

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 7C-0279710

ENFORCEMENT ACTION AGAINST UPSTREAM PROPERTIES, LLC (OP. 878951) FOR VIOLATIONS OF STATEWIDE RULES ON THE E. GOTTSCHALK (13574) LEASE, WELL NO. 1, LINDEMANN (JENNINGS) FIELD, RUNNELS COUNTY; AND GOTTSCHALK, D 3 (14497) LEASE, WELL NO. 3, SW CREWS (FRY, LO.) FIELD, RUNNELS COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on August 6, 2015 and that the respondent, Upstream Properties, LLC (Op. 878951), failed to appear or respond to the Notice of Opportunity for Hearing. Pursuant to § 1.49 of the Commission's General Rules of Practice and Procedure [Tex. R. R. Comm'n, 16 TEX. ADMIN. CODE § 1.49] and after being duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Upstream Properties, LLC (Op. 878951), ("Respondent"), was given Notice of Opportunity for Hearing by certified mail, addressed to the most recent Form P-5 (Organization Report) address.
2. The certified envelope containing the Original Complaint and the Notice of Opportunity for Hearing, was signed for on May 15, 2015. The electronic receipt is included in the file and has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On June 28, 2013 Respondent filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): John Albert Upton, Manager, and Roland Baker, Filing Agent.
4. John Albert Upton, was in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violations of Commission rules committed by respondent.
5. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
6. Respondent designated itself to the Commission as the operator of the E. Gottschalk (13574) Lease, Well No. 1, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective April 1, 2012, approved April 10, 2012.
7. Respondent designated itself to the Commission as the operator of the Gottschalk, D 3 (14497) Lease, Well No. 3, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective April 1, 2012, approved April 10, 2012.

8. Respondent's P-5 (Organization Report) is currently delinquent. Respondent had a \$50,000 bond as its financial assurance at the time it became delinquent.
9. Commission District inspection reports made on June 20 2012; June 29, 2012; September 10, 2012; October 11, 2012; November 27, 2012; November 28, 2012; April 8, 2013; April 30, 2013; May 31, 2013; March 20, 2014; October 6, 2014 and October 15, 2014, and reports filed by Respondent with the Commission (reflecting zero injection) since April 2011, with no reports filed since April 2013, showed that the E. Gottschalk (13574) Lease, Well No. 1 has been inactive for a period greater than one year. Injection from the subject well ceased on or before injection was last reported March 2011.
10. Commission District inspection reports made on June 20 2012; June 29, 2012; September 10, 2012; October 11, 2012; November 27, 2012; November 28, 2012; April 8, 2013; April 30, 2013; May 31, 2013; March 20, 2014; October 6, 2014 and October 15, 2014, and reports filed by Respondent with the Commission (reflecting zero injection) since April 2011, with no reports filed since April 2013, showed that the Gottschalk, D 3 (14497) Lease, Well No. 3 has been inactive for a period greater than one year. Production from the subject well ceased on or before March 2013. Additionally, this well had been productin ggas and no oil since December 2011, with only minimal oil production and predominately gas production since March 2005. The well should have been reclassified as a gas well.
11. A Commission District office inspection made on June 29, 2012 for the Gottschalk, D 3 (14497) Lease indicated that Well No. 3 is leaking produced water from the Bradenhead. Followup inspections made on August 30, 2102; September 10, 2012; October 11, 2012; November 27, 2012; October 7, 2014; April 8, 2015 and April 15, 2015 show the well to still be leaking produced water from the Bradenhead.
12. No permit has been issued to Respondent for the discharge of oil and gas wastes on or from the subject lease.
13. The unpermitted discharges of oil and gas wastes or other substances or materials on the subject lease constitute a hazard to public health and safety because the leads and spills of oil and produced waters onto soils can migrate into surface water bodies causing contamination or can leach into the ground and percolate through soils into groundwater supplies.
14. None of the subject wells have plugging extensions.
15. A Commission District inspection report made on October 15, 2014 on the E. Gottschalk (13574) Lease, Well No. 1 showed that there was approximately 35 psi on the casing/tubing annulus. The inspection showed that the inspector dug down beside the well and dugout the Bradenhead valve. The valve was partially stuck open. The well is plumbed to the surface with a non-working gauge and the needle valve was stuck. The inspection further shows that the inspector backed off the 2" bull plug, he could see that it was leaking with an unknown amount of pressure.
16. Commission District inspection reports made on June 20, 2012; June 29, 2012; October 11, 2012; November 27, 2012; April 8, 2013; April 30, 2013 and May 31, 2013 on the E. Gottschalk (13574) Lease showed that Respondent had failed to properly screen a two open top fiberglass tanks. The

nets on both tanks had fallen in and oil was exposed. Followup inspections made on March 20, 2014 and October 6, 2014 show no bird netting present. An inspection dated October 15, 2015 showed that remnants of netting were present in the tanks, but had fallen and disintegrated due to rot.

17. Enforcement seeks to require Respondent to take appropriate protective measures to prevent harm to birds pursuant to Statewide Rule 22, but specifically does not seek administrative penalties for the violation of this rule in this proceeding.
18. Commission records show that an injection permit, Permit No. 10508, was issued for the E. Gottschalk (13574) Lease, Well No. 1, under a former operator, issued August 16, 1995. Commission records show that an H-5 MIT test was conducted on the E. Gottschalk (13574) Lease, Well No. 1, on January 4, 2012 as required by Statewide Rule 46(j). The test had a failing result, indicating that there is a leak in the casing, tubing and/or packer.
19. Respondent has failed to rework or plug the well. Given the failed H-5 test and Respondent's failure to repair, pursuant to Statewide Rule 46(d), the permit should be terminated.
20. Usable quality groundwater in the area is likely to be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
21. The total estimated cost to the State for plugging the E. Gottschalk (13574) Lease, Well No. 1 is \$16,272.00; and for the Gottschalk, D3 (14497) Lease, Well No. 3 is \$17,556.00.
22. Respondent has no prior history of violations of Commission rules.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Railroad Commission to respondent and all other appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Respondent is responsible for maintaining the subject lease in compliance with all applicable Commission rules and for properly plugging the subject well according to Statewide Rules 14, 58, and 79 and Chapters 89 and 91, Texas Natural Resources Code.
4. The documented violations committed by the 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 ANN. §81.0531(c) (Vernon 1993).
5. Respondent is in violation of Statewide Rules 8(d)(1), 14(b)(2), 17, 22(b), and 46(d).
6. Respondent is responsible for maintaining the subject lease in compliance with Rule 8(d)(1), which prohibits the discharge of oil and gas wastes without a permit.

7. An application for a permit to drill, deepen, plug back , or reenter any oil well, gas well, or geothermal resource well, must be accompanied by any relevant information, form or certification required by the Railroad Commission or a Commission representative necessary to determine compliance with this rule and state law.
8. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 22(b), which requires that open-top storage tanks that are eight feet or greater in diameter and contain a continuous or frequent surface film or accumulation of oil, be rendered harmless to birds.
9. Respondent is responsible for maintaining the subject lease in compliance with Rule 46(d), which provides that each an injection well permit may be modified, suspended, or terminated by the Commission for just cause after notice and opportunity for hearing, if : (B) fresh water is likely to be polluted as a result of continued operation of the well.
10. As a person in a position of ownership or control of respondent at the time respondent violated Commission rule related to safety and the control of pollution, John Albert Upton, and any other organization in which he, may hold a position of ownership or control, shall be subject to the restriction of Texas Natural Resources Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or sooner, if the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed, and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.

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

1. Upstream Properties, LLC (Op. 878951), shall plug the E. Gottschalk (13574) Lease, Well No. 1, Lindemann (Jennings) Field, Runnels County, Texas in compliance with applicable Commission rules and regulations; and
2. Upstream Properties, LLC (Op. 878951), shall plug the Gottschalk, D 3 (14497) Lease, Well No. 3, SW Crews (Fry, Lo.) Field, Runnels County, Texas in compliance with applicable Commission rules and regulations; and
3. Upstream Properties, LLC (Op. 878951), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FIFTEEN THOUSAND FOUR HUNDRED EIGHTY-FOUR DOLLARS (\$15,484.00)**.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 days after a party is notified of the Commission's order. If a timely motion for rehearing of an application is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law is hereby extended until 90 days from the date the parties are notified of this order in accordance with Tex. Gov't Code §2001.144.

All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Non-compliance with the provisions of this order is subject to enforcement by the Attorney General and subject to civil penalties of up to \$10,000.00 per day per violation.

Done this 3rd day of February , 2016

RML / jm

RAILROAD COMMISSION OF TEXAS
(Signatures affixed by Default Master Order
dated February 3, 2016)