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*INTERIM DIRECTOR*

# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

OIL & GAS DOCKET NO. 01-0307780

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ENFORCEMENT ACTION AGAINST JET BLACK OIL, INC. (OPERATOR NO. 432089) FOR VIOLATIONS OF STATEWIDE RULES ON THE FIVE MILE UNIT (14313) LEASE, WELL NOS. 4 AND 7, FIVE MILE (WILSON, UPPER) FIELD, GONZALES COUNTY, TEXAS

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### PROPOSAL FOR DECISION

**HEARD BY:** Kristi M. Reeve – Administrative Law Judge

**PROCEDURAL HISTORY:**

Notice of Hearing Date:	February 20, 2018
Hearing Date:	April 16, 2018
Proposal for Decision Issued:	September 21, 2018

**APPEARANCES:**

**For Commission Staff –**

David M. Bell, Staff Attorney, Enforcement  
Petar Buva, Oil & Gas Division, Field Operations, Engineering Specialist

**For Jet Black Oil, Inc. –**

Stacey Rice

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## I. Statement of the Case

This is an enforcement case alleging violations of Commission rules by Jet Black Oil, Inc. ("Jet Black" or "Respondent"), Operator No. 432089, on the Five Mile Unit (14313) Lease ("Lease"), Well Nos. 4 and 7 ("Wells") in the Five Mile (Wilcox, Upper) Field in Gonzales County, Texas.

Railroad Commission ("Commission" or "RRC's") staff ("Staff") initiated this case claiming Jet Black is responsible for violations of Statewide Rules 3(1), 3(2), 3(3), 8(d)(1), 13(a)(6)(A), 14(b)(2) and 22(b). The alleged violation of Statewide Rule 3(1) is for failing to have required signage at the entrance for the Lease. The alleged violations of Statewide Rule 3(2) are for failing to have required signage at the Wells. The alleged violation of Statewide Rule 3(3) is for failing to have required signage at the tank battery for the Lease. The alleged violations of Statewide Rule 8(d)(1) are for unauthorized discharges of hydrocarbons around Well No. 4 and around the tank battery for the Lease. Staff alleges that the Wells are in violation of Statewide Rule 14(b)(2) for failing to comply with inactive well requirements. Staff alleges a violation of Statewide Rule 13(a)(6)(A) for the gate/master valve being open to the atmosphere. The alleged violation of Statewide Rule 22(b) is for failure to render an open-top tank harmless to birds through the use of screening. Staff seeks a penalty of \$20,614.00 against Jet Black and that Jet Black be ordered to place the Lease and Wells in compliance with applicable Commission regulations. Staff does not seek a penalty for the alleged violation of Statewide Rule 22(b); Staff seeks compliance only.

Jet Black states it is not the responsible party, as it has not been an operator since 2015. Jet Black asserts it was a contract operator for the mineral rights owner (Capstone Innovations) and in August of 2014 the mineral rights holder released the minerals to the landowners and they assumed operator and ownership of the mineral rights.

The Administrative Law Judge ("ALJ") respectfully submits this Proposal for Decision ("PFD") and recommends the Commission find that Jet Black is the responsible operator and find Jet Black responsible for the violations of Statewide Rules 3(1), 3(2), 3(3), 13(a)(6)(A), and 14(b)(2) have occurred as alleged by Staff, and violations of Statewide Rule 8(d)(1) as alleged by Staff and amended by the ALJ. The Commission assess a penalty of \$20,609.00 against Jet Black for the violations and order Jet Black to place the Lease and Wells in compliance with Commission rules and statutes.

## II. Jurisdiction and Notice<sup>1</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>2</sup> The Commission expressly has jurisdiction over inactive wells.<sup>3</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>4</sup> 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.<sup>5</sup>

On February 20, 2018, Staff sent Jet Black the Original Complaint ("Complaint") for this case and a Notice of Hearing ("Notice") setting the hearing for March 16, 2018.<sup>6</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 Jet Black appeared at the hearing.

## III. Applicable Legal Authority

Staff alleges violations of Statewide Rules 3(1), 3(2), 3(3), 8(d)(1), 13(a)(6A), 14(b)(2) and 22(b).

Statewide Rules 3(1) requires a sign to be posted at the principal entrance to each lease.<sup>7</sup> Staff alleges Respondent failed to have a sign posted at the Lease entrance.

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<sup>1</sup> The audio file for the hearing in this case is referred to as "Tr. at [minutes:seconds]." Staff's exhibits admitted during its direct case are referred to as "Staff Ex. [exhibit no.]" Jet Black's exhibits are referred to as "Respondent Ex. [exhibit no.]"

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

<sup>3</sup> See, e.g., TEX. NAT. RES. CODE §§ 89.041-.042.

<sup>4</sup> 16 TEX. ADMIN. CODE § 1.49(c).

<sup>5</sup> TEX. GOV'T CODE §§ 2001.051(1), 2001.052(a).

<sup>6</sup> See Notice of Hearing dated February 20, 2018.

<sup>7</sup> 16 TEX. ADMIN. CODE § 3.3.

Statewide Rules 3(2) requires a sign to be posted at each well site.<sup>8</sup> Staff alleges Respondent failed to have a sign posted at Well Nos. 4 and 7.

Statewide Rules 3(3) requires a sign to be posted at or on each oil stock tank and on each remotely located satellite tank.<sup>9</sup> Staff alleges Respondent failed to have a sign posted at or on the Lease tank battery.

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

(d) Pollution control.

(1) Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection, subsection (e) of this section, or § 3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), or disposal methods required to be permitted pursuant to § 3.9 of this title (relating to Disposal Wells) (Rule 9) or § 3.46 of this title (relating to Fluid Injection into Productive Reservoirs) (Rule 46), no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.<sup>10</sup>

Staff alleges unauthorized discharges near Well No. 4 and around the Lease tank battery.

Statewide Rule 13(a)(6)(A) provides that all wellhead assemblies shall be used on wells to maintain surface control of the well.<sup>11</sup>

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>12</sup> 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.<sup>13</sup>

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

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

<sup>10</sup> 16 TEX. ADMIN. CODE § 3.8(d)(1).

<sup>11</sup> 16 TEX. ADMIN. CODE § 3.13(a)(6)(A).

<sup>12</sup> 16 TEX. ADMIN. CODE § 3.14(b)(2).

<sup>13</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 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.<sup>14</sup>

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 the Wells have been inactive over twelve months, are not plugged and there are no plugging deadline extensions for the Wells. Staff states production from the Lease ceased on or before February 2013.

Statewide Rule 22(b) specifies that an operator must screen, net, cover or otherwise render designated categories of open-top tanks, skimming pits, and collecting pits harmless to birds.<sup>15</sup> Staff alleges that Respondent failed to properly screen an open top fiberglass tank.

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

Staff presented the testimony of one witness and five exhibits. Jet Black provided testimony only and did not have any exhibits at the hearing. The ALJ provided Jet Black with the opportunity to provide late filed exhibits in support of its offered testimony. Staff filed a response to the late filed exhibits.

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

Staff's only witness was Petar Buva, an engineering specialist with the Commission's Oil and Gas Division, Field Operations.<sup>16</sup>

Jet Black's most recent Commission Form P-5 (Organization Report) ("Form P-5") was received on May 23, 2014.<sup>17</sup> The officers listed are Derrick Lamont Phelps, as President, and Stacey F. Rice, as Treasurer.<sup>18</sup> The Notice and Complaint were sent to Mr. Phelps and Mr. Rice at the addresses provided on the Form P-5.<sup>19</sup>

<sup>14</sup> 16 TEX. ADMIN. CODE § 3.15(a)(6); see also TEX. NAT. RES. CODE § 89.002(a)(12).

<sup>15</sup> 16 TEX. ADMIN. CODE § 3.22(b).

<sup>16</sup> Tr. at 6:00-06:05.

<sup>17</sup> Staff Ex. 1.

<sup>18</sup> See Notice of Hearing dated February 20, 2018.

<sup>19</sup> See Notice of Hearing dated February 20, 2018.

The current Form P-5 status of Respondent is delinquent. The last date a Form P-5 was filed is June 28, 2013.<sup>20</sup> Mr. Buva testified that because Respondent does not have an active Form P-5, it is not allowed to operate a well in Texas.<sup>21</sup>

Mr. Buva testified that Jet Black became the operator of the Lease by submitting a Commission Form P-4, effective December 23, 2011.<sup>22</sup>

The last reported production for the Lease was in February 2013.<sup>23</sup>

Mr. Buva provided Commission inspection reports dated May 18, 2017; June 19, 2017; and August 3, 2017.<sup>24</sup>

Regarding the alleged Statewide Rule 3(1) violation, the inspection reports dated May 18, 2017; June 19, 2017; and August 3, 2017 all note that there was no sign at the Lease entrance.

Regarding the alleged Statewide Rule 3(2) violations, the inspection reports dated May 18, 2017; June 19, 2017; and August 3, 2017 all note that there was no sign at Well Nos. 4 and 7.

Regarding the alleged Statewide Rule 3(3) violation, the inspection reports dated May 18, 2017; June 19, 2017; and August 3, 2017 all note that there was no sign at or on the tank battery.

Mr. Buva discussed the information in the inspection reports related to the alleged Statewide Rule 8(d)(1) violations. Unauthorized discharges were documented during the May 18, 2017; June 19, 2017; and August 3, 2017 inspections. The inspector documented that the battery was corroded and looked to be leaking around the bottom and that the gate/master valve of Well No. 4 was slowly dripping. Mr. Buva stated that based on the pictures taken and included by the inspector, the discharges were some type of hydrocarbon.<sup>25</sup>

Regarding the alleged Statewide Rule 13(a)(6)(A) violation, the inspection reports dated May 18, 2017; June 19, 2017; and August 3, 2017 all note that there is a leak coming from the gate/master valve of Well No. 4. Mr. Buva testified that a leak from this valve is an indication of lack of surface control.

Mr. Buva discussed the information in the inspection reports dated May 18, 2017; June 19, 2017; and August 3, 2017 related to the alleged Statewide Rule 14(b)(2) violation. Well No. 4 was non-productive, and there was a tree growing

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<sup>20</sup> Staff Ex. 1.

<sup>21</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>22</sup> Staff Ex. 2.

<sup>23</sup> Staff Ex. 3.

<sup>24</sup> Staff Ex. 4.

<sup>25</sup> Tr. at 12:57 –13:08.

through the pump jack. Well No. 7 was inactive and had mesquite trees growing around and through the pump jack, the flange was up, and the pump jack was missing the electric motor. Mr. Buva testified that the last production reported on the Lease was reported for February 2013.<sup>26</sup>

Regarding the alleged Statewide Rule 22(b) violation, the inspection reports for June 19, 2017 and August 3, 2017 note that there is no bird protection on the open top fiberglass tank.

Mr. Buva stated the penalties were calculated based on Statewide Rule 107 using the typical minimum.<sup>27</sup>

## **B. Summary of Jet Black's Evidence and Argument**

Jet Black's only witness was Mr. Rice. Mr. Rice did not present any evidence at the hearing.

Mr. Rice stated that Jet Black was a contract operator for Capstone Innovations, Inc. and ceased to be the operator of the Lease when the mineral lease holder, Capstone Innovations, Inc., returned the mineral rights to the landowners.<sup>28</sup> Mr. Rice stated that it was his belief that everything that was necessary to transfer the Lease was provided to the Commission.<sup>29</sup> To support that fact, Mr. Rice stated that the two financial bonds [P-5 financial assurance] had been returned in February of 2015.<sup>30</sup> The ALJ requested Mr. Rice submit late filed exhibits in support of this testimony.

## **V. Respondent's Late Filed Exhibits and Staff's Response**

### **A. Respondent's Late Filed Exhibits**

On April 30, 2018 and May 2, 2018, Respondent filed Exhibits 1 through 6 and a letter of explanation as evidence in support of Mr. Rice's testimony.<sup>31</sup>

- Exhibit 1: Timeline of events created by Mr. Rice.<sup>32</sup>

Mr. Rice stated this was to show the order of events related to Jet Black's business activities.<sup>33</sup>

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<sup>26</sup> Tr. at 7:30-8:08.

<sup>27</sup> Tr. at 21:06-21:15 and Tr. at 24:10-20.

<sup>28</sup> Tr. at 28:43-29:10.

<sup>29</sup> Tr. at 26:40-27:30.

<sup>30</sup> Tr. at 27:30-27:58.

<sup>31</sup> Respondent's written explanation is referred to as Respondent Explanation.

<sup>32</sup> Respondent Ex. 1.

<sup>33</sup> Respondent Explanation.

- Exhibit 2: Oil & Gas Production Data Query results from the RRC Online System for the Lease from November 2011 to October 2017.<sup>34</sup>

Mr. Rice stated this was to show that Jet Black was a reliable operator of the Lease, as it made filings consistently and "reports stopped after October 2014, and the only explanation for this determined action is that Jet Black was no longer the Operator."<sup>35</sup>

- Exhibit 3: Letter dated December 13, 2014, from Mr. Rice to Derrick Phelps, President of Jet Black, resigning as CEO and Treasurer of Jet Black effective the date of the letter.<sup>36</sup>

Mr. Rice stated in his explanation that he requests his name be removed from the docket, as he had no responsibility after December 13, 2014, and that Staff's claims are based on inspections performed in 2017.<sup>37</sup>

- Exhibit 4: Commission Form P-4 *Certificate of Compliance and Transportation Authority* for the Arnold, C.S. (32185) Lease, filed December 29, 2014, approved January 22, 2015, for a change of operator transferring that lease from Jet Black to WMG Enterprises II, Inc.<sup>38</sup>
- Exhibit 5: Commission Form P-4 *Certificate of Compliance and Transportation Authority* for the Five Mile Unit (14313) Lease, Well Nos. 4 and 7, filed February 20, 2015, for a change of operator transferring the Lease from Jet Black to WMG Enterprises II, Inc.<sup>39</sup>

Mr. Rice states for Exhibits 4 and 5, the P-4s show the lease transfers by February 2015, along with the accompanying responsibilities and obligations.<sup>40</sup>

- Exhibit 6: Amegy Bank of Texas, Statement of Accounts from February 27, 2015, showing a deposit of \$25,020.62 on February 13, 2015.<sup>41</sup>

Mr. Rice states the deposit was "understood by Amegy Bank representatives to be the deliberate release of the P-5 Financial Assurance by RRC."<sup>42</sup> Mr. Rice asserts

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<sup>34</sup> Respondent Ex. 2.

<sup>35</sup> Respondent Explanation.

<sup>36</sup> Respondent Ex. 3.

<sup>37</sup> Respondent Explanation.

<sup>38</sup> Respondent Ex. 4.

<sup>39</sup> Respondent Ex. 5.

<sup>40</sup> Respondent Explanation.

<sup>41</sup> Respondent Ex. 6.

<sup>42</sup> Respondent Explanation.

this action demonstrates that RRC recognizes that Jet Black Oil is no longer an Operator" (i.e., no longer needing P-5 Financial Assurance).<sup>43</sup>

## **B. Staff's Response to Respondent's Late Filed Exhibits**

On May 2, 2018, Enforcement filed a response to Respondent's late filed exhibits.

- Exhibit 1: Timeline of events

Staff states that most of the "documents mentioned in the timeline are not included as exhibits and the exhibit functions more as a broad outline of events."<sup>44</sup>

- Exhibit 2: Oil & Gas Production Data Query

Staff states the timeline provided by Respondent shows the lease was transferred back to the previous operator around 2014, but the claim is unsupported, as "Staff has not received any documentation indicating a transfer was filed or approved during this time period."<sup>45</sup>

- Exhibit 3: Rice Resignation letter

Staff contends the resignation letter "has no bearing on the liability of Jet Black [...] and no alteration was made to Jet Black's P-5 Organization Report to show Mr. Rice was no longer with the company."<sup>46</sup> Staff further contends that by appearing for the hearing and offering evidence on behalf of Jet Black, Mr. Rice's actions are "at odds with his assertion that he no longer is an officer of the company."<sup>47</sup>

- Exhibit 4: C.S. Arnold (32185) Lease Form P-4

Staff states this document has no bearing on this case as this lease is not the subject of this docket.<sup>48</sup>

- Exhibit 5: Five Mile Unit (14313) Lease Form P-4

Staff states the Form P-4 was not approved and "no additional supportive documentation has been proved with this P-4 transfer to show that the request was valid [...] and no evidence of a good faith claim was provided to Staff during the enforcement process."<sup>49</sup> Staff goes on to state that "all efforts by Staff to receive

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<sup>43</sup> Respondent Explanation.

<sup>44</sup> Staff's written response to Respondent's explanation is referred to as Staff's Response.

<sup>45</sup> Staff's Response.

<sup>46</sup> Staff's Response.

<sup>47</sup> Staff's Response.

<sup>48</sup> Staff's Response.

<sup>49</sup> Staff's Response.

supporting documentation from either Jet Black or WMG Enterprises II, Inc. have been unsuccessful."<sup>50</sup>

- Exhibit 6: Amegy Bank of Texas, Statement of Accounts.

Staff states the return of the financial assurance, as evidenced by Respondent's testimony and Exhibit 6, was the "result of an oversight in the P-5 process."<sup>51</sup> Staff cites to 16 TEX. ADMIN. CODE § 3.78(j)(2) which provides, "that such release of financial assurance should not occur until the well transfer is approved."<sup>52</sup> Staff contends Respondent should not have received a return of its financial assurance and should submit new assurance, as the release was done prior to confirmation of approval of the transfer.<sup>53</sup>

In conclusion, Staff states Respondent is still the responsible operator of the Lease and nothing submitted has altered that fact or the evidence of violations presented by Staff.<sup>54</sup>

## VI. ALJ's Analysis

The ALJ finds that Staff provided sufficient evidence as to nine of the ten violations alleged. Jet Black did not dispute any of the violations. Jet Black instead disputed it was the responsible operator. The ALJ recommends the Commission find that Jet Black is the responsible operator, that violations of Statewide Rules 3(1), 3(2), 3(3), 13(a)(6)(A), and 14(b)(2), have occurred as alleged, that violations of Statewide Rule 8(d)(1) have occurred as alleged by Staff and modified by the ALJ, that Staff failed to prove a violation of Statewide Rule 22(b). Furthermore, the ALJ recommends the Commission assess a penalty of \$20,609.00 against Jet Black for the violations and order Jet Black to place the Lease and Wells in compliance with Commission rules and statutes.

### A. Responsible Operator

Texas Natural Resource Code § 89.002 defines how and when an operator assumes regulatory responsibility of a well and how and when an operator ceases to be the regulatory responsible operator. Texas Natural Resource Code § 89.002(a)(2) states:

"Operator" means a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves.

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<sup>50</sup> Staff's Response.

<sup>51</sup> Staff's Response.

<sup>52</sup> Staff's Response.

<sup>53</sup> Staff's Response.

<sup>54</sup> Staff's Response.

[...] In the event of a sale or conveyance of an unplugged well or the right to operate an unplugged well, a person ceases being the operator for the purpose of Section 89.011 only if the well was in compliance with commission rules relating to safety or the prevention of pollution at the time of the sale or conveyance and once the person who acquires the well or right to operate the well:

(A) specifically identifies the well as a well for which the person assumes plugging responsibility on forms required and approved by the commission;

(B) has a commission-approved organization report as required by Section 91.142;

(C) has a commission-approved bond, letter of credit, or cash deposit under Sections 91.103-91.107 covering the well; and

(D) places the well in compliance with commission rules.<sup>55</sup>

The ALJ appreciates Mr. Rice's belief that Jet Black is no longer regulatorily responsible, given the release of its financial assurance. However, Texas Natural Resource Code § 89.002 is quite clear, the Commission Form P-4 must be filed and "approved by the commission." For reasons not included in the evidence presented in this case, the Commission was never able to approve the Form P-4 for the Lease. Thus, the Lease did not transfer. As such, the ALJ finds Jet Black to be the regulatory responsible operator of the Lease.

## **B. Responsible Officers**

According to Staff's Original Complaint, Respondent's most recently filed Commission Form P-5 was filed on May 23, 2014. That Form P-5 listed the officers of Respondent as Derrick Lamont Phelps as President and Stacey F. Rice as Treasurer.<sup>56</sup> Staff did not present any evidence of such at the hearing. Mr. Rice offered testimony, later supported by a letter of resignation dated December 13, 2014, to show he is no longer an officer of Respondent.<sup>57</sup> Mr. Rice also testified that Respondent has not been in business since 2015, (February of 2015 according to Mr. Rice's timeline).<sup>58</sup>

Mr. Rice's resignation is in line with the winding up of a company. If a company is no longer in business, it has no officers. However, when an operator in the oil and gas industry is no longer in business, but still has obligations, the Commission looks to the most recently filed Form P-5 to identify the responsible officers. Organizations are required to maintain a current Form P-5 so long as obligations remain.<sup>59</sup> Respondent remains the responsible operator of the Lease.

<sup>55</sup> TEX. NAT. RES. CODE § 89.002(a)(2).

<sup>56</sup> Staff's Original Complaint, at 1.

<sup>57</sup> Respondent Ex. 3.

<sup>58</sup> Tr. at 4:18-4:28.

<sup>59</sup> See Tex. Nat. Res. Code § 91.142 and see also 16 TEX. ADMIN. CODE § 3.1(a)(3).

The most recently filed P-5 identifies Derrick Lamont Phelps, President and Stacey F. Rice, Treasurer, as its officers. The ALJ finds Derrick Lamont Phelps, President and Stacey F. Rice, Treasurer, to be responsible officers of Respondent.

**C. Violation of Statewide Rule 3(1)**

Staff alleges a violation of 16 TEX. ADMIN. CODE § 3.3(1), otherwise known as Statewide Rule 3(1). Staff alleges that there was no sign posted at the Lease entrance. Statewide Rule 3(1) requires a sign to be posted at the principal entrance of the property. Inspection reports for inspections on May 18, 2017; June 19, 2017; and August 3, 2017 all document that no sign was observed at the Lease entrance. Based on the evidence, the ALJ finds that Jet Black is in violation of Statewide Rule 3(1).

**D. Violation of Statewide Rule 3(2)**

Staff alleges a violation of 16 TEX. ADMIN. CODE § 3.3(2), otherwise known as Statewide Rule 3(2). Staff alleges that there was no sign at the well for Well Nos 4 and 7. Statewide Rule 3(2) requires a sign to be posted at each well site. Inspection reports for inspections on May 18, 2017; June 19, 2017; and August 3, 2017 all document that no sign was observed at the well sites for Well Nos. 4 and 7. Based on the evidence, the ALJ finds that Jet Black is in violation of Statewide Rule 3(2), one violation for each well.

**E. Violation of Statewide Rule 3(3)**

Staff alleges a violation of 16 TEX. ADMIN. CODE § 3.3(3), otherwise known as Statewide Rule 3(3). Staff alleges that there was no sign at the tank battery. Statewide Rule 3(3) requires a sign to be posted at or on each oil stock tank. Inspection reports for inspections on May 18, 2017; June 19, 2017; and August 3, 2017 all document that no sign was observed at the Lease tank battery. Based on the evidence, the ALJ finds that Jet Black is in violation of Statewide Rule 3(3).

**F. Violation of Statewide Rule 8(d)(1)**

Staff alleges violations of 16 TEX. ADMIN. CODE § 3.8(d)(1), otherwise known as Statewide Rule 8(d)(1). Statewide Rule 8(d)(1) prohibits unauthorized discharges. Staff alleges there were two unauthorized discharges. Inspection reports for inspections on May 18, 2017; June 19, 2017; and August 3, 2017 document a discharge around the tank battery due to corrosion and one at the wellhead of Well No. 4, as the gate/master valve has a slow drip. Staff alleged in its complaint that the leak at Well No. 4 had created an affected area of 3' x 3'. However, the inspections do not state a size of affected area. Based on the evidence, the ALJ finds that Jet Black is in violation of Statewide Rule 8(d)(1), two violations, one for each discharge, but does not find the evidence sufficient to support the affected area size alleged by staff.

### **G. Violation of Statewide Rule 13(a)(6)(A)**

Staff alleges a violation of 16 TEX. ADMIN. CODE § 3.13(a)(6)(A), otherwise known as Statewide Rule 13(a)(6)(A). Staff alleges that Well No. 4 is open to the atmosphere. Statewide Rule 13(a)(6)(A) prohibits uncontrolled tubing or casing open to the atmosphere and that wellhead assemblies are to be used to maintain surface control to prevent fluids from being discharged from the wellbore onto the ground surface. Inspection reports for inspections on May 18, 2017; June 19, 2017; and August 3, 2017 document a leak at the gate/master valve. Based on the evidence, the ALJ finds that Jet Black is in violation of Statewide Rule 13(a)(6)(A).

### **H. Violation of Statewide Rule 14(b)(2)**

Staff alleges violations of 16 TEX. ADMIN. CODE § 3.14(b)(2), otherwise known as Statewide Rule 14(b)(2). Staff alleges that Well Nos. 4 and 7 are inactive, ineligible for plugging extensions and have not been plugged as required.

According to Commission records, Jet Black does not have an active approved Form P-5 and has not had one since March 2015. As such, Jet Black has been prohibited from engaging in oil and gas exploration and production activities in Texas, including operating oil or gas wells.<sup>60</sup>

In addition to being prohibited from operating a well, because Jet Black does not have an active Form P-5, it is ineligible for extensions of plugging deadlines for inactive wells.<sup>61</sup>

Jet Black has been the operator of record of the Lease from January 3, 2012 until present. There has been no reported production for the Lease since February 2013. Additionally, according to Commission inspection reports dated May 18, 2017; June 19, 2017; and August 3, 2017, Well Nos. 4 and 7 are non-operational. Because the Wells are unplugged and there has been no reported activity for over twelve months, they qualify as inactive wells per Commission rules.<sup>62</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 for the Lease ceased in February 2013; it became an inactive well and plugging operations were required to commence no later than March 2014. There is no dispute that the Wells have not been plugged while Jet Black has been the operator. As such, Jet Black has been in violation of Statewide Rule 14(b)(2) for the Wells from March 2014—one year after cessation of operations—until present.

<sup>60</sup> See 16 TEX. ADMIN. CODE § 3.1(a)(1).

<sup>61</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>62</sup> See 16 TEX. ADMIN. CODE § 3.15(a)(6).

## I. Violation of Statewide Rule 22(b)

Staff alleges a violation of 16 TEX. ADMIN. CODE § 3.22(b), otherwise known as Statewide Rule 22(b). Staff alleges no bird protection on a fiberglass open top tank. Statewide Rule 22(b) requires an operator to render open-top tanks and pits harmless to birds. Statewide Rule 22(a) states that "federal statutes, such as the Migratory Bird Treaty Act, provide substantial penalties for the death of certain species of birds due to contact with oil in a tank or pit."<sup>63</sup> Inspection reports for inspections on June 19, 2017 and August 3, 2017 document no bird protection on a fiberglass open top tank.

The ALJ asked Staff's witness, Mr. Buva, if the fiberglass tank had anything in it, as the pictures in the inspection reports showed multiple tanks, two fiberglass, and the other a closed top metal tank, as well as other equipment of site. Mr. Buva stated that the inspection reports do not state which fiberglass tank does not have bird netting, nor do the inspection reports state if anything is in the tank(s) or not. Mr. Buva continued, stating that the tank(s) is there for the receipt of hydrocarbons, and therefore should have netting.<sup>64</sup> The inspection reports do not include any information regarding what is or was stored in the tank in question. Without this evidence, it cannot be determined if bird protection is necessary. Based on the lack of evidence, the ALJ recommends that the Commission issue no findings as to this violation, as Staff has failed to meet its burden.

## J. The Penalty

Staff recommends a penalty of \$20,614.00, based on the penalty guidelines in Statewide Rule 107.

The Commission may assess administrative penalties against Respondent up to \$10,000 per day for each violation, with each day such violation continues constituting a separate violation.<sup>65</sup> Commission Statewide Rule 107 provides guidelines to be utilized when assessing enforcement penalties.<sup>66</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;

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<sup>63</sup> 16 TEX. ADMIN. CODE § 3.22(b).

<sup>64</sup> Tr. at 15:20-20:31.

<sup>65</sup> TEX. NAT. RES. CODE § 81.0531.

<sup>66</sup> 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.<sup>67</sup>

Rule 107 also provides guideline minimum penalties for typical violations.<sup>68</sup>

The guideline minimum penalty for failure to comply with lease sign requirements (Statewide Rule 3(1)) is \$1,000.<sup>69</sup> Staff recommends a penalty of \$1,000 for the Statewide Rule 3(1) violation.

The guideline minimum penalty for failure to comply with well sign requirements (Statewide Rule 3(2)) is \$500.<sup>70</sup> Staff recommends a penalty of \$1,000 for two violations of the Statewide Rule 3(2).

The guideline minimum penalty for failure to comply with tank battery sign requirements (Statewide Rule 3(3)) is \$1,000.<sup>71</sup> Staff recommends a penalty of \$1,000 for the Statewide Rule 3(3) violation.

The guideline minimum penalty for improper disposal of oil and gas waste (Statewide Rule 8(d)(1)) is \$500 plus \$0.30 per square-foot of the discharge area.<sup>72</sup> Staff fails to either list or breakdown the penalty, but by doing the calculations the ALJ was able to determine the amount of \$1,005. However, Staff's calculations are incorrect as to the violations alleged. Staff's number only works if Staff had plead an impacted area size larger than what it alleged or plead two impacted areas. Staff, in its Original Complaint, plead one impact size of 3' x 3'.<sup>73</sup> That would calculate to \$2.70, not \$5. However, the inspection reports do not contain any documentation regarding an affected area size, nor did Staff offer any other evidence of such at the hearing. As there is no evidence of the size of the discharge area, only the base penalty may be applied. Thus, the correct amount for the Statewide Rule 8(d)(1) violations is \$500 per violation.

The guideline minimum penalty for failure to comply with surface control requirements (Statewide Rule 13(a)(6)(a)) is a range of \$1,000 to \$5,000.<sup>74</sup> Staff recommends a penalty of \$5,000 for the Statewide Rule 13(a)(6)(a) violation.

The guideline minimum penalty for failure to plug an onshore well (Statewide Rule 14(b)(2)) is \$2,000 plus \$1 per foot of total depth of the well.<sup>75</sup>

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<sup>67</sup> 16 TEX. ADMIN. CODE § 3.107(d).

<sup>68</sup> 16 TEX. ADMIN. CODE § 3.107(e)(1) and (j).

<sup>69</sup> 16 TEX. ADMIN. CODE § 3.107(e)(1)(Table 1) and (j)(Table 5).

<sup>70</sup> 16 TEX. ADMIN. CODE § 3.107(e)(1)(Table 1) and (j)(Table 5).

<sup>71</sup> 16 TEX. ADMIN. CODE § 3.107(e)(1)(Table 1) and (j)(Table 5).

<sup>72</sup> 16 TEX. ADMIN. CODE § 3.107(e)(1)(Table 1) and (j)(Table 5).

<sup>73</sup> Staff's Original Complaint, at 3.

<sup>74</sup> 16 TEX. ADMIN. CODE § 3.107(e)(1)(Table 1) and (j)(Table 5).

<sup>75</sup> 16 TEX. ADMIN. CODE § 3.107(e)(1)(Table 1) and (j)(Table 5).

Staff recommends a penalty of \$2,000 per well plus \$7,609 for total well depth of both wells.

Staff requests compliance, no penalty, for the alleged Statewide Rule 22(b) violation.

The ALJ finds the evidence supports an assessment of a \$20,609.00 penalty, rather than the \$20,614.00 amount recommended by Staff.

#### **K. Corrective Action**

The ALJ finds that corrective actions requiring compliance with Statewide Rules 3(1), 3(2), 3(3), 8(d)(1), 13(a)(6)(A), and 14(b)(2) are appropriate.

#### **VII. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law**

Based on the record in this case and evidence presented, the ALJ recommends the Commission find that the violations of Statewide Rules 3(1), 3(2), 3(3), 13(a)(6)(A), and 14(b)(2) have occurred as alleged; the violations of Statewide Rule 8(d)(1) have occurred as amended; assess a penalty of \$20,609.00 against Jet Black for those violations; order Jet Black to place the Lease and Wells in compliance with Commission rules and statutes; adopt the following findings of fact and conclusions of law; and issue the recommended the following proposed ordering provisions.

#### **Findings of Fact**

1. On February 20, 2018, Jet Black Oil, Inc., ("Jet Black" or "Respondent") Operator No. 432089, was sent the Original Complaint for this case and a Notice of Hearing, for April 16, 2018, by certified and first class mail, addressed to the most recent Commission Form P-5 address. Respondent's officers 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 Original 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 Jet Black appeared at the hearing on April 16, 2018.
4. Respondent was given more than 30 days' notice of the Original Complaint and Notice.

5. On or about May 23, 2014, Respondent filed its most recent Form P-5 with the Commission reporting that its officers consist of the following individuals: Derrick Lamont Phelps, President and Stacey F. Rice, Treasurer.
6. Derrick Lamont Phelps 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. Stacey F. Rice 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.
8. The violations of Commission rules committed by Respondent are related to safety and the control of pollution.
9. Respondent designated itself to the Commission as the operator of the Five Mile Unit (14313) Lease, Well Nos. 4 and 7, Five Mile (Wilcox, Upper) Field, Gonzales County, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective December 23, 2011, approved January 3, 2012. Respondent remains the operator of record for the Lease and Wells.
10. There has been no reported production for the Lease since February 2013.
11. Respondent's Form P-5 has been delinquent since March 1, 2015. Respondent is not eligible for plugging deadline extensions for Well Nos. 4 or 7.
12. Commission inspection reports made on May 18, 2017; June 19, 2017; and August 3, 2017 show that the sign or identification required to be posted at the Lease entrance was missing.
13. Commission inspection reports made on May 18, 2017; June 19, 2017; and August 3, 2017 show that the sign or identification required to be posted at Well Nos. 4 and 7 were missing.
14. Commission inspection reports made on May 18, 2017; June 19, 2017; and August 3, 2017 show that the sign or identification required to be posted at the Lease tank battery was missing.
15. 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.

16. Commission inspection reports made on May 18, 2017; June 19, 2017; and August 3, 2017 for the Lease show that the battery was corroded and looked to be leaking around the bottom and that the master/gate valve of Well No. 4 was slowly dripping.
17. Respondent did not have a permit for said discharges, nor were they authorized under Statewide Rules 8(d)(3), 8(e), 9, 46, or 98.
18. Unpermitted discharges of oil and gas waste, in violation of Statewide Rule 8(d)(1), can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters.
19. Commission inspection reports made on May 18, 2017; June 19, 2017; and August 3, 2017 for the Lease, show Well No. 4 is open to the atmosphere.
20. 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.
21. Commission inspection reports made on May 18, 2017; June 19, 2017; and August 3, 2017, and either reports filed with the Commission reflecting zero production or the absence of production reports being filed with the Commission, show that Well Nos. 4 and 7 have been inactive for a period greater than one year. Production from the Lease ceased in February 2013.
22. 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 Well Nos. 4 or 7 as allowed by Statewide Rule 14. Well Nos. 4 and 7 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 well. Unplugged wellbores, in violation of Statewide Rule 14(b)(2), constitute a cognizable threat to the public health and safety because of the potential of pollution.

### Conclusions of Law

1. Proper notice was issued by the Commission to Respondent and all other appropriate persons legally entitled to notice. See, e.g., TEX. GOV'T CODE § 2001.051-.052; 16 TEX. ADMIN. CODE § 1.25.
2. The Commission has jurisdiction in this case. See, e.g., TEX. NAT. RES. CODE §§ 81.051, 81.0512, 85.041-.042; see also TEX. NAT. RES. CODE ch. 91.
3. Respondent is responsible for maintaining the subject lease in compliance with all applicable Commission rules and chapters 89 and 91 of the Texas Natural Resources Code.
4. Respondent is in violation of Statewide Rules 3(1), 3(2), 3(3), 8(d)(1), 13(a)(6)(A), and 14(b)(2). 16 TEX. ADMIN. CODE §§ 3.3(1), 3.3(2), 3.3(3), 3.8(d)(1), 3.13(a)(6)(A) and 3.14(b)(2).
5. The documented violations committed by Respondent constitute acts deemed serious, and a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE § 81.0531(c).
6. Respondent is responsible for maintaining the subject leases in compliance with Statewide Rule 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.
7. 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.
8. 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.
9. Respondent is responsible for maintaining the Lease in compliance with Statewide Rule 8(d)(1), which prohibits the discharge of oil and gas waste without a permit.

10. 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.
11. Respondent is responsible for maintaining the Lease in compliance with Statewide Rule 14(b)(2), which requires that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed, unless the operator is eligible for and obtains an extension of the plugging deadline.
12. 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.
13. An assessed administrative penalty in the amount of TWENTY THOUSAND SIX HUNDRED NINE DOLLARS (\$20,609.00) is justified considering the facts and violations at issue.
14. 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, Derrick Lamon Phelps, 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.
15. 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, Stacey F. Rice, 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. Jet Black Oil, Inc. shall place the Lease and Well Nos. 4 and 7 in compliance with Statewide Rules 3(1), 3(2), 3(3), 8(d)(1), 13(a)(6)(A), 14(b)(2), and any other applicable Commission rules and statutes.

2. Jet Black Oil, Inc. shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWENTY THOUSAND SIX HUNDRED NINE DOLLARS (\$20,609.00)**.

It is further **ORDERED** that as persons in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Derrick Lamont Phelps and Stacey F. Rice and any other organization in which said individuals 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 Submitted,

A handwritten signature in black ink, appearing to read 'Kristi M. Reeve', with a long horizontal line extending to the right.

Kristi M. Reeve  
Administrative Law Judge