

## **Texas Railroad Commission Announces Standard of Proof for Induced Seismicity**

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On August 31, the Hearings Division of the Texas Railroad Commission issued a Proposal for Decision involving the West Lake SWD Well No. 1. The order comes four months after the Commission filed notice on April 24 that it would conduct a hearing to consider whether operation of the well in the Barnett Shale field is causing or contributing to seismic activity in the vicinity of Reno, Texas in Parker County.

The Commission's order noted that the Show Cause Hearing on June 10 "was called in response to the publication of the article 'Causal Factors for Seismicity Near Azle, Texas' . . . on April 21, 2015." In a lengthy technical analysis of the Causal Factors Study and evidence presented at the hearing, the Commission found that there was insufficient evidence to determine that injection at West Lake SWD Well No. 1 induced seismicity in the Azle/Reno area. At the hearing, the respondent offered "direct evidence into the record in this case—several hours of expert witness testimony and 38 exhibits." Order at 6. The Commission's Oil & Gas Division cross-examined the respondent's witnesses and offered one exhibit into the record, the injection permit file for the subject well. *Id.* The Commission discussed many of the Causal Factors Study's limitations and noted that no evidence was offered in support of the study.

In its order, the Commission ruled that in a show cause hearing a respondent has the burden of proof to show that the injected fluids from its well are not likely to be or determined to be contributing to seismic activity. In a matter of first impression, the Commission held that for a permit to be revoked, the Commission must find by a preponderance of the evidence it is "more likely than not that injection is causing seismic activity." Order at 4 (citing *Ellis County State Bank v. Keever*, 888 S.W.2d 790, 792 (Tex. 1994)). Because that standard could not be met, the well permit will remain effective.