

CHRISTI CRADDICK, *CHAIRMAN*
RYAN SITTON, *COMMISSIONER*
WAYNE CHRISTIAN, *COMMISSIONER*



RANDALL D. COLLINS, *DIRECTOR*

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 09-0295358

ENFORCEMENT ACTION AGAINST REDWOOD OPERATING, INC. (OPERATOR NO. 697137) FOR VIOLATIONS OF STATEWIDE RULES ON THE ABE LINCOLN LEASE (LEASE NO. 05490), WELL NOS. 1L, 1W, 2L, 2W, 3, 3L, 4, 4L, 6, 6L, 7, 8, 9W, 10G, 11G, 12, 13, 14, 15W, 16, 17, 19, 20, 21, 22 AND 24, WICHITA COUNTY REGULAR FIELD, WICHITA 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

Table of Contents

I.	Statement of the Case.....	3
II.	Jurisdiction and Notice.....	3
III.	Applicable Legal Authority	4
IV.	Discussion of Evidence.....	6
	A. Summary of Staff's Evidence and Argument	7
	B. Summary of Redwood's Evidence and Argument.....	9
V.	ALJ's Analysis	10
	A. Violation of Statewide Rule 3(1).....	10
	B. Violation of Statewide Rule 3(2).....	11
	C. Violation of Statewide Rule 3(3).....	11
	D. Violation of Statewide Rule 8(d)(2)	11
	E. Violation of Statewide Rule 13(a)(6)(A).....	11
	F. Violation of Statewide Rule 14(b)(2)	12
	G. Violation of Statewide Rule 17(a).....	13
	H. Violation of Statewide Rule 46(j)	13
	I. Violation of Statewide Rule 73(i) and Tex. Nat. Res. Code § 91.706.....	13
	J. The Penalty.....	13
	K. Corrective Action.....	14
VI.	Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law.....	14

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 Abe Lincoln Lease (Lease No. 05490) (the "Lease"), Well Nos. 1L, 1W, 2L, 2W, 3, 3L, 4, 4L, 6, 6L, 7, 8, 9W, 10G, 11G, 12, 13, 14, 15W, 16, 17, 19, 20, 21, 22 and 24, (the "Wells") in the Wichita County Regular Field in Wichita County.

Railroad Commission ("Commission" or "RRC's") staff ("Staff") initiated this case claiming Redwood is responsible for violation of Statewide Rules 3(1), 3(2), 3(3), 8(d)(2), 13(a)(6)(A), 14(b)(2), 17(a), 46(j) and 73(i) and TEX. NAT. RES. CODE § 91.706. The alleged violations of Statewide Rules 3(1), 3(2) and 3(3) are for failing to have required signage at the Lease entrance, wells and tank battery. The alleged violation of Statewide Rule 8(d)(2) is for unauthorized workover pits at the Lease. The alleged violation of Statewide Rule 13(a)(6)(A) is for casing or tubing open to the atmosphere. Staff alleges that all twenty-six of the Lease wells are in violation of Statewide Rule 14(b)(2) for failing to comply with inactive well requirements. The alleged violation of Statewide Rule 17(a) is for failing to have Bradenhead equipment. The alleged violation of Statewide Rule 46(j) is for failing to perform annual integrity tests on the injection well at the Lease. The alleged violation of Statewide Rule 73(i) is for operating severed wells, which is prohibited.

Redwood does not dispute the violations. Redwood was unaware of the extent of the problems because Respondent's address on file with the Commission is incorrect—through no fault of the Commission. Redwood claims that it has made efforts to achieve compliance with all the violations except the Rule 14(b)(2) violations.

The Administrative Law Judge ("ALJ") respectfully submits this Proposal for Decision ("PFD") and recommends the Commission find that the violations of Statewide Rules have occurred as alleged, assess a penalty of \$155,902.00 against Redwood for the violations and order Redwood to place the Lease 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 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

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.]."

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.

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(1), 3(2), 3(3), 8(d)(2), 13(a)(6)(A), 14(b)(2), 17(a-b), 46(j) and 73(i) and a violation of TEX. NAT. RES. CODE § 91.706.

Statewide Rules 3(1) requires a sign to be posted at the main entrance of a lease that identifies the name of the property, the name of the operator and the number of acres in the lease.⁷ Staff alleges Respondent's sign posted at the Lease entrance contains incorrect information.

Statewide Rules 3(2) requires a sign to be posted at each well identifying the name of the property, the name of the operator and the well number.⁸ Staff alleges Respondent failed to have signs posted at the wells or the signs posted did not contain the required information.

Statewide Rules 3(3) requires a sign to be posted at or on each tank battery that identifies the name of the property, the name of the operator, the number of acres in the lease and the Commission formation from which oil stored in the tank battery is produced.⁹ Staff alleges Respondent failed to have a sign posted at or on the Lease tank battery.

⁴ 16 TEX. ADMIN. CODE § 1.49(c).

⁵ Tex. Gov't Code §§ 2001.051(1) and 2001.052(a).

⁶ See Notice of Hearing dated February 1, 2017.

⁷ 16 TEX. ADMIN. CODE § 3.3(1).

⁸ 16 TEX. ADMIN. CODE § 3.3(2).

⁹ 16 TEX. ADMIN. CODE § 3.3(3).

Statewide Rules 8(d)(2) prohibits unauthorized pits. Specifically, it states:

(2) Prohibited pits. No person may maintain or use any pit for storage of oil or oil products. Except as authorized by this subsection, no person may maintain or use any pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, without obtaining a permit to maintain or use the pit. A person is not required to have a permit to use a pit if a receiver has such a permit, if the person complies with the terms of such permit while using the pit, and if the person has permission of the receiver to use the pit. The pits required by this paragraph to be permitted include, but are not limited to, the following types of pits: saltwater disposal pits; emergency saltwater storage pits; collecting pits; skimming pits; brine pits; brine mining pits; drilling fluid storage pits (other than mud circulation pits); drilling fluid disposal pits (other than reserve pits or slush pits); washout pits; and gas plant evaporation/retention pits. If a person maintains or uses a pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, and the use or maintenance of the pit is neither authorized by this subsection nor permitted, then the person maintaining or using the pit shall backfill and compact the pit in the time and manner required by the director. Prior to backfilling the pit, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.¹⁰

Staff alleges there were unauthorized pits on the Lease during Commission inspections.

Statewide Rules 13(a)(6)(A) prohibits uncontrolled casing or tubing open to the atmosphere. Specifically, it states:

(A) Wellhead assemblies. After setting the conductor pipe on offshore wells or surface casing on land or bay wells, wellhead assemblies shall be used on wells to maintain surface control of the well at all times. Each component of the wellhead shall have a pressure rating equal to or greater than the anticipated pressure to which that particular component might be exposed during the course of drilling, testing, or producing the well.

Staff alleges that during Commission inspections, wells on the Lease were observed to have casing or tubing open to the atmosphere.

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.¹¹ 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.¹²

¹⁰ 16 Tex. Admin. Code § 3.8(d)(2).

¹¹ 16 TEX. ADMIN. CODE § 3.14(b)(2).

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

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.¹³

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 all twenty-six wells on the Lease have been inactive over twelve months, are not plugged and there are no plugging deadline extensions for the wells.

Statewide Rule 17(a) states:

(a) All wells shall be equipped with a Bradenhead. Whenever pressure develops between any two strings of casing, the district office shall be notified immediately. No cement may be pumped between any two strings or pipe at the top of the hole, except after permission has been granted by the district office.

Staff alleges that two wells on the Lease did not have required Bradenhead equipment.

Statewide Rules 46(j) requires periodic mechanical integrity tests for injection wells.¹⁴ Staff alleges Respondent failed to annually perform mechanical integrity tests for Well 6, which is an injection well.

Statewide Rule 73(i) and NAT. RES. CODE § 91.706 prohibits operators from operating severed wells until a new certificate of compliance for that well is issued by the Commission.¹⁵ A severed well is a well for which the Commission has canceled the certificate of compliance due to violations in connection with operating the well.¹⁶ An approved certificate of compliance is required to operate a well in Texas.¹⁷ Staff alleges that some of the wells on the Lease were in operation while the Lease was severed.

IV. Discussion of Evidence

Staff presented the testimony of one witness and eight exhibits.¹⁸ Redwood provided testimony of two witnesses and four exhibits.

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

¹⁴ 16 TEX. ADMIN. CODE § 3.46(j).

¹⁵ 16 TEX. ADMIN. CODE § 3.73(i), NAT. RES. CODE § 91.706.

¹⁶ 16 TEX. ADMIN. CODE § 3.73(d).

¹⁷ See generally 16 TEX. ADMIN. CODE § 3.58.

¹⁸ This case was heard at the same time as two other enforcement cases (O&G Docket Nos. 7B-0294231 and 7B-0298247) against Redwood for efficiency. Each exhibit was given a unique exhibit number. Staff's exhibits pertaining to this case were Exhibits 1, 12-17 and Exhibit C. Respondent's exhibits for this case are Exhibits 3-6.

A. Summary of Staff's Evidence and Argument

Staff's only witness was Olin Macnamara, a geoscientist with the Commission.¹⁹ 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, 2013.²⁰ 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-5.²¹

The current Form P-5 status of Respondent is delinquent. The last date a Form P-5 was filed is June 28, 2013.²² Mr. Macnamara testified that the Form P-5 expired on or 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.²³ Respondent is also non-compliant with "SB639" according to Commission records.²⁴ 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, 2013.²⁵

Redwood is the current Commission operator of record for the Lease, and has been since June 1, 2009.²⁶ The last reported production for the Lease was in February 2013.²⁷ The Lease contains twenty-six wells unplugged and identified in Commission records. The Lease contains one injection well, Well No. 6. The last reported injection for Well No. 6 was in May 2013.²⁸

Mr. Macnamara provided Commission inspection reports dated August 5, 2013; August 7, 2013; October 20, 2014 and October 3, 2016.²⁹ Violations observed were documented in the reports and pictures of the observations and alleged violations were included.

Regarding the alleged Statewide Rule 3(1) violation, the inspection report for the October 20, 2014 inspection documents that there was no sign at the Lease entrance. The inspection report for the October 3, 2016 inspection documents that the sign at the Lease entrance contained the wrong information.

¹⁹ See Tr. Vol. 2 at 00:26-01:32.

²⁰ Staff Ex. 1 at 1-3.

²¹ See Notice of Hearing dated February 1, 2017.

²² Staff Ex. 1 at 4.

²³ See 16 TEX. ADMIN. CODE § 3.15(e)(2) (allows extensions only for an operator who has a current Form P-5 report).

²⁴ Staff Ex. 1 at 4.

²⁵ Staff Ex. 1 at 6.

²⁶ See Staff Ex. 12 at 1.

²⁷ Staff Ex. 14.

²⁸ Staff Ex. 13.

²⁹ Staff Ex. 16.

Regarding the alleged Statewide Rule 3(2) violation, the inspection report for the August 5, 2013 inspection documents that there was no sign for 15 of the wells on the Lease: Well Nos. 1L, 1W, 2W, 4, 4L, 6, 8, 10G, 11G, 13, 15W, 16, 19, 22 and 24. The inspection report for the August 7, 2013 inspection documents that there was no sign for two additional wells: Well Nos. 12 and 14. The inspection report for the October 20, 2014 inspection documents that all twenty-six wells on the Lease were not in compliance; Well Nos. 1L, 1W, 3, 4, 4L and 21 had signs with the wrong operator identified and Well Nos. 2L, 2W, 3L, 6, 6L, 7, 8, 9W, 10G, 11G, 12, 13, 14, 15W, 16, 17, 19, 20, 22 and 24 had no sign. The inspection report for the October 3, 2016 inspection documents that there were 11 wells not in compliance; Well Nos. 3L, 6L, 7, 8 and 9W had signs with incorrect information and Well Nos. 1L, 1W, 2L, 12, 13 and 14 had no sign.

Regarding the alleged Statewide Rule 3(3) violation, the inspection reports for the October 20, 2014 and October 3, 2016 inspections both note that there was no sign at the tank battery on the Lease.

Regarding the alleged Statewide Rule 8(d)(2) violation, the inspection report for the August 5, 2013 inspection documents a pit with standing oil and an estimated impact area of 3' x 8' x 3' with a trail of oil leading to the pit that has an estimated impact area of 15' x 5' x 3'. The inspection report for the October 20, 2014 inspection documents five unlined workover pits: one near Well No. 3L with an estimated impact area of 20' x 15' x 1'; one near Well No. 6L with an estimated impact area of 30' x 20' x 1'; one near Well No. 9W with an estimated impact area of 20' x 15' x 1'; one near Well No. 12 with an estimated impact area of 30' x 20' x 1'; and one near Well No. 14 with an estimated impact area of 30' x 20' x 1'. The inspection report for the October 3, 2016 inspection documents three remaining open pits: one near Well No. 6L; one near Well No. 9W; and one near Well No. 14.

Regarding the alleged Statewide Rule 13(a)(6)(A) violation, the inspection report for the August 5, 2013 inspection documents that the following wells had casing open to the atmosphere: Well Nos. 2W, 4, 10G, 13, 16, 20 and 24; Well No. 22 was observed with tubing open to the atmosphere. The inspection report for the August 7, 2013 inspection documents that there were two additional wells with open casing: Well Nos. 6L and 14. The inspection report for the October 20, 2014 inspection documents that the following wells on the Lease had casing or tubing open to the atmosphere: Well Nos. 1L, 1W, 2W, 3, 4, 4L, 6L, 8, 10G, 11G, 13, 14, 15W, 16, 17, 19, 20, 21, 22 and 24. The inspection report for the October 3, 2016 inspection documents that the following wells were still open to the atmosphere: Well Nos. 1L, 6L, 13, and 14.

Regarding the alleged Statewide Rule 14(b)(2) violation, the inspection report for the August 5, 2013 inspection documents that the following wells were non-operational: Well Nos. 1W, 2W, 3L, 4, 4L, 8, 10G, 11G, 13, 15W, 16, 19, 20, 21, 22 and 24. The inspection report for the August 7, 2013 inspection documents that there were seven additional wells non-operational: Well Nos. 2L, 3L, 6L, 7, 9W, 12 and 14. The inspection report for the October 20, 2014 inspection documents that all twenty-six wells on the

Lease were non-operational. The inspection report for the October 3, 2016 inspection documents that all wells inspected were still non-operational.

Regarding the alleged Statewide Rule 17(a) violation, the inspection report for the October 20, 2014 inspection documents that Well No. 6 had no Bradenhead observation valve and Well No. 8 had no Bradenhead.

Regarding the alleged Statewide Rule 46(j) violation, Staff provided Commission records stating that Well No. 6 is an injection well requiring an annual mechanical integrity test and that no test was taken between November 23, 2009 and the date of the most recent test, April 8, 2016.³⁰

Regarding the alleged Statewide Rule 73(i) and TEX. NAT. RES. CODE § 91.706 violation, Staff provided Commission records showing that the Lease had been severed since October 5, 2012.³¹ The inspection report for the August 5, 2013 inspection documents that the following wells were active: Well Nos. 1L, 6 and 17.

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 time for the operator to achieve compliance with no 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.³²

B. Summary of Redwood's Evidence and Argument

Redwood's witnesses were Mr. Richard Millard, President of Redwood, and consultant Roland Baker.³³

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.³⁴

³⁰ Staff Ex. 13.

³¹ Staff Ex. 17.

³² 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.

³³ Tr. Vol. 2 at 01:01-01:33.

³⁴ See Tr. Vol. 1 at 00:08-00:11.

Redwood claims it did not get notice of the inspections and inspection reports relied on by Staff because it did not have a correct address on file with the Commission, through no fault of the Commission. Redwood became aware that there were problems with the Lease and did obtain copies of a March 21, 2016³⁵ inspection report. Mr. Millard believed that the March 21 report identified all the violations at the Lease. However, it states that it is a "Partial Lease Inspection" and only addresses seven of the twenty-six wells. Based on the March 21 inspection, Redwood hired a contractor to remedy the violations, other than the Rule 14(b)(2) violations. Then, Mr. Millard obtained a copy of an August 1, 2016³⁶ inspection report. He believed that the August 1 report identified all remaining violations. However, it states that it is a "Partial Lease Inspection" and only addresses six of the twenty-six wells. He compiled a chart comparing the violations from the March 21 report to the August 1 report to show that many of the violations in the March 21 inspection had been addressed.³⁷

Mr. Millard did not dispute the violations in any of the reports relied on by Staff. Mr. Millard and Mr. Baker both testified that while there are still problems with the Lease, much work had been done between the 2013-2014 reports and the most recent October 3, 2016 report. Mr. Millard claimed that much work had been done to clean the Lease. He acknowledged that none of the Rule 14(b)(2) violations have been addressed.

Staff acknowledges that there have been improvements on the Lease. Staff asserts that improvements do not nullify that the violations did exist and that there are still violations. Staff also commented that the penalty requested in this case was calculated based on one instance for each violation so the length of time for each violation does not impact the requested penalty.

V. ALJ's Analysis

The ALJ finds that Staff provided sufficient evidence as to all violations alleged. Redwood did not dispute any of the violations. The ALJ recommends that the Commission find the violations occurred as alleged, assess Staff's recommended penalty of \$155,902.00 against Redwood for the violations and order Redwood to place the Lease and wells in compliance with Commission rules and statutes.

A. Violation of Statewide Rule 3(1)

Staff alleges a violation of Statewide Rule 3(1).³⁸ Staff alleges that there was not the required sign at the Lease entrance. Statewide Rule 3(1) requires particular information be posted on a sign at the main entrance of a lease. Inspection reports made on October 20, 2014 and October 3, 2016 document that either no sign was present at the Lease entrance or the sign did not contain the required information. Based on the evidence, the ALJ finds that Redwood violated Statewide Rule 3(1).

³⁵ Respondent Ex. 4.

³⁶ Respondent Ex. 3.

³⁷ Respondent Ex. 5.

³⁸ 16 TEX. ADMIN. CODE § 3.3(1).

B. Violation of Statewide Rule 3(2)

Staff alleges a violation of Statewide Rule 3(2).³⁹ Staff alleges that there were not required signs at the wells. Statewide Rule 3(2) requires a sign to be posted at or on each well. Inspection reports for inspections on August 5, 2013; August 7, 2013; October 20, 2014 and October 3, 2016 document that either no sign was present or the sign did not contain the required information, as to all twenty-six wells on the Lease. Based on the evidence, the ALJ finds that Redwood violated Statewide Rule 3(3).

C. Violation of Statewide Rule 3(3)

Staff alleges a violation of Statewide Rule 3(3).⁴⁰ 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 October 20, 2014 and October 3, 2016 document that no sign was observed at the Lease tank battery. Based on the evidence, the ALJ finds that Redwood violated Statewide Rule 3(3).

D. Violation of Statewide Rule 8(d)(2)

Staff alleges a violation of Statewide Rule 8(d)(2).⁴¹ Staff alleges that there were unauthorized pits at the Lease. Statewide Rule 8(d)(2) prohibits unauthorized pits. Inspection reports for inspections on October 20, 2014 and October 3, 2016 documents at least four workover pits present at the Lease which had not been backfilled and compacted within 120 days of completion of any workover operations as required.⁴² Based on the evidence, the ALJ finds that Redwood violated Statewide Rule 8(d)(2).

E. Violation of Statewide Rule 13(a)(6)(A)

Staff alleges a violation of Statewide Rule 13(a)(6)(A).⁴³ Staff alleges that there were wells with casing and/or tubing open to the atmosphere. Statewide Rule 13(a)(6)(A) prohibits uncontrolled tubing or casing open to the atmosphere. Inspection reports for inspections on August 5, 2013; August 7, 2013; October 20, 2014 and October 3, 2016 document at least twenty instances in which a well on the Lease had casing or tubing open to the atmosphere. Based on the evidence, the ALJ finds that Redwood is in violation of Statewide Rule 13(a)(6)(A).

³⁹ 16 TEX. ADMIN. CODE § 3.3(2).

⁴⁰ 16 TEX. ADMIN. CODE § 3.3(3).

⁴¹ 16 TEX. ADMIN. CODE § 3.8(d)(2).

⁴² See 16 TEX. ADMIN. CODE § 3.8(d)(H)(i)(III).

⁴³ 16 TEX. ADMIN. CODE § 3.13(a)(6)(A).

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

Staff alleges a violation of Statewide Rule 14(b)(2).⁴⁴ Staff alleges that all twenty-six wells on the Lease are inactive, ineligible for plugging extensions and have 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.⁴⁵ 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.⁴⁶ Consequently, because Redwood is non-compliant with "SB639" according to Commission records, it is currently ineligible to obtain approval of a P-5.⁴⁷

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.⁴⁸

Redwood has been the operator of record for the Lease from June 1, 2009 until present. There has been no reported production for the Lease since February 2013. The Lease contains one injection well, Well No. 6. The last reported injection for Well No. 6 was in May 2013.

Commission inspection reports made on August 5, 2013; August 7, 2013; October 20, 2014 and October 3, 2016 confirm the wells on the Lease have been non-operational. Because the wells are unplugged and there has been no reported activity for over twelve months, the wells on the Lease qualify as inactive wells per Commission rules.⁴⁹

Statewide Rule 14(b)(2) requires operators to commence plugging an inactive well within a year after operations cease. According to the evidence, operations on the Lease ceased by June 2013. The wells became inactive wells and plugging operations were required to commence no later than July 2014. There is no dispute that the wells have not been plugged. Based on the evidence, the ALJ finds that Redwood violated Statewide Rule 14(b)(2).

⁴⁴ 16 TEX. ADMIN. CODE § 3.14(b)(2).

⁴⁵ See 16 TEX. ADMIN. CODE § 3.1(a)(1).

⁴⁶ 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).

⁴⁷ 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).

⁴⁸ See 16 TEX. ADMIN. CODE § 3.15(e)(2) (allows extensions only for an operator who has a current Form P-5 report).

⁴⁹ See 16 TEX. ADMIN. CODE § 3.15(a)(6).

G. Violation of Statewide Rule 17(a)

Staff alleges a violation of Statewide Rule 17(a).⁵⁰ Statewide Rule 17(a) requires wells to have a Bradenhead. A Commission inspection report made on October 20, 2014 documents that Well No. 6 had no Bradenhead observation valve and Well No. 8 had no Bradenhead. Based on the evidence, the ALJ finds that Redwood violated Statewide Rule 17(a).

H. Violation of Statewide Rule 46(j)

Staff alleges a violation of Statewide Rule 46(j).⁵¹ Statewide Rule 46(j) requires periodic integrity tests for injection wells. Commission records show that Well No. 6 is an injection well requiring an annual mechanical integrity test and that no test was taken between November 23, 2009 and the date of the most recent test, April 8, 2016.⁵² Based on the evidence, the ALJ finds that Redwood violated Statewide Rule 46(j).

I. Violation of Statewide Rule 73(i) and TEX. NAT. RES. CODE § 91.706

Staff alleges a violation of Statewide Rule 73(i)⁵³ and TEX. NAT. RES. CODE § 91.706, which prohibits operators from operating wells that have been severed. Commission records show that the Lease had been severed since October 5, 2012. The inspection report for the August 5, 2013 inspection document that the following wells were active: Well Nos. 1L, 6 and 17. Based on the evidence, the ALJ finds that Redwood is in violation of Statewide Rule 73(i) and TEX. NAT. RES. CODE § 91.706.

J. The Penalty

Staff recommends a penalty of \$155,902.00 for the violations 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.⁵⁴ Commission Statewide Rule 107 provides guidelines to be utilized when assessing enforcement penalties.⁵⁵ 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;

⁵⁰ 16 TEX. ADMIN. CODE § 3.17(a).

⁵¹ 16 TEX. ADMIN. CODE § 3.46(j).

⁵² Staff Ex. 13.

⁵³ 16 TEX. ADMIN. CODE § 3.73(i).

⁵⁴ TEX. NAT. RES. CODE § 81.0531.

⁵⁵ See 16 TEX. ADMIN. CODE § 3.107(b).

- (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.⁵⁶

Rule 107 provides guideline minimum penalties for typical violations.⁵⁷ Below is a breakdown of Staff's recommended penalty.

Violation	Description	Methodology	Amount
Statewide Rule 3(1)	Lease sign	1 instance at \$1,000	\$1,000
Statewide Rule 3(2)	Well sign	26 instances at \$500	\$13,000
Statewide Rule 3(3)	Tank battery sign	1 instance at \$1,000	\$1,000
Statewide Rule 8(d)(2)	Unauthorized pits	4 instances at \$2,500 plus \$0.75 per sq. ft. of the area of the pits	\$11,800
Statewide Rule 13(a)(6)(A)	Open tubing/casing	20 instances at \$1,000	\$20,000
Statewide Rule 14(b)(2)	Inactive well violation	26 instances of \$2,000 plus total well depth of 41,602 at \$1 per foot	\$93,602
Statewide Rule 17(a)	Braden head violation	2 instances at \$1,000	\$2,000
Statewide Rule 46(j)	Mechanical integrity testing	1 instance at \$5,000	\$5,000
Statewide Rule 73(i) and TEX. NAT. RES. CODE § 91.706	Producing severed well	1 instance at \$8,500	\$8,500
TOTAL			\$155,902

Staff's recommended penalty is supported by the guidelines in Statewide Rule 107. The ALJ finds the evidence supports assessment of the \$155,902.00 penalty recommended by Staff.

K. Corrective Action

All parties acknowledge the Lease is still in violation. The ALJ finds that Staff's request for corrective actions requiring compliance with the rules and statute at issue in this case is appropriate.

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

Based on the record in this case and evidence presented, the ALJ recommends that the Commission find that the alleged violations occurred; assess the penalty

⁵⁶ 16 TEX. ADMIN. CODE § 3.107(d).

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

recommended by Staff; 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 Abe Lincoln Lease (Lease No. 05490) (the "Lease"), Well Nos. 1L, 1W, 2L, 2W, 3, 3L, 4, 4L, 6, 6L, 7, 8, 9W, 10G, 11G, 12, 13, 14, 15W, 16, 17, 19, 20, 21, 22 and 24, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective June 1, 2009. Respondent remains the operator of record for the Lease.
9. 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 the wells on the Lease.
10. Redwood is non-compliant with "SB639" according to Commission records. Consequently, it is currently ineligible to obtain approval of a P-5.

11. Commission inspection reports made on October 20, 2014 and October 3, 2016 show that either no sign was present at the Lease entrance or the sign did not contain the required information.
12. Commission inspection reports made on August 5, 2013; August 7, 2013; October 20, 2014 and October 3, 2016 document that either no sign was present at the well or the sign did not contain the required information, as to all twenty-six wells on the Lease.
13. Commission inspection reports made on October 20, 2014 and October 3, 2016 document that no sign was observed at the Lease tank battery.
14. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rules 3(1), 3(2) and 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.
15. Commission inspection reports made on October 20, 2014 and October 3, 2016 show workover pits present at the Lease which had not been backfilled and compacted as required. The estimated area of impact of some of the pits are:
 - a. One near Well No. 3L with an estimated impact area of 20' x 15' x 1';
 - b. One near Well No. 6L with an estimated impact area of 30' x 20' x 1';
 - c. One near Well No. 9W with an estimated impact area of 20' x 15' x 1';
 - d. One near Well No. 12 with an estimated impact area of 30' x 20' x 1'; and
 - e. One near Well No. 14 with an estimated impact area of 30' x 20' x 1'.
16. Continued maintenance of unpermitted pits, in violation of Statewide Rule 8(d)(2), may result in unpermitted discharges of oil and gas waste which can contaminate the land surface, affect the health of humans and animals, and may be discharged to surface or subsurface waters, causing pollution.
17. Commission inspection reports made on August 5, 2013; August 7, 2013; October 20, 2014 and October 3, 2016 show at least twenty instances in which a well on the Lease had casing or tubing open to the atmosphere.
18. Wells left uncontrolled or open to the atmosphere, in violation of Statewide Rule 13(a)(6)(A), may discharge oil and gas waste onto the land surface and affect the health of humans and animals; these discharges may eventually make their way to surface or subsurface waters, causing pollution.
19. There has been no reported production for the Lease since February 2013.
20. Well No. 6 is an injection well and there has been no reported injection since May 2013.

21. Commission inspection reports made on August 5, 2013; August 7, 2013; October 20, 2014 and October 3, 2016, and no production or injection reported to the Commission since May 2013, show that all the wells on the Lease have been inactive for a period greater than one year.
22. None of the subject wells were 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.
23. 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.
24. A Commission inspection report made on October 20, 2014 documents that Well No. 6 had no Bradenhead observation valve and Well No. 8 had no Bradenhead.
25. Wells that do not have required Bradenhead equipment, in violation of Statewide Rule 17(a), may result in a discharge of oil and gas waste into ground water and contamination of surface or subsurface waters, thereby resulting in pollution.
26. Commission records show that Well No. 6 is an injection well requiring an annual mechanical integrity test and that no test was taken between November 23, 2009 and the date of the most recent test, April 8, 2016.
27. 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, 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.
28. Commission records show that the Lease had been severed since October 5, 2012. A Commission inspection report made on August 5, 2013 shows that the following wells on the Lease were operating: Well Nos. 1L, 6 and 17.

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 in violation of Statewide Rules 3(1), 3(2), 3(3), 8(d)(2), 13(a)(6)(A), 14(b)(2), 17(a), 46(j) and 73(i) (16 TEX. ADMIN. CODE §§ 3.3(1), 3.3(2), 3.3(3), 3.8(d)(2), 3.13(a)(6)(A), 3.14(b)(2), 3.17(a), 3.46(j) and 3.73(i)) and TEX. NAT. RES. CODE § 91.706.
4. 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).
5. Respondent is responsible for maintaining the Lease in compliance with Statewide Rule 3(1) which requires that for each property that produces oil, gas or geothermal resources and each oil, gas or geothermal resource well and tank, or other approved crude oil measuring facility, a sign shall be posted at the principal entrance which shall show the name by which the property is carried on the records of the Commission, the name of the operator, and the number of acres in the property.
6. Respondent is responsible for maintaining the 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 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.
8. Respondent is responsible for maintaining the Lease in compliance with Statewide Rule 8(d)(2), which prohibits unauthorized pits.
9. Respondent is responsible for maintaining the Lease in compliance with Statewide Rule 13(a)(6)(A), which requires that surface control of all wells be maintained with wellhead assemblies.
10. Respondent was responsible for maintaining the Lease wells 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.
11. Respondent is responsible for maintaining the Lease in compliance with Statewide Rule 17(a), which requires that all wells be equipped with a Bradenhead.

12. Respondent is responsible for maintaining the Lease in compliance with Statewide Rule 46(j), which requires passing mechanical integrity test periodically as determined by the Commission, which is annually in this case.
13. 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.
14. 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.
15. An assessed administrative penalty in the amount of ONE HUNDRED FIFTY-FIVE THOUSAND NINE HUNDRED TWO DOLLARS (\$155,902.00) is justified considering the facts and violations at issue.
16. 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:

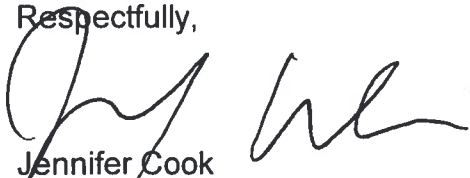
IT IS ORDERED THAT within 30 days from the day immediately following the date this order becomes final:

1. Redwood Operating, Inc. shall place the Lease and the twenty-six wells on the Lease in compliance with Statewide Rules 3(1), 3(2), 3(3), 8(d)(2), 13(a)(6)(A), 14(b)(2), 17(a), 46(j) and 73(i), TEX. NAT. RES. CODE § 91.706 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 **ONE HUNDRED FIFTY-FIVE THOUSAND NINE HUNDRED TWO DOLLARS (\$155,902.00)**.

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