August 30, 2004

OIL AND GAS DOCKET NO. 08-0235029

ENFORCEMENT ACTION AGAINST RCM OIL, INC. FOR VIOLATIONS OF STATEWIDE RULES AND LAND TREATMENT PERMIT NO. LT-0136 ON THE RICKY SMITH RANCH FACILITY, WINKLER COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:	**MOVANT:**
Susan German, Staff Attorney	Railroad Commission of Texas
Jill Hybner	" "
FOR RESPONDENT:	**PARTY:**
Rickey Smith	RCM Oil, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	July 14, 2003
ORIGINAL NOTICE OF HEARING:	August 19, 2003
SECOND AMENDED NOTICE OF HEARING:	February 20, 2004
HEARING HELD:	April 15, 2004
RECORD CLOSED:	August 13, 2004
PFD PREPARED BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	August 30, 2004
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

This was a Commission-called hearing on the recommendation of the Environmental Services Section of the Oil & Gas Division to determine the following:

1. Whether the respondent failed to comply with Statewide Rule 8 in the closure of the Ricky Smith Ranch Facility, Land Treatment Permit No. LT-0136, Winkler County, Texas;

2. Whether the respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to comply with said statutes and Statewide Rule 8;

3. Whether the respondent should be assessed administrative penalties of not more than $10,000 per day for each offense committed;

4. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code Ann. §81.0534.

Susan German, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section ("Enforcement"). Rickey Smith appeared and submitted evidence on behalf of RCM Oil, Inc. ("RCM" or "respondent").[1]

On August 19, 2004, a notice of hearing in this matter scheduling a hearing for October 9, 2004 was circulated by Enforcement. Respondent timely requested to appear at the hearing by telephone. Enforcement objected to the telephone appearance and respondent's request was denied. Two days prior to the scheduled hearing, respondent retained counsel. At that time both parties agreed to continue the hearing to a later date.

Enforcement argued that RCM's failure to close the facility in a timely fashion after the permit was canceled warrants an administrative penalty of $10,000. RCM argued that it complied with the closure requirements, and that there was never any pollution associated with the facility. It therefore urged that no

[1]Enforcement's hearing file was admitted into evidence at the original hearing. At respondent's request, the record was left open to allow the submission of additional documentary evidence. The record was originally closed on May 24, 2004 and a Proposal for Decision was issued. On July 19, 2004, the Proposal for Decision was withdrawn and the record was reopened to address a deficiency in the evidentiary record. After both parties were given the opportunity to address the evidentiary issue and to submit additional evidence, the record was closed again on August 13, 2004.

administrative penalty should be imposed.

The examiner agrees that an administrative penalty is appropriate. Under the facts presented, the examiner recommends an administrative penalty of $2,500 instead of the $10,000 penalty sought by Enforcement..

DISCUSSION OF THE EVIDENCE

Facility Permit and Closure Cost Issues

Commission records show that RCM designated itself as the operator of the Ricky Smith Ranch Facility, Permit No. LT-0136 by filing a permit renewal application which was granted by the Commission on July 30, 1995. The renewal permit allowed for the disposal of nonhazardous crude oil contaminated soil from spills in a 55 acre facility composed of 11 individual 5 acre cells. The renewal permit expired on April 1, 1998.

RCM filed another renewal application on March 26, 1998. RCM was advised in correspondence from Environmental Services dated September 10, 2001, that the estimated closure cost for the facility was too low and that a new estimate was required. RCM provided an estimate on October 4, 2001, with the notation that a report from a petroleum engineer would follow. In November 2001, RCM forwarded the report, which estimated the closure cost at $13,748 for each cell. The total estimated closure cost for all 11 cells was $151,228. The report also noted that only two cells were in operation at the facility.

On January 18, 2002, RCM requested that its permit be limited to the two existing cells, and sought a reduction in the closure cost bond consistent with the amended permit. On February 1, 2002, Environmental Services advised that the amended permit was acceptable, subject to RCM filing a closure cost bond of $27,496. RCM was further advised that the required closure cost bond was $2,496 because it could reduce the amount by $25,000 under Statewide Rule 78.

In March 2002, RCM submitted a Certificate of Deposit in the name of the Railroad Commission in the amount of $2,500. RCM was apparently advised by Commission staff that the Certificate of Deposit was not an acceptable form of financial assurance. On May 18, 2002, RCM submitted a Letter of Credit on the proper Commission form in the amount of $2,500.

Organization Report Renewal Issues

RCM claimed it filed a renewal of its Commission Form P-5 (Organization Report) in January 2002. With its renewal filing, RCM claimed it also submitted financial assurance for the organization under the $1,000 cash alternative option and a filing fee of $200. RCM further claimed that the $1,000 cash alternative filing was returned, but that the $200 fee was not. It appears that RCM's P-5 was not

processed at this time due to issues involving the facility closure cost bond, however there is no evidence in the record to confirm this. There is also no evidence in either the Commission records or the documents submitted by RCM to confirm that RCM filed a Commission Form P-5, the $1,000 cash alternative amount, or the $200 filing fee in January 2002.

As previously noted, on May 18, 2002, RCM filed a $2,500 letter of credit to satisfy the facility closure cost requirements. RCM claimed that its P-5 should have been processed at this time. There is no information in the record to establish why the Organization Report was not renewed at this time, or whether all of the required forms and fees were filed and paid.[2]

No further action was taken by RCM to renew its Organization Report in 2002, However RCM filed a renewal of its Organization Report on July 21, 2003 which was approved on August 7, 2003. The P-5 identified Rickey Smith as the sole officer. RCM submitted a cash fee of $3,125 as its financial assurance. The $2,500 closure cost Letter of Credit originally submitted in May 2002 was also processed at this time. The August 7, 2003 renewal applied to the period from February 1, 2003 to January 31, 2004.

Permit Cancellation and Closure Issues

On May 21, 2002, RCM was advised by Environmental Services that its permit for the facility would be canceled due to its failure to renew its Organization Report. Certified mailings sent on June 26, 2002 and July 30, 2002 advised RCM of the pending cancellation and its right to request a hearing. On August 26, 2002, Environmental Services canceled RCM's permit and advised RCM that it should proceed with closing the facility. Follow up letters were sent regarding closure requirements on October 7, 2002 and January 15, 2003.

The Commission inspected the facility on October 18, 2002. No one from RCM was present during the inspection. The inspector noted that the facility appeared closed, that weeds were growing in Cell #1, and that construction started on Cell #2 had not been completed.

A follow-up inspection of the facility occurred on April 15, 2003. Again no RCM representative was present during the inspection. The inspector again noted that the facility was closed and that winter wheat had been planted in Cell #1. Cell #2 was observed to not have a proper earthen ramp. The

[2]Correspondence from the P-5 department to RCM dated February 12, 2003 advised that RCM's P-5 filing was deficient for three reasons: 1) it had not filed a Form P-5; 2) it had not filed the organizational financial assurance under the $1,000 cash alternative option: 3) it did not pay the $300 filing fee. The examiner notes that because the annual renewal date for RCM's Organization Report is February 1st, it is not possible to determine whether the February 12, 2003 letter refers to deficiencies in RCM's filings in 2002, or whether it discusses the requirements for the period from February 1, 2003 to January 31, 2004.

inspector reported that there was no evidence of past or recent disposal activities.

On May 14, 2003, this matter was referred to Enforcement for further action. On May 16, 2003, a settlement offer was sent to RCM. RCM responded to the settlement offer on May 21, 2003, advising that the facility had not been used in over two years. RCM indicated that it attempted to renew the permit and its Organization Report beginning in February 2002, but that it could not locate any correspondence indicating whether its permit had been accepted or denied. RCM also noted that it could not locate some of its files after a merger with another company.

Contemporaneous with its May 21, 2003 response to the settlement letter, RCM submitted a test report for samples obtained from the facility in February 2002. RCM further advised that no wastes had been added to the site since December 2000. The February 2002 test results were compared with prior test results from June 2001. The comparison found an increase in the total petroleum hydrocarbons in the last report. Environmental Services concluded that the increase evidenced additional oil and gas wastes were added to the site after June 2001. RCM was advised to obtain new samples and test results with Commission staff present.

RCM and Enforcement exchanged correspondence in June and July 2003 over sampling requirements and renewal requirements for RCM's Organization Report. On July 28, 2003 the District Office inspected the facility, with a representative of RCM. The dikes around the cells were observed to be eroding due to lack of maintenance. A 20' by 20' oil stained area was noted in Cell #1. RCM claimed that the oil stained area was the result of illegal dumping and that Commission personnel knew who illegally dumped the contaminated soil, but could not prove it. RCM also attempted to schedule a sample collecting inspection with Commission staff for July 31, 2003. There is no indication that samples were collected on that date or why no inspection occurred.

A follow up inspection of the facility was conducted on September 18, 2003. The oil stained area in Cell #1 had been remediated, and the inspector opined that it was within the closure limits. A 4' by 30' pile of brush, concrete, discarded produce and soil was observed in Cell #1. RCM's representative was present and reportedly said "he has been attempting to close down the facility but that he has no idea what is needed to close this out with Austin."

RCM collected soil samples on September 18, 2003 which were lab tested on September 30, 2003. The test results were forwarded to the Environmental Section. The collection of samples was not witnessed by Commission personnel. Commission records indicate that the September tests results were incomplete and that RCM was requested to perform additional testing.

The Commission witnessed collection of soil samples by RCM on October 30, 2003. The final test results for the October samples were submitted on December 1, 2003. RCM was advised on December 9, 2003 that the tests were acceptable and that it could proceed to close the facility. An

inspection on January 16, 2004 indicated that RCM had initiated closure operations. A final inspection on February 3, 2004 found that the facility was properly closed.

ENFORCEMENT'S POSITION

Enforcement contends that RCM violated the conditions of it permit and Statewide Rule 8(d)(6) by failing to maintain a valid Organization Report with the Commission. Enforcement further claims that the facility permit was properly canceled in August 2002.

With respect to the amount of the administrative penalty, Enforcement argues that RCM engaged in a pattern of "intentional and flagrant" conduct in a bad faith attempt to delay closure of the facility. Enforcement specifically points to RCM's retention of an attorney to defend its interests as a bad faith delaying tactic. Enforcement also argues that RCM took no positive steps to comply with the facility closure requirements until 2 days before the original hearing date scheduled for this docket. Finally, Enforcement argues that RCM's failure to completely close the facility until February 2004, a period of 17 months, was a serious violation of Commission rules, warranting a penalty of $10,000.

RCM'S POSITION

RCM contends that it properly operated the facility from July 30, 1995, when it received the renewal permit, until it stopped accepting oil and gas wastes in December 2000. RCM points to its history of no violations associated with operations to support this contention.

RCM argues that the Commission's P-5 Department could not tell it what was required to renew its Organization Report in 2002 due to changes in financial assurance requirements. RCM claims that its Organization Report should have been renewed in 2002. RCM also admits that when it could not get its Organization Report renewed, that it abandoned any attempts to renew the facility permit.

RCM also claims it could not assess the facility closure requirements due to lost paperwork. RCM contends it attempted to work with the Commission to determine what it was required to do. RCM argues that it conducted all necessary tests, and acted in good faith to satisfy all Commission requirements as soon as they became known.

Finally, RCM urges that it never caused any pollution in operating the facility and that the testing results confirm this claim. Environmental Services admits that RCM did not cause any pollution in its operation of the facility, but notes that it was unable to confirm this until RCM submitted the appropriate test results.

Because of its record of no violations, the lack of any pollution, and its attempts to work with the Commission to properly close the facility, RCM claims that no administrative penalty should be assessed.

APPLICABLE AUTHORITY

Statewide Rule 8(d)(6)(a) allows for a permit to be issued for disposal of oil and gas wastes, by any method, only if the Commission determines that the disposal will not result in the waste of oil, gas or geothermal resources or the pollution of surface or subsurface water.

Statewide Rule 8(h) provides that violations of permits issued under Rule 8 are subject to penalties and remedies specified in the Texas Natural Resources Code.

The primary controlling legal authority for determination of the amount of any administrative penalty is Texas Natural Resources Code §81.0531(c) which provides:

> In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged.

EXAMINER'S OPINION

Most of the facts in this case are undisputed. RCM acknowledges operating the facility, and letting its Organization Report and permit lapse in 2002 over financial assurance issues. RCM also admits that the facility was not completely closed until February 3, 2004. Enforcement acknowledges: 1) RCM's history of no violations of Commission rules in operating the facility; 2) RCM's attempts to renew its Organization Report and facilities permit in 2002; 3) RCM's delay in closing the facility did not cause pollution; and, 4) the proper closure of the facility. The confrontation between the parties focuses on the RCM's actions from August 26, 2002 through February 3, 2004 and how those actions impact the amount of any administrative penalty.

Texas Natural Resources Code §81.0531(c) requires the Commission to consider four issues in determining the amount of an administrative penalty for a violation of Commission rules: 1) the permittee'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. In most Enforcement cases, a standard penalty guideline has already evaluated these factors in determining the amount of the administrative penalty that the Commission's Enforcement Section and Oil & Gas Division request for violations of specific Commission rules. However, the violation in this case is not covered in the standard penalty guideline. Accordingly, an analysis of this violation and the four statutory issues is required to determine the amount of the administrative penalty.

Enforcement's argument for a $10,000 administrative penalty for a single continuing violation of Commission Statewide Rule 8(d)(6) is premised on two issues under Texas Natural Resources Code §81.0531(c): RCM's alleged bad faith delay in closing the facility; and, the seriousness of the violation in the 17 month time period between the cancellation of the permit and the final closure of the facility.

RCM raises four issues relevant to the statutory factors under Texas Natural Resources Code §81.0531(c). RCM contends that it has no history of violations for this facility. RCM further argues that the time period of the violation was not serious because the facility did not accept any wastes after December 2000. RCM also argues that there was no threat to the health or safety of the public as there was no pollution associated with the facility. Finally, RCM claims that it demonstrated its good faith by working with the Commission for over 7 months to make sure it closed the facility properly, and through the payment of $3,125 in fees to renew its organization report in July 2003.

The examiner agrees with Enforcement that an administrative penalty is appropriate in this case. RCM took the ostrich approach to this problem in June 2002. After determining that it no longer wanted to pursue renewal of its permit or its Organization Report, RCM buried its head in the sand and waited for the Commission to tell it what to do. There is no evidence that RCM took any affirmative action to meet its regulatory responsibilities from late June 2002 until the Commission initiated this proceeding in May 2003. Ignoring the situation for almost a year after the Commission canceled the permit, and sent several letters to RCM in attempts to address the problem, was not an appropriate response to resolving the regulatory issues associated with closing the facility.

However, the examiner disagrees with the $10,000 administrative penalty amount recommended by Enforcement. The penalty sought by Enforcement is based on the purported bad faith delay in closing the facility and the claim that the violation was serious due to the 17 months between the permit cancellation and facility closure. The record in this docket does not fully support either contention.

As noted above, after the permit was canceled, RCM did nothing until May 2003. But the argument that RCM **deliberately** delayed closing the facility until 2 days prior to the scheduled October hearing is not supported by the evidence. The record clearly shows that while RCM did not timely respond to the cancellation of the permit, that beginning in May 2003, RCM did work with the Commission to properly close the facility. First, in May 2003 submitted test results to the Commission, which while admittedly out of date and incomplete, still must be viewed as a step toward facility closure. In September 2003, a further affirmative step was taken by RCM when it obtained new samples and test results which were also submitted to the Commission. The record also indicates that after May 2003, there was an active dialogue between RCM and the Commission regarding the proper closure of the facility as seen in the exchange of correspondence in June and July 2003 over sampling requirements and renewal requirements for RCM's Organization Report. Further, the record also shows that RCM attended inspections with District Office personnel in July and September 2003. Finally, the record indicates that RCM renewed its Organization Report with the Commission in August 2003. These facts contradict the

assertion that RCM did not engage in any closure related activity until 2 days prior to the hearing scheduled in October 2003.

The examiner also rejects the argument that RCM's retention of counsel two days prior to the October hearing was a bad faith attempt to delay closing the facility. The fact that a party chooses to exercise its constitutional right to representation, a right the Commission recognizes in its Rules of Practice and Procedure, is not evidence of a bad faith delaying tactic. Additionally, Enforcement's argument ignores two other pertinent facts from the record. In September 2003, respondent filed a request to appear by telephone at the hearing. Enforcement objected to respondent's appearance by telephone, and under the Rules of Practice and Procedure, the examiner therefore denied respondent's request. Shortly thereafter, respondent retained local counsel. It strains credibility to argue that it is bad faith to retain an attorney in a legal proceeding where the opposing side is represented by counsel that exercised a proper legal objection concerning the manner in which respondent could participate in the hearing. It is simple prudence under such circumstances for a respondent to retain an attorney familiar with Commission proceedings.

Additionally, the bad faith delay argument ignores the fact that Enforcement **agreed** to a continuance of the scheduled October 2003 hearing after RCM retained counsel. If Enforcement truly believed respondent's conduct was a bad faith delaying tactic, it should have objected to any request to continue the hearing and advised the examiner that the continuance was solely to delay the proceedings. It is the examiner's opinion that the failure to timely and consistently raise the bad faith issue coupled with the procedural objections raised regarding respondent's appearance at the hearing undermine Enforcement's bad faith delay argument.

The examiner also disagrees with Enforcement's characterization of the length of time between permit cancellation and the facility closure. While the facility permit in this case does not specify a deadline for closing the facility after operations cease, Rule 8 provides that for disposal pits, operators are required to dewater, backfill and compact the pit anywhere from 120 days to one year after the associated well operations cease.

Because the facility permit includes soil sampling and testing requirements, and involves a much larger area than the typical disposal pit, it is reasonable to infer that an operator may require a significant period of time to properly close a facility after a permit is canceled. It is not unreasonable that RCM spent approximately 7 months between May 21, 2003 and February 3, 2004 to confirm closure requirements with the Commission's Environmental Staff, obtain samples and test results and properly close a 10 acre facility, especially where multiple sampling and testing issues arose. The examiner therefore is not convinced by Enforcement's argument that the complete 17 month time period should be considered in determining the amount of any administrative penalty.
It would be more appropriate under the facts in this matter to use the ten month time period where RCM took no action when considering seriousness of the violation and the amount of the administrative penalty.

Guidance with respect to the amount of the administrative penalty recommended for the "seriousness" of this violation can also be found by comparing this violation to the recommended standard penalty amounts for violations related to permitted disposal pits. The range of standard penalties for the failure to properly dewater, backfill and compact dry disposal pits associated with well operations starts at $500 and caps at $2,000.[3] In looking to the other statutory factors, it is undisputed that RCM has no history of violations associated with its operation of the facility. Additionally, there is no evidence that RCM's inactivity resulted in pollution. Finally, as evidence of its belated "good faith", between May 2003 and February 2004, RCM: 1) renewed its Organization Report; 2) expended significant sums to properly test and close the facility; and 3) worked with the Commission for over 7 months to verify that its closure operations met the applicable requirements.

In sum, review of all of the available evidence in the record suggests that both Enforcement's request for a $10,000 administrative penalty and RCM's request that no penalty be assessed are inconsistent with the facts and circumstances surrounding this violation. It is the examiner's recommendation that an administrative penalty of $2,500 is consistent with analogous violations of Commission rules, more accurately reflects the seriousness of the violation, takes into account RCM's lack of previous violations, the absence of any pollution, and considers RCM's actions after May 2003 in properly closing the facility.

Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent, RCM Oil, Inc. (hereinafter "respondent" or "RCM"), was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address. RCM appeared at the hearing and offered evidence.

2. RCM designated itself as the operator of the Ricky Smith Ranch Facility, Permit No. LT-0136 by filing a permit renewal application which was granted by the Commission on July 30, 1995. The renewal permit allowed for the disposal of nonhazardous crude oil contaminated soil from spills in a 55 acre facility composed of 11 individual 5 acre cells. The renewal permit expired on April 1, 1998.

3. RCM filed another renewal application on March 26, 1998. RCM was advised in correspondence from Environmental Services dated September 10, 2001, that the estimated closure cost

[3] Because the facility was not being operated, with no materials deposited for several years prior to the issues raised in this docket, it would appear that violations concerning dry pits under Rule 8(d)(4)(G) are the most analogous to this case.

for the facility was too low and that a new estimate was required. RCM provided an estimate on October 4, 2001, with the notation that a report from a petroleum engineer would follow. In November 2001, RCM forwarded the report, which estimated the closure cost at $13,748 for each cell. The total estimated closure cost for all 11 cells was $151,228. The report also noted that only two cells were in operation at the facility.

4. On January 18, 2002, RCM requested that its permit be limited to the two existing cells, and sought a reduction in the closure cost bond consistent with the amended permit. On February 1, 2002, Environmental Services advised that the amended permit was acceptable, subject to RCM filing a closure cost bond of $27,496. RCM was further advised that the actual amount of the closure cost bond was $2,496 because it could reduce the amount by $25,000 under Statewide Rule 78.

5. In March 2002, RCM submitted a Certificate of Deposit in the name of the Railroad Commission in the amount of $2,500. RCM was apparently advised by Commission staff that the Certificate of Deposit was not an acceptable form of financial assurance.

6. On May 18, 2002, RCM submitted a Letter of Credit on the proper Commission form in the amount of $2,500.

7. On May 21, 2002, RCM was advised by Environmental Services that its permit for the facility would be canceled due to its failure to renew its Organization Report.

8. On August 26, 2002, Environmental Services canceled the permit for the Ricky Smith Ranch Facility, Permit No. LT-0136.

9. The Commission inspected the facility on October 18, 2002. The facility appeared closed, weeds were growing in Cell #1, and construction started on Cell #2 had not been completed.

10. A follow-up inspection of the facility occurred on April 15, 2003. The facility was closed and winter wheat had been planted in Cell #1. Cell #2 was observed to not have a proper earthen ramp. There was no evidence of past or recent disposal activities.

11. On May 21, 2003, RCM submitted a test report to Environmental Services for samples obtained from the facility in February 2002. RCM further advised that no wastes had been added to the site since December 2000.

12. The February 2002 test results were compared with prior test results from June 2001. The comparison found an increase in the total petroleum hydrocarbons in the last report.

Environmental Services concluded that the increase evidenced additional oil and gas wastes were added to the site after June 2001.

13. RCM filed a renewal of its Organization Report on July 21, 2003 which was approved on August 7, 2003. The P-5 identified Rickey Smith as the sole officer. RCM submitted a cash fee of $3,125 as its financial assurance. The $2,500 closure cost Letter of Credit originally submitted in May 2002 was also processed at this time. The August 7, 2003 renewal applied to the period from February 1, 2003 to January 31, 2004.

14. On July 28, 2003 the District Office inspected the facility, with a representative of RCM. The dikes around the cells were observed to be eroding due to lack of maintenance. A 20' by 20' oil stained area was noted in Cell #1.

15. A follow up inspection of the facility was conducted on September 18, 2003. The oil stained area in Cell #1 was remediated. Two piles of brush, concrete, discarded produce and soil were observed in Cell #1.

16. RCM collected soil samples on September 18, 2003 which were lab tested on September 30, 2003. The test results were forwarded to the Environmental Section. The collection of samples was not witnessed by Commission personnel. Commission records indicate that the September tests results were rejected.

17. RCM collected soil samples on October 30, 2003. The final test results for the October samples were submitted on December 1, 2003. RCM was advised on December 9, 2003 that the tests were acceptable and that it could proceed to close the facility.

18. An inspection on January 16, 2004 indicated that RCM had initiated closure operations.

19. A final inspection on February 3, 2004 found that the facility was properly closed.

20. RCM has no history of violations regarding this facility.

21. There is no evidence that RCM's operation of the facility or RCM's failure to act in the time period between the cancellation of the permit and the closure of the facility resulted in any pollution.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.

2. All things necessary to the Commission attaining jurisdiction have occurred.

3. RCM was the operator of the Ricky Smith Ranch Facility, Permit No. LT-0136 as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code from July 30, 1995 through the closure of the facility confirmed by the Commission on February 3, 2004.

4. RCM had the primary responsibility for complying with Rule 8, as well as other applicable statutes and Commission rules relating to Ricky Smith Ranch Facility, Permit No. LT-0136.

5. RCM's Organization Report with the Commission was delinquent from February 1, 2002 to August 7, 2003.

6. On August 26, 2002, the Commission properly canceled the permit for the Ricky Smith Ranch Facility, Permit No. LT-0136 due to RCM's delinquent Organization Report.

7. RCM violated Statewide Rule 8 and Chapters 85, 89 and 91 of the Texas Natural Resources Code by failing to promptly close the Ricky Smith Ranch Facility, Permit No. LT-0136 after the facility permit was canceled.

8. RCM closed the Ricky Smith Ranch Facility, Permit No. LT-0136 in compliance with Statewide Rule 8 and Chapters 85, 89 and 91 of the Texas Natural Resources Code as confirmed by the Commission on February 3, 2004.

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring RCM Oil, Inc. to pay an administrative penalty of TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500).

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner