2015 all note that there was an insufficient fire wall at the tank battery on the Lease. Pictures were provided in the reports. In the September 23, 2015 inspection report, the inspector documented that the fire wall violation was in compliance and the fire wall had been repaired. A picture of the reconstructed fire wall was provided as part of the report. Based on the compliance documented in this inspection report, at the hearing Staff withdrew its request for any order of corrective action for this alleged violation. Staff also clarified that, as stated in the Complaint, Staff is not seeking any penalty for this violation. Accordingly, Staff is not seeking any ordering provisions for the alleged Statewide Rule 21(j) violation.

Mr. Macnamara discussed the enforcement process and the process for notifying operators of violations. Typically, the first time an inspector documents a violation, he notes it in the inspection report and a letter is sent to the operator notifying the operator of the violation and allowing the operator to achieve compliance without further enforcement. The second time the same violation is observed, a certified letter is sent to the operator notifying the operator of the violation and allowing time for the operator to achieve compliance without further enforcement. If the violation is documented a third time after the two letters, the matter is referred to the Commission Enforcement Section and an enforcement case is pursued including the assessment of penalties. All correspondence to the operator is sent to the operator's Form P-5 address on file with the Commission.²⁴

B. Summary of Redwood's Evidence and Argument

Redwood's witnesses were Mr. Richard Millard, President of Redwood, and consultant Roland Baker.²⁵

Redwood did not deny the violations or provide any evidence controverting Staff's evidence. Redwood maintains it is merely a "contracting" operator for other operators that are ineligible for a current Form P-5. For example, if an operator cannot obtain a Form P-5 due to unresolved violations, Redwood agrees to be the operator of record at the Commission and the ineligible operator still operates the well.²⁶

Mr. Millard testified that he hired a contractor to remediate the site and paid him \$5,600.²⁷ It took several attempts to remediate due to inclement weather. Mr. Baker recommended that Redwood hire the contractor based on his knowledge of the positive reputation of the contractor and that the contractor has twenty years

²⁴ See, e.g., Tr. Vol. 1 at 01:42-01:45. There are some violation that are referred directly to the Enforcement Section when they are initially observed but there are no violations meeting that criteria in this case.

²⁵ Tr. Vol. 2 at 00:05-00:18.

²⁶ See Tr. Vol. 1 at 00:08-00:11.

²⁷ Respondent Ex. 1.

of experience in general oil and gas independent contractor work, including remediating sites.

Respondent provided pictures showing the remediation efforts and that there is a sign on the tank battery, but it is not legible in the pictures.²⁸ Mr. Milliard would like staff to do another inspection to verify compliance.²⁹ Neither Mr. Milliard nor Mr. Baker have been to the site. Mr. Milliard believes the lease is clean now.

V. ALJ's Analysis

The ALJ finds that Staff provided sufficient evidence as to three violations alleged. Redwood did not dispute any of the violations. The ALJ recommends the Commission find that the violations of Statewide Rules 3(3), 8(d)(1) and 14(b)(2) have occurred as alleged, assess a penalty of \$8,674.00 against Redwood for the violations and order Redwood to place the Lease and Well 2 in compliance with Commission rules and statutes.

A. Violation of Statewide Rule 3(3)

Staff alleges a violation of 16 TEX. ADMIN. CODE § 3.3(3), otherwise known as Statewide Rule 3(3). Staff alleges that there was no sign at the Lease tank battery. Statewide Rule 3(3) requires a sign to be posted at or on each oil stock tank. Inspection reports for inspections on January 14, 2015; April 6, 2015; August 12, 2015 and September 23, 2015 all document that no sign was observed at the Lease tank battery. Based on the evidence, the ALJ finds that Redwood is in violation of Statewide Rule 3(3).

B. Violation of Statewide Rule 8(d)(1)

Staff alleges a violation of 16 TEX. ADMIN. CODE § 3.8(d)(1), otherwise known as Statewide Rule 8(d)(1). Statewide Rule 8(d)(1) prohibits unauthorized discharges. Staff alleges there were two unauthorized discharges around the Lease tank battery and one discharge near Well 2. Inspection reports for inspections on January 14, 2015 document a discharge around the tank battery and one near Well 2. Inspection reports for inspections on April 6, 2015 and August 12, 2015 document that the two discharges documented in the January 14 inspection report were still present and that a third discharge also around the tank battery was present. An inspection report for an inspection on September 23, 2015 document that substantial remediation had occurred but there was still contamination from the discharges present. Based on the evidence, the ALJ finds that Redwood is in violation of Statewide Rule 8(d)(1).

²⁸ Respondent Ex. 2.

²⁹ Staff represented that there is a process for requesting a compliance inspection, which is to request one from the applicable Commission district office. Staff requests the Commission order corrective action until the appropriate Commission district office staff verifies compliance.

C. Violation of Statewide Rule 14(b)(2)

Staff alleges a violation of 16 TEX. ADMIN. CODE § 3.14(b)(2), otherwise known as Statewide Rule 14(b)(2). Staff alleges that Well 2 is inactive, ineligible for plugging extensions and has not been plugged as required.

According to Commission records, Redwood does not have an active approved Form P-5 and has not had one since May 2014. As such, Redwood has been prohibited from engaging in oil and gas exploration and production activities in Texas, including operating oil or gas wells.³⁰ Additionally, Redwood is identified in Commission records as non-compliant with “SB639.” “SB639” refers to Senate Bill 639 that was passed in 1995 and amended TEX. NAT. RES. CODE § 91.114 to prohibit approval of organization reports (i.e. Form P-5s) from persons or entities that have been found to be in violation of certain Commission regulations, mainly violations relating to safety or the prevention or control of pollution.³¹ Consequently, because Redwood is non-compliant with “SB639” according to Commission records, it is currently ineligible to obtain approval of a P-5.³²

In addition to being prohibited from operating a well, because Redwood does not have an active Form P-5, it is ineligible for extensions of plugging deadlines for inactive wells.³³

Redwood has been the operator of record for Well 2 from May 1, 2010 until present. There has been no reported production for Well 2 since May 2008, before Redwood became the operator. Additionally, according to Commission inspection reports dated January 14, April 6 and September 23, 2015, Well 2 was non-operational. Because Well 2 is unplugged and there has been no reported activity for over twelve months, it qualifies as an inactive well per Commission rules.³⁴

Statewide Rule 14(b)(2) requires operators to commence plugging an inactive well within a year after operations cease. According to the evidence, operations of Well 2 ceased in June 2008; it became an inactive well and plugging operations were required to commence no later than July 2009. There is no dispute that Well 2 has not been plugged while Redwood has been the operator. As such, Redwood has been in violation of Statewide Rule 14(b)(2) for Well 2 from May 1, 2010—when Redwood became the operator—until present.

³⁰ See 16 TEX. ADMIN. CODE § 3.1(a)(1).

³¹ Act of 1995, 74th Leg., R.S., ch. 617 (S.B. 639), § 1, eff. Sept. 1, 1995 (codified at Tex. Nat. Res. Code § 91.114).

³² A person can regain eligible status for a Form P-5 approval by correcting the violations and paying all applicable penalties, clean up and plugging costs. See TEX. NAT. RES. CODE § 91.114(d).

³³ See 16 TEX. ADMIN. CODE § 3.15(e)(2) (allows extensions only for an operator who has a current Form P-5 report).

³⁴ See 16 TEX. ADMIN. CODE § 3.15(a)(6).

D. Violation of Statewide Rule 21(j)

Because Staff requests no Commission action—neither a penalty assessment or ordered corrective action—for the alleged Statewide Rule 21(j) violation, the ALJ recommends no finding as to the occurrence of this violation.

Originally, Staff alleged a violation of Statewide Rule 21(j) and requested an ordering provision requiring Redwood to become compliant with Statewide Rule 21(j). From the beginning, Staff has not sought any penalty for this alleged violation. Currently, Staff seeks no ordering provision related to this violation so any finding as to its validity is immaterial to what Staff is currently requesting in this case. Because any finding as to the occurrence of a Statewide Rule 21(j) violation is immaterial, the ALJ recommends that the Commission issue no findings as to this violation.

E. The Penalty

Staff recommends a penalty of \$8,674.00 based on the penalty guidelines in Statewide Rule 107.

The Commission may assess administrative penalties against Respondent up to \$10,000 per day for each violation, with each day such violation continues constituting a separate violation.³⁵ Commission Statewide Rule 107 provides guidelines to be utilized when assessing enforcement penalties.³⁶ Statewide Rule 107 provides factors that are to be considered. Specifically, Statewide Rule 107(d) states:

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

- (1) the person's history of previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health or safety of the public; and
- (4) the demonstrated good faith of the person charged.³⁷

Rule 107 also provides guideline minimum penalties for typical violations.³⁸

³⁵ TEX. NAT. RES. CODE § 81.0531.

³⁶ See 16 TEX. ADMIN. CODE § 3.107(b).

³⁷ 16 TEX. ADMIN. CODE § 3.107(d).

³⁸ 16 TEX. ADMIN. CODE § 3.107(e)(1) and (j).

The guideline minimum penalty for failure to comply with tank battery sign requirements (Statewide Rule 3(3)) is \$1,000.³⁹ Staff recommends a penalty of \$1,000 for the Statewide Rule 3(3) violation.

The guideline minimum penalty for improper disposal of oil and gas waste (Statewide Rule 8(d)(1)) is \$500 plus \$0.30 per square-foot of the discharge area.⁴⁰ Staff recommends a penalty of \$2,254 for the Statewide Rule 8(d)(1) violation, which equates to \$500 per violation (two discharges around the tank battery and one around Well 2) plus \$0.30 per square-foot of an estimated total discharge area of 2,513.3 square-feet.

The guideline minimum penalty for failure to plug an onshore well (Statewide Rule 14(b)(2)) is \$2,000 plus \$1 per foot of total depth of the well.⁴¹ Staff recommends a penalty of \$5,420 for the Statewide Rule 14(b)(2) violation, which equates to \$2,000 plus \$1 per foot of Well 2's total well depth of 3,420 feet.

Staff requests no penalty for the alleged Statewide Rule 21(j) violation.

The ALJ finds the evidence supports assessment of the \$8,674.00 penalty recommended by Staff.

F. Corrective action

At the most recent Staff inspection, on September 23, 2015, the inspector documented the existence of the violations of Statewide Rules 3(3) and 8(d)(1). Respondent claims the violations of Statewide Rules 3(3) and 8(d)(1) have been remedied. At the time of the hearing, Respondent had not communicated with the Commission district office to request an inspection to confirm compliance or otherwise communicate with the district office to demonstrate compliance. Consequently, the district office has not verified compliance. There is no dispute that Well 2 is still unplugged and in violation of Statewide Rule 14(b)(2). The ALJ finds that corrective actions requiring compliance with Statewide Rules 3(3), 8(d)(1) and 14(b)(2) are appropriate. To the extent Respondent is already in compliance with any of these violations, there is no detriment to Respondent to having these corrective actions included in a final order.

VI. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law

Based on the record in this case and evidence presented, the ALJ recommends the Commission find that the violations of Statewide Rules 3(3), 8(d)(1) and 14(b)(2) have occurred as alleged; assess a penalty of \$8,674.00 against Redwood for those violations; order Redwood to place the Lease and Well

³⁹ 16 TEX. ADMIN. CODE § 3.107(e)(1)(Table 1) and (j)(Table 5).

⁴⁰ 16 TEX. ADMIN. CODE § 3.107(e)(1)(Table 1) and (j)(Table 5).

⁴¹ 16 TEX. ADMIN. CODE § 3.107(e)(1)(Table 1) and (j)(Table 5).

2 in compliance with Commission rules and statutes; adopt the following findings of fact and conclusions of law; and issue the recommended following proposed ordering provisions.

Findings of Fact

1. On February 1, 2017, Redwood Operating, Inc. ("Respondent"), Operator No. 697137, was sent the Second Amended Original Complaint ("Complaint") for this case and a Notice of Hearing ("Notice"), for March 16, 2017, 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 were each sent the Complaint and Notice by certified and first class mail, addressed to their last known address.
2. The Notice with the Complaint provided the time, place, and nature of the hearing; statements regarding the legal authority and jurisdiction under which the hearing was to be held; references to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted.
3. Both Staff and Redwood appeared at the hearing on March 16, 2017.
4. Respondent was given more than 30 days' notice of the Complaint and Notice.
5. On or about June 28, 2013, Respondent filed its most recent Form P-5 with the Commission reporting that its officers consist of the following individual: Richard Scott Millard, President and Secretary.
6. Richard Scott Millard 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.
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 F.J. Hurlbut Lease ("Lease"), Well No. 2 ("Well 2"), by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective May 1, 2010. Respondent remains the operator of record for Well 2.
9. There has been no reported production for Well 2 since May 2008.

10. Respondent's Form P-5 has been delinquent since approximately May 2014. There have been no and Respondent was not eligible for plugging deadline extensions for Well 2.
11. Redwood is non-compliant with "SB639" according to Commission records. Consequently, it is currently ineligible to obtain approval of a P-5.
12. Commission inspection reports made on January 14, 2015; April 6, 2015; August 12, 2015 and September 23, 2015 show that the sign or identification required to be posted at the Lease tank battery was missing.
13. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rule 3(3), 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.
14. A Commission inspection report made on January 14, 2015 show a discharge around the Lease tank battery (hydrocarbons on water) with an estimated area of impact of 60' x 35' x 2" deep and a hydrocarbon discharge near Well 2 with an estimated area of impact of 12' x 6' x 2" deep. Commission inspection reports made on April 6, 2015 and August 12, 2015 show that the two discharges documented in the January 14 inspection report were still present and that a third discharge of hydrocarbon soaked soil was present around the tank battery with an estimated area of impact of 130' x 4' x 1". A Commission inspection report made on September 23, 2015 shows that substantial remediation had occurred but there was still contamination from the discharges present.
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.
17. Commission inspection reports made on January 14, April 6 and September 23, 2015, and either reports filed with the Commission reflecting zero production or the absence of production reports being filed with the Commission, show that Well 2 has been inactive for a period greater than one year. Production from Well 2 ceased in June 2008.
18. No work-overs, re-entries, or subsequent operations have taken place on Well 2 within the last twelve months; Well 2 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 Well 2 as allowed by Statewide Rule 14. Well 2 is not otherwise in compliance with Statewide Rule 14.

19. 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.

Conclusions of Law

1. Proper notice was issued by the Commission to Respondent and all other appropriate persons legally entitled to notice. *See, e.g.*, TEX. GOV'T CODE § 2001.051-.052; 16 TEX. ADMIN. CODE § 1.49.
2. The Commission has jurisdiction in this case. *See, e.g.*, TEX. NAT. RES. CODE §§ 81.051, 81.0512, 85.041-.042; *see also* TEX. NAT. RES. CODE ch. 91.
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(3), 8(d)(1) and 14(b)(2). 16 TEX. ADMIN. CODE §§ 3.3(3), 3.8(d)(1), 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 Lease in compliance with Statewide Rule 3(3), which requires that each tank battery that produces oil, gas, or geothermal resources shall post signs or identification showing the name of the property, commission lease number, name of the operator, number of acres in the property and if commingled, include the commingling permit number.
7. Respondent is responsible for maintaining the 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 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. 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.
10. An assessed administrative penalty in the amount of EIGHT THOUSAND SIX HUNDRED SEVENTY-FOUR DOLLARS (\$8,674.00) is justified considering the facts and violations at issue.
11. 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, Richard Scott Millard, and any other organization in which this individual 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.

Ordering Provision Recommendations

The ALJ recommends the Commission enter an order with the following ordering provisions:

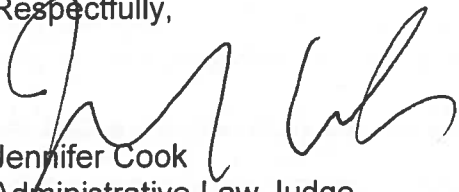
IT IS ORDERED THAT within 30 days from the day immediately following the date this order becomes final:

1. Redwood Operating, Inc. shall place the Lease and Well 2 in compliance with Statewide Rules 3(3), 8(d)(1) and 14(b)(2), and any other applicable Commission rules and statutes.
2. Redwood Operating, Inc. shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **EIGHT THOUSAND SIX HUNDRED SEVENTY-FOUR DOLLARS (\$8,674.00)**.

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, Richard Scott Millard 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.

Respectfully,



Jennifer Cook
Administrative Law Judge