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RANDALL D. COLLINS, *DIRECTOR*

# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

OIL & GAS DOCKET NO. 7B-0307112

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**ENFORCEMENT ACTION AGAINST BROWN INDUSTRIAL GAS OPERATING, INC.  
(OPERATOR NO. 100298) FOR VIOLATIONS OF STATEWIDE RULES ON THE  
HAMER (29489) LEASE, WELL NOS. 12, 13, 14, 15 AND 17, AMITY FIELD,  
COMANCHE COUNTY, TEXAS**

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### PROPOSAL FOR DECISION

**HEARD BY:** Jennifer Cook – Administrative Law Judge

**PROCEDURAL HISTORY:**

Notice of Hearing Date: January 4, 2018  
Hearing Date: March 8, 2018  
Proposal for Decision Issued: May 9, 2018

**APPEARANCES:**

**For Commission Staff –**

David Bell, Staff Attorney, Office of General Counsel – Enforcement

**For Brown Industrial Gas Operating, Inc. –**

Lewis Sessions  
*Sessions & Associates*

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## I. Statement of the Case

This is an enforcement case alleging violations of Commission rules by Brown Industrial Gas Operating, Inc. ("Brown" or "Respondent"), Operator No. 100298, on the Hamer Lease (Lease No. 29489) (the "Lease"), Well Nos. 12, 13, 14, 15 and 17 (the "Wells") in the Amity Field in Comanche County.

Railroad Commission ("Commission" or "RRC's") staff ("Staff") initiated this case claiming Respondent is responsible for violations of Statewide Rules 3(2), 3(3), 13(a)(6)(A), 14(b)(2) and 21(j).<sup>1</sup> Staff requests that the Commission assess a penalty in the amount of \$22,310 and order Respondent to place the Lease in compliance with Commission rules.

Respondent maintains it sold its assets regarding the Lease in 2016 and the new contractual operator refuses to file a new Commission Form P-4 *Certificate of Compliance and Transportation Authority* ("Form P-4") so that Commission records reflect that the Wells are transferred to the new contractual operator.

The Administrative Law Judge ("ALJ") respectfully submits this Proposal for Decision ("PFD") and recommends the Commission find that the violation of Statewide Rules have occurred as alleged, assess a penalty of \$22,310 against Respondent for the violations and order Respondent to place the Lease and Wells in compliance with Commission rules and statutes.

## II. Jurisdiction and Notice<sup>2</sup>

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.<sup>3</sup> The Commission expressly has jurisdiction over inactive wells.<sup>4</sup>

In a Commission enforcement case, Commission rules state that notice of an enforcement hearing with the complaint for the case included is sufficient notice.<sup>5</sup> The Administrative Procedures Act requires reasonable notice of not less than ten days and that the contents of the notice include:

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<sup>1</sup> 16 TEX. ADMIN. CODE §§ 3.3(2), 3.3(3), 13(a)(6)(A), 3.14(b)(2) and 3.21(j).

<sup>2</sup> There are two audio files for the hearing in this case on March 8, 2018. The first segment of the hearing file is named "Enf 3-8-18 Brown Part 1" and the second segment file name is "Enf 3-8-18 Brown Part 2." The audio file for the first segment is referred to in this PFD as "Audio 1 at [hours:minutes]" and the second audio segment is referred to as "Audio 2 at [hours:minutes]." Staff's exhibits are referred to as "Staff Ex. [exhibit no(s)]." Respondent exhibits are referred to as "Respondent Ex. [exhibit no(s)]."

<sup>3</sup> See, e.g., TEX. NAT. RES. CODE §§ 85.041-.042; see also TEX. NAT. RES. CODE ch. 91.

<sup>4</sup> See, e.g., TEX. NAT. RES. CODE §§ 89.041-.042.

<sup>5</sup> 16 TEX. ADMIN. CODE § 1.25(c).

- (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.<sup>6</sup>

On January 4, 2018, Staff sent Respondent the Original Complaint (“Complaint”) for this case and a Notice of Hearing (“Notice”) setting the hearing for March 8, 2018.<sup>7</sup> 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 Respondent appeared at the hearing.

### III. Applicable Legal Authority

Staff alleges violations of Statewide Rules 3(2), 3(3), 13(a)(6)(A), 14(b)(2) and 21(j).

Statewide Rule 3(2) requires a sign to be posted at each well site which includes the name of the property, the name of the operator, and the well number.<sup>8</sup> Rule 3(3) requires a similar identification sign to be posted at or painted on each oil stock tank.<sup>9</sup>

Statewide Rule 13(a)(6)(A) contains requirements regarding wellhead assemblies. It requires wellhead assemblies to be used on all wells to maintain surface control of the well at all times. Each component of the wellhead is required to 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.<sup>10</sup>

Statewide Rule 14(b)(2) requires a well that has been inactive over twelve months to be plugged unless the well operator obtains a plugging extension for the well. Specifically, 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.<sup>11</sup> The operator of a well identified on the most recent Commission-approved Form P-4 is responsible for properly plugging that well in compliance with Commission rules and regulations.<sup>12</sup>

An inactive well is defined as:

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<sup>6</sup> TEX. GOV'T CODE §§ 2001.051(1) and 2001.052(a).

<sup>7</sup> See *Notice of Hearing* dated January 4, 2018.

<sup>8</sup> 16 TEX. ADMIN. CODE § 3.3(2).

<sup>9</sup> 16 TEX. ADMIN. CODE § 3.3(3).

<sup>10</sup> 16 TEX. ADMIN. CODE § 3.13(a)(6)(A).

<sup>11</sup> 16 TEX. ADMIN. CODE § 3.14(b)(2).

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

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.<sup>13</sup>

Statewide Rule 21(j) requires dikes or fire walls to 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; or where such tanks are so located as to be deemed by the commission to be an objectionable hazard.<sup>14</sup>

#### **IV. Discussion of Evidence**

Staff presented the testimony of two witness and seven exhibits. Respondent provided no testimony and two exhibits.

##### **A. Summary of Staff's Evidence and Argument**

Staff alleges Respondent is in violation of Statewide Rules 3(2), 3(3), 13(a)(6)(A), 14(b)(2) and 21(j). Staff requests assessment of a penalty for the violations in the amount of \$22,310 and that the Respondent be ordered to place the Lease and Wells into compliance with Commission rules.

Staff's first witness was Petar Buva. He works in the field operations unit in the Commission's Oil & Gas Division. As part of his duties, he reviews field inspection reports and assembles packets to be referred for enforcement. He reviewed and prepared the enforcement packet for this case.<sup>15</sup>

Respondent's most recent Commission Form P-5 *Organization Report* ("Form P-5") was received on January 25, 2016. The only officers listed are: Ian B. Acrey, President and Travis Olen Conley, Secretary.<sup>16</sup> The Notice and Complaint were sent to the Respondent's address provided on the Form P-5 and to the officers identified on the Form P-5. The Notice and Complaint were also sent to Respondent's attorney.<sup>17</sup>

The current Form P-5 status of Respondent is delinquent. Mr. Buva testified that because Respondent does not have an active Form P-5, it is not allowed to perform oil and gas activities, including operating a well, in Texas.<sup>18</sup>

Respondent is the current Commission operator of record for the Lease and Wells, and has been since February 1, 2015.<sup>19</sup> The last reported production for the Lease was

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

<sup>14</sup> 16 TEX. ADMIN. CODE § 3.21(j).

<sup>15</sup> See Audio 1 at 0:03-04.

<sup>16</sup> Staff Ex. 1.

<sup>17</sup> See *Notice of Hearing* dated January 4, 2018.

<sup>18</sup> Staff Ex. 1 at 3; Audio 1 at 0:04-05; see 16 TEX. ADMIN. CODE § 3.1(a)(1).

<sup>19</sup> Staff Ex. 2; Audio 1 at 0:06-07.

in February 2015. Mr. Buva is not aware of any plugging extensions for the Wells and because Respondent's Form P-5 is delinquent, it is not eligible for plugging extensions.<sup>20</sup>

Mr. Buva provided Commission inspection reports dated June 27, 2017, September 19, 2017 and October 31, 2017.<sup>21</sup> On each report the inspector certifies the data in the inspection is true and complete. The date of the inspection is identified, including a start and end time. In each inspection report, the inspector identifies violations he finds and the observations he relies on. He also takes pictures during the inspection of conditions at the time and includes them in the report.

During the June 27, 2017 inspection, the inspector documented the following observations and identified violations he determined were supported by his observations:

- Lease violations –
  - Violation of Statewide Rule 21(j): The inspector observed that the fire wall around the tank was not there or insufficient due to presumably weather and/or traffic. Photographs showing a lack of fire wall are provided. He observes the tank is approximately 15 feet from County Road 135.
  
- Well violations –
  - Well No. 12
    - Violation of Statewide Rule 14(b)(2): The inspector observes that the flowlines are in the "off" position, the polish rod liner is rusted and the electricity is in the "off" position. Photographs are provided.
  
  - Well No. 13
    - Violation of Statewide Rule 14(b)(2): The inspector observes that the flowline is in the closed position and the electricity is in the "off" position. Photographs are provided.
  
  - Well No. 14
    - Violation of Statewide Rule 14(b)(2): The inspector observes that the flowline is disconnected. Photographs are provided.
  
  - Well No. 15
    - Violation of Statewide Rule 14(b)(2): The inspector observes that the polish rod liner is rusted, the motor is off the pump jack and the flowline valves are shut in the "off" position. Photographs are provided.
  
  - Well No. 17

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<sup>20</sup> Staff Ex. 3; Audio 1 at 0:07-08; see 16 TEX. ADMIN. CODE § 3.15(e)(2) (allows plugging extensions only for an operator who has a current Form P-5 report).

<sup>21</sup> Staff Ex. 4; Audio 1 at 0:08-0:25.

- Violation of Statewide Rule 13(a)(6)(A): The inspector observes that the tubing is open to the atmosphere and provides photographs.
- Violation of Statewide Rule 14(b)(2): The inspector observes that the well tubing and rods have been removed, the flowline is disconnected and the electricity is in the "off" position. Photographs are provided.

During the September 19, 2017 inspection, the inspector observed and documented the same violations observed June 27. He also observed and documented the following additional violations:

- Lease violations –
  - Violation of Statewide Rule 3(3): The inspector observed the sign posted at the tank battery identified the wrong operator. Photographs are provided.
- Well violations –
  - Well No. 12
    - Violation of Statewide Rule 3(2): The inspector observed the sign posted at the well identified the wrong operator. Photographs are provided.
  - Well No. 13
    - Violation of Statewide Rule 3(2): The inspector observed the sign posted at the well identified the wrong operator. Photographs are provided.
  - Well No. 14
    - Violation of Statewide Rule 3(2): The inspector observed the sign posted at the well identified the wrong operator. Photographs are provided.
  - Well No. 15
    - Violation of Statewide Rule 3(2): The inspector observed the sign posted at the well identified the wrong operator. Photographs are provided.
  - Well No. 17
    - Violation of Statewide Rule 3(2): The inspector observed the sign posted at the well identified the wrong operator. Photographs are provided.

During the October 31, 2017 inspection, the inspector observed and documented that all the violations were still present. Mr. Buva testified that after reviewing the inspection reports, it is his opinion that the violations occurred as indicated.

Mr. Buva testified that the requested penalty is based on the guidelines in Statewide Rule 107. He calculated the recommended penalty in this case. He uses a penalty calculation worksheet based on the guidelines in Rule 107. The table below

provides a summary of the recommended penalty assessments for the violations in this case.<sup>22</sup>

Commission Statewide Rule	General Description of violation	Guideline minimum from Rule 107	Description of calculation	Penalty Tally
3(2)	Failure to comply with well sign requirements	\$500	5 wells at \$500 each	\$2,500
3(3)	Failure to comply with tank battery sign requirements	\$1000	1 battery at \$1000	\$1,000
13(a)(6)(A)	Open casing/tubing	\$1,000-\$5,000	\$3,000 is standard practice unless special specific circumstances	\$3,000
14(b)(2)	Failure to plug onshore well	\$2,000 plus \$1/ft of total depth	Five wells at \$2,000 plus the total depth of the five wells at 3,310 feet	\$13,310
21(j)	Failure to comply with fire wall requirements	\$2,500	On instance at \$2,500	\$2,500
<b>Total</b>				<b>\$22,310</b>

Mr. Buva provided Commission well records for the five wells in violation of Statewide Rule 14(b)(2), showing the total depth of each well is as follows:<sup>23</sup>

- Well No. 12 total depth is 670 ft
- Well No. 13 total depth is 660 ft
- Well No. 14 total depth is 642 ft
- Well No. 15 total depth is 660 ft
- Well No. 17 total depth is 678 ft

Adding the total depth of these wells is equal to 3,310 feet.

Staff's second witness was Mysti Doshier, manager of the Commission's P-5 Financial Assurance Unit. She noted the officers identified on the Respondent's most current Form P-5 are Ian Acrey and Travis Olen Conley. She also provided Texas Secretary of State records dated March 5, 2018, showing Respondent's officers to be Ian Acrey (President and Director) and Phillip Gennarelli (Director, President and Secretary).

<sup>22</sup> Audio 1 at 0:56-1:02; Staff Ex. 6.

<sup>23</sup> Audio 2 at 0:01-03; Staff Ex. 7.



During cross examination, Ms. Doshier explained that a well is not transferred from one operator to another—via an approved Form P-4—unless the operator proposed to be the operator of record agrees to be the operator of record and agrees to assume liability for compliance. The Commission does not unilaterally require an operator to become the operator of record; it is something that operator does. She testified she is aware of no Commission mechanism in place to require an operator to become a Commission operator of record.<sup>24</sup>

## **B. Summary of Respondent's Evidence and Argument**

Respondent maintains that it no longer should be the operator of record because it sold all assets. Respondent claims the current owner of the assets refuses to submit a Form P-4 to transfer the subject lease to the current asset owner. Respondent also generally asserts Staff did not meet its burden to prove the violations.

Respondent had no witnesses and admitted two exhibits. Both exhibits are Texas Secretary of State records. Respondent filed a Certificate of Amendment on January 26, 2017, identifying Phillip Gennarelli as a person to be added as a Director, President and Secretary; it also states that Travis Conley has been removed as Director.<sup>25</sup> Respondent also provided documentation that Mr. Gennarelli was made Respondent's Registered Agent at the Secretary of State on January 25, 2017.<sup>26</sup>

When asked about the relevance of the officer information provided by Respondent, Respondent's attorney expressed concern that Staff was seeking in this proceeding to hold officers personally responsible for the violations in this case and the penalty. Staff represented that in this proceeding it is only seeking ordering provisions against Respondent.<sup>27</sup>

## **V. ALJ's Analysis**

The ALJ finds that Staff provided sufficient evidence as to the violations alleged. The ALJ recommends that the Commission find the violations occurred as alleged, assess Staff's recommended penalty of \$22,310.00 against Respondent for the violations and order Respondent to place the Lease and Wells in compliance with Commission rules and statutes.

The ALJ finds that Respondent's complaints regarding a failure to have the Commission Form P-4 of the Wells transferred to an operator Respondent claims is the current owner of the mineral rights at issue in this case without merit. The rules provide that an operator who seeks to operate a well within the jurisdiction of the Commission is to file a Form P-4 and must certify compliance with Commission rules. The rules state

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<sup>24</sup> Audio 1 at 1:05-1:15; Staff Ex. 5.

<sup>25</sup> Respondent Ex. 1.

<sup>26</sup> Respondent Ex. 2.

<sup>27</sup> Audio 2 at 0:12-15.

that the certification by the operator certifies responsibility for regulatory compliance.<sup>28</sup> Here, there is no evidence of another officer seeking to become the Commission operator of record of these wells or willing to certify compliance and responsibility for compliance. Commission rules further provide that an approved Form P-4 binds the operator until another operator files a subsequent Form P-4 and it is approved.<sup>29</sup> In this case, Respondent is the current operator of record for the Wells and Lease. No other operator has filed a Form P-4 and no subsequent Form P-4 has been approved. Consequently, Respondent continues to be responsible for regulatory compliance on the Lease and Wells. Respondent's contractual arrangements are immaterial as to this point.

**A. Staff established five wells are in violation of Statewide Rule 3(2).**

Statewide Rule 3(2) requires a sign to be posted at each well site which includes, among other things, the name of the operator.<sup>30</sup> During inspections of the Lease on September 19 and October 31, 2017, a Commission inspector observed that the signs for all the Wells identified the incorrect operator. The inspector documented the observed violations in inspection reports and with photographs. Respondent provided no evidence contradicting the inspection reports. The ALJ finds the violations occurred as alleged.

**B. Staff established a violation of Statewide Rule 3(3).**

Statewide Rule 3(3) requires a sign to be posted at each tank battery which includes, among other things, the name of the operator. During inspections of the Lease on September 19 and October 31, 2017, a Commission inspector observed that the sign at the tank battery identified the incorrect operator. The inspector documented the observed violation in inspection reports and with photographs. Respondent provided no evidence contradicting the inspection reports. The ALJ finds the violation occurred as alleged.

**C. Staff established a violation of Statewide Rule 13(a)(6)(A).**

Statewide Rule 13(a)(6)(A) requires wellhead assemblies to be used on all wells to maintain surface control of the well at all times. During inspections of the Lease on June 27, September 19 and October 31, 2017, a Commission inspector observed the tubing for Well No. 17 was open to the atmosphere. The inspector documented the observed violation in inspection reports and with photographs. Respondent provided no evidence contradicting the inspection reports. The ALJ finds the violation occurred as alleged.

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<sup>28</sup> See 16 TEX. ADMIN. CODE § 3.58(a)(1).

<sup>29</sup> See 16 Tex. Admin. Code § 3.58(a)(2).

<sup>30</sup> 16 TEX. ADMIN. CODE § 3.3(2).

**D. Staff established five wells are in violation of Statewide Rule 14(b)(2).**

Staff alleges violations of Statewide Rule 14(b)(2) for all Wells. Staff alleges that the Wells are inactive, ineligible for plugging extensions and have not been plugged as required.

According to Commission records, Respondent does not have an active approved Form P-5. As such, Respondent is prohibited from engaging in oil and gas exploration and production activities in Texas, including operating oil or gas wells.<sup>31</sup> In addition to being prohibited from operating a well, because Respondent does not have an active Form P-5, it is ineligible for extensions of plugging deadlines for inactive wells.<sup>32</sup>

There has been no reported production for the Lease since February 2015. Commission inspection reports made on June 27, September 19 and October 31, 2017 confirm the Wells are not operational. Because the Wells are unplugged and there has been no reported activity for over twelve months, the Wells qualify as inactive wells per Commission rules.<sup>33</sup>

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 Well ceased by March 2015. The Wells became inactive wells and plugging operations were required to commence no later than March 2016. Respondent provided no evidence regarding the inactive Wells or other evidence contradicting Staff's evidence in support of the violations. The ALJ finds the violations occurred as alleged.

**E. Staff established a violation of Statewide Rule 21(j).**

Statewide Rule 21(j) requires dikes or fire walls to be erected and kept around all permanent oil tanks, or battery of tanks, where such tanks are closer than 500 feet to any highway.<sup>34</sup> During inspections of the Lease on June 27, September 19 and October 31, 2017, a Commission inspector observed that there was no fire wall around the tank battery and that the tank battery was approximately 15 feet from County Road 135. The inspector documented the observed violation in inspection reports and with photographs showing the lack of fire wall. Respondent provided no evidence contradicting the inspection reports. The ALJ finds the violation occurred as alleged.

**F. The ALJ recommends assessment of the penalty urged by Staff of \$22,310.**

Staff recommends a penalty of \$22,310.00 for the violations based on the penalty guidelines in Statewide Rule 107. Per the Natural Resources Code, the Commission may assess administrative penalties against Respondent up to \$10,000 per day for each

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<sup>31</sup> See 16 TEX. ADMIN. CODE § 3.1(a)(1).

<sup>32</sup> See 16 TEX. ADMIN. CODE § 3.15(e)(2) (allows extensions only for an operator who has a current Form P-5 report).

<sup>33</sup> See 16 TEX. ADMIN. CODE § 3.15(a)(6).

<sup>34</sup> 16 TEX. ADMIN. CODE § 3.3(2).

violation, with each day such violation continues constituting a separate violation.<sup>35</sup> Commission Statewide Rule 107 provides guidelines to be utilized when assessing enforcement penalties.<sup>36</sup> 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.<sup>37</sup>

Rule 107 provides guideline minimum penalties for typical violations.<sup>38</sup> The penalties recommended by Staff are equivalent to the guideline minimum for each violation except for the violation of Statewide Rule 13(a)(6)(A). The guideline minimum penalty for a violation of Rule 13(a)(6)(A) is a range between \$1,000-\$5,000. Staff provided testimony that Staff typically recommends an assessment of \$3,000 per violation unless there are special circumstances in the particular case that would cause a lower or higher recommended penalty. Staff knew of no such fact-specific situation in this case. Staff's recommended penalty is supported by the guidelines in Statewide Rule 107. The ALJ finds the evidence supports assessment of the \$22,310.00 penalty recommended by Staff.

**G. The ALJ recommends the Commission order Respondent to place the Lease and Wells in compliance with Commission rules as requested by Staff.**

According to the most recent inspection report of October 31, 2017, all violations still exist. There was no evidence of any action taken to bring the violations into compliance with Commission rules. The ALJ finds that Staff's request for corrective actions requiring compliance with the rules and statutes 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

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<sup>35</sup> TEX. NAT. RES. CODE § 81.0531.

<sup>36</sup> See 16 TEX. ADMIN. CODE § 3.107(b).

<sup>37</sup> 16 TEX. ADMIN. CODE § 3.107(d).

<sup>38</sup> 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 January 4, 2018, Respondent Brown Industrial Gas Operating, Inc. ("Brown" or "Respondent"), Operator No. 100298, was sent the Original Complaint ("Complaint") for this case and a Notice of Hearing ("Notice"), setting the hearing for March 8, 2018. The Complaint and Notice were sent by certified and first-class mail, addressed to the most recent Commission Form P-5 *Organization Report* ("Form P-5") address. Respondent and 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 the addresses provided in the Form P-5. Respondent's counsel of record was also sent the Notice and Complaint.
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 Respondent appeared at the hearing on March 8, 2018.
4. Respondent was given more than 30 days' notice of the Complaint and Notice.
5. On or about January 25, 2016, Respondent filed its most recent Form P-5.
6. The violations of Commission rules committed by Respondent are related to safety and the control of pollution.
7. Respondent designated itself to the Commission as the operator of the Hamer Lease (Lease No. 29489) (the "Lease"), Well Nos. 12, 13, 14, 15 and 17 (the "Wells"), by filing a Commission Form P-4 *Certificate of Compliance and Transportation Authority* ("Form P-4"), effective February 1, 2015. Respondent remains the operator of record for the Lease and Wells.
8. Commission inspection reports made on September 19, 2017 and October 31, 2017 show that the sign posted at Well Nos. 12, 13, 14, 15 and 17 identified the wrong operator.
9. Commission inspection reports made on September 19, 2017 and October 31, 2017 show that the sign posted at tank battery identified the wrong operator.
10. The lack of legible signs and identification displaying correct information, as set forth in Statewide Rules 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.

11. Commission inspection reports made on June 27, 2017, September 19, 2017 and October 31, 2017, and no production reported to the Commission since February 2015, show that the Wells have been inactive for a period greater than one year.
12. 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.
13. Respondent's Form P-5 is delinquent. Respondent is not eligible for plugging deadline extensions for the Wells.
14. There has been no reported production for the Lease and Wells since February 2015.
15. Commission inspection reports made on June 27, 2017, September 19, 2017 and October 31, 2017, and no production reported to the Commission since February 2015, show that the Wells have been inactive for a period greater than one year.
16. No work-overs, re-entries, or subsequent operations have taken place on the Wells within the last twelve months; the Wells have not been properly plugged in accordance with Statewide Rule 14, 16 TEX. ADMIN. CODE § 3.14; and no plugging extension is in effect for the Wells as allowed by Statewide Rule 14. The Wells are not otherwise in compliance with Statewide Rule 14.
17. Usable quality groundwater in the area can become contaminated by migrations or discharges of saltwater and other oil and gas wastes from the 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.
18. Commission inspection reports made on June 27, 2017, September 19, 2017 and October 31, 2017 show that the required fire wall or dike around the tank was not there.
19. Failing to erect a dike or fire wall as required by Statewide Rule 21(j) can cause fires.

### **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 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(2), 3(3), 13(a)(6)(A), 14(b)(2) and 21(j). 16 TEX. ADMIN. CODE §§ 3.3(2), 3.3(3), 13(a)(6)(A), 3.14(b)(2) and 3.21(j).
5. The documented violations committed by Respondent constitute acts deemed serious, and a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE § 81.0531(c).
6. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 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 subject 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 subject lease in compliance with Statewide Rule 13(a)(6)(A), which requires that surface control of all wells be maintained with wellhead assemblies.
9. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 14(b)(2), which requires that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed, unless the operator is eligible for and obtains an extension of the plugging deadline.
10. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 21(j), which requires that dikes or fire walls 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, or where such tanks are located as to be deemed by the Commission to be an objectionable hazard.
11. 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.

12. An assessed administrative penalty in the amount of **TWENTY-TWO THOUSAND THREE HUNDRED TEN DOLLARS (\$22,310.00)** is justified considering the facts and violations at issue.

### 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. Respondent shall place the Lease and the Wells in compliance with Statewide Rules 3(2), 3(3), 13(a)(6)(A), 14(b)(2), 21(j) and any other applicable Commission rules and statutes.
2. Respondent shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWENTY-TWO THOUSAND THREE HUNDRED TEN DOLLARS (\$22,310.00)**.

Respectfully,



Jennifer Cook  
Administrative Law Judge