

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**OIL AND GAS DOCKET NO. 05-0290070**

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**ENFORCEMENT ACTION AGAINST UPSTREAM PROPERTIES, LLC (OP. 878951) FOR VIOLATIONS OF STATEWIDE RULES ON THE HEDRICK, J.L. (00965) LEASE, WELL NOS. 1B, 2, 2B, 3B AND 5, MITCHELL CREEK FIELD, HOPKINS COUNTY, TEXAS**

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**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 as the operator of the Hedrick, J.L. (00965) Lease, Well Nos. 1B, 2, 2B, 3B and 5, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective October 1, 2012, approved November 28, 2012.
7. 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.
8. Commission inspection reports completed on August 23, 2012; January 2, 2013; February 13, 2013; March 12, 2013; September 3, 2013; October 17, 2013 and May 29, 2014, and reports filed by

- Respondent with the Commission (reflecting zero production and no reports filed after May 2014), since January 2005, showed January 2005, showed that the Hedrick, J.L. (00965) Lease, Well Nos. 2B, 3B and 5 have been inactive for a period greater than one year. Production from the subject wells ceased on or before January 2005.
9. Commission inspection reports completed on August 23, 2012; January 2, 2013; February 13, 2013; March 12, 2013; September 3, 2013; October 17, 2013 and May 29, 2014, and reports filed by Respondent with the Commission (reflecting zero production and no reports filed after June 2012), since January 2007, showed January 2005, showed that the Hedrick, J.L. (00965) Lease, Well Nos. 1B and 2 have been inactive for a period greater than one year. Production from the subject wells ceased on or before January 2005.
  10. Commission District inspection reports made on January 2, 2013; February 13, 2013; March 12, 2013; September 3, 2013; October 17, 2013 and May 29, 2014 for the Hedrick, J.L. (00965) Lease, show that the sign or identification required under Statewide Rule 3(2), [Tex. RR. Comm'n, 16 TEX. ADMIN. CODE §3.3(2)] to be posted at Well No. 2 displayed incorrect operator information.
  11. Failure to properly identify a well by the posting of the sign required by Statewide Rule 3 has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.
  12. The Respondent has not demonstrated good faith since it failed to timely plug or otherwise place the subject lease and subject well in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.
  13. None of the subject wells have plugging extensions.
  14. Commission District inspection reports made on August 23, 2012; January 2, 2013; February 13, 2013 and March 12, 2013 for the Hedrick, J.L. (00965) Lease indicated that there was oil saturated soil and water around the wellhead on the injection, Well No. 2.
  15. Commission District inspection reports made on September 3, 2013; October 17, 2013 and May 29, 2014 for the Hedrick, J.L. (00965) Lease indicated that the wellhead of Well No. 2 was still leaking saltwater. The Commission District inspection report made on May 29, 2014 show the chlorides to be 7800 ppm.
  16. No permit has been issued to Respondent for the discharge of oil and gas wastes on or from the subject lease.
  17. 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 leaks 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.
  18. Commission District inspection reports made on August 23, 2012; January 2, 2013; February 13, 2013; March 12, 2013; September 3, 2013; October 17, 2013 and May 29, 2014 showed that the

surface casing on the Hedrick, J.L. (00965) Lease, Well Nos. 2, 2B, 3B and 5 was buried, therefore a Bradenhead surface casing valve could not be located and the pressure on the casing was unable to be monitored.

19. 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.
20. The total estimated cost to the State for plugging Well Nos. 1B, 2, 2B, 3B, and 5, Hedrick, J.L. (00965) Lease, is \$326,050.00.
21. 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 3, 14(b)(2), 8(d)(1), and 17(a).
6. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 3, which requires that 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 shall post signs or identification.
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 Rule 8(d)(1), which prohibits the discharge of oil and gas wastes without a permit.
9. By failing to install a Bradenhead surface casing valves to observe the surface casing pressure or by failing ot install a Bradenhead surface casing valves above ground level so that surface casing

pressure can be monitored, Respondent has violated Statewide Rule 17(a) [Tex. RR. Comm'n, 16 TEX. ADMIN. CODE §3.17(a)].

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 and place the Hedrick, J.L. (00965) Lease, Well Nos. 1B, 2, 2B, 3B and 5, Mitchell Creek Field, Hopkins County, Texas in compliance with applicable Commission rules and regulations; and
2. 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 **THIRTY NINE THOUSAND FIVE HUNDRED SEVENTY-TWO DOLLARS (\$39,572.00)**.

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)**