

ENFORCEMENT ACTION AGAINST BRYANT SALT WATER DISPOSAL, INC. (OPERATOR NO. 104775) FOR VIOLATIONS OF STATEWIDE RULES ON THE N. W. "B" WILLARD (61337) LEASE, WELL NO. 1, LEVELLAND FIELD, HOCKLEY COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German
Staff Attorney

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Phil Gamble
James Oney

RESPONDENT:

Bryant Salt Water Disposal, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINT FILED:	September 13, 2002
DATE OF NOTICE OF HEARING:	February 17, 2004
DATE OF HEARING:	June 17, 2004
HEARD BY:	James M. Doherty, Hearings Examiner
RECORD CLOSED:	August 16, 2004
PFD CIRCULATION DATE:	August 24, 2004

STATEMENT OF THE CASE

This proceeding was called by the Commission on the recommendation of the District Office to determine the following:

1. Whether the Respondent Bryant Salt Water Disposal, Inc. ("Bryant"), 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, Statewide Rule 8(d)(1) [16 TEX. ADMIN. CODE§3.8(d)(1)] and Statewide Rule 9(12) [16 TEX. ADMIN. CODE§3.9(12)] by discharging oil and gas wastes on the N. W. "B" Willard (61337) Lease ("subject lease") without a permit authorizing such discharge and by failing

to conduct an annual pressure test on Well No. 1 on the said lease (“subject well”), as required by the conditions of the well’s disposal well permit.

2. Whether Bryant should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding the subject lease and well; and
3. Whether any violations of Statewide Rules 8(d)(1) and 9(12) by Bryant should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534.

A hearing was held on June 17, 2004. Susan German, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Phil Gamble, attorney, and James Oney appeared representing Bryant. Pursuant to his request, James Oney participated at the hearing by telephone and presented testimony. Enforcement’s certified hearing file was admitted into evidence. The record was held open until August 16, 2004, to afford Bryant a further opportunity to bring the subject lease and well into compliance and reach a settlement with Enforcement. The lease and well were not brought into compliance, and the case did not settle, on or before August 16, 2004.

Enforcement recommends that an administrative penalty of \$4,000.00 be imposed against Bryant and that Bryant be ordered to bring the subject lease and well into compliance with Commission rules. The examiner agrees with Enforcement’s recommendation.

APPLICABLE LAW

Pursuant to Statewide Rule 8(d)(1), with exceptions not relevant here, no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. Pursuant to Statewide Rule 8(a)(24), disposal is engaging in any act of disposal subject to regulation by the Commission, including, but not limited to, conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming, or allowing to seep, or to cause or allow any such act of disposal.

Pursuant to Statewide Rule 9(12)(C), each disposal well completed with surface casing set and cemented through the entire interval of protected usable quality water shall be tested for mechanical integrity at least once every five years. A disposal well that is completed without surface casing set and cemented through the entire interval of protected usable quality ground water shall be tested at the frequency prescribed in the disposal well permit. The Commission or its delegate may prescribe a schedule and mail notification to operators to allow for orderly and timely compliance with these requirements.

If a person violates provisions of Title 3 of the Texas Natural Resources Code or a Commission rule pertaining to safety or the prevention or control of pollution, the person may be assessed a civil penalty by the Commission not to exceed \$10,000.00 a day for each violation. In determining the amount of the

penalty, the Commission must consider the respondent'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 respondent. *See* TEX. NAT. RES. CODE ANN. §81.0531.

DISCUSSION OF THE EVIDENCE

Enforcement's Evidence

At the time of the hearing, Bryant had last filed a Commission approved Form P-5 Organization Report on February 13, 2001, and Bryant's P-5 was delinquent. However, the examiner has officially noticed Commission Form P-5 records establishing that on August 5, 2004, Bryant renewed its Form P-5 Organization Report and filed financial security in the form of a \$25,000 letter of credit. The examiner has also officially noticed that Bryant is a corporation, and its officers are James Oney, President, and Penny Bryant Oney, Secretary/Treasurer.

Bryant designated itself as operator of the subject lease and well by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance), which was approved March 17, 1989, and effective May 1, 1988.

The subject well is a disposal well, and was issued a disposal well permit (Permit No. 09409) on May 24, 1957. The permit for this well is conditioned to require that the operator perform an annual pressure test on the well and file the test results on Form H-5 (Disposal/Injection Well Pressure Test Report). The affidavit of Paul Whitehead, Engineering Specialist, Field Operations, stated that: (1) any injection or disposal of fluid down a wellbore could be a potential source of pollution; (2) Under Statewide Rule 9(12), operators must pressure test each disposal well at least once every five years to show the well is not leaking and that waste is being confined to the permitted injection interval and that usable water zones are properly isolated from possible contamination; (3) injection or disposal wells may be assigned a more frequent pressure testing schedule as binding conditions of the permit for the wells; and (4) wells grouped in the latter category pose a higher risk of contamination to usable water strata based on technical review of the engineering design and completion techniques used in creation of the wellbore.

Bryant was scheduled by the Commission to perform an annual pressure test on the subject well on October 6, 2000, and to file the test results on Form H-5 on or before January 30, 2001. A District Office inspection conducted on January 14, 2003, showed that Bryant had not performed the required pressure test. Bryant did not perform the required test on the subject well until February 10, 2003.

Between May 9, 2001, and June 11, 2004, the District Office performed 14 separate inspections of the subject lease and well. On the occasion of these inspections, multiple discharges of oil or produced water, caused by leaking tanks, piping, valves, and connections or by leaks at the wellhead of the subject

well, were observed. Inspections on January 14, May 27 and September 18, 2003, disclosed some effort to remediate these discharges, consisting of fresh soil spread on top of contaminated soil or patches on tanks. However, contaminated soil continued to be present beneath the fresh soil that had been applied, and patches on tanks were found to be seeping. On the occasion of the most recent inspections on January 21, April 19, and June 11, 2004, leaks from tanks were continuing, a new discharge at the wellhead of the subject well was observed, and no further remediation had occurred. An affidavit of the Commission's Secretary stated that a diligent search of Commission records had disclosed that Bryant had no permit to discharge oil and/or gas wastes from or onto the subject lease, other than the disposal well permit for the subject well.

Between May 18, 2001, and July 11, 2002, the District Office, on nine separate occasions, sent correspondence, notices, or copies of memoranda to Bryant regarding the need to resolve violations of Statewide Rule 8(d)(1) and/or Statewide Rule 9(12) with respect to the subject lease and well.

Enforcement recommends that Bryant be assessed a total penalty of \$4,000.00, consisting of \$2,000.00 for one violation of Statewide Rule 8(d)(1) and \$2,000.00 for one corrected violation of Statewide Rule 9(12).

Respondent's Evidence

James Oney, President, presented evidence on behalf of Bryant. During the early morning hours of September 13, 2000, a transporter of oil and gas wastes entered the subject lease and, without Bryant's knowledge or consent, dumped several loads of drilling mud into the subject saltwater disposal well. This unauthorized use of the disposal well caused the well to seal up and become inoperable.

At the time of this incident, operation of the subject disposal well accounted for 90% of the income of James Oney and Penny Bryant Oney. A lawsuit was filed in 2000 against defendants responsible for the damage to the well. This lawsuit has remained pending for several years, at least partially as a result of multiple continuances of trial dates obtained by the defendants.

With the loss of use of the subject disposal well, James Oney was forced to seek employment outside the oil and gas industry. He found employment elsewhere, but his income from this employment was about 20% of the income earned from operation of the disposal well and only barely sufficient to cover monthly living expenses.

Because of these circumstances, banks declined to loan Bryant or Oney any money to repair and maintain tanks or remediate pollution on the subject lease, and service companies refused to extend Bryant or Oney any credit. Oney was able to obtain some money by refinancing his house, and used some of this money to empty and patch tanks, spread fresh soil on contaminated areas of the lease, and perform a mechanical integrity test on the subject well. However, neither Bryant or Oney had access to the kind of

money required to completely stop the discharges and completely remediate all of the pollution. The estimated cost to empty tanks on the subject lease of BS&W alone equals Oney's annual salary from his present employment.

The lawsuit for damages done to the subject well finally settled on April 22, 2004. At the time of the hearing, receipt by Oney of the settlement proceeds from the defendants' insurers had been delayed beyond what had been expected by Oney. The terms of the settlement are confidential, but James Oney stated that as a result of the settlement, he will receive title to 34 acres of land on which the subject well is located and a sum of money more than sufficient to cover the cost of curing the violations alleged in this docket. Oney also testified that he will take immediate steps to correct the violations upon receipt of the settlement proceeds. On the recommendation of the District Office, with which Oney has discussed his planned remedial action, Oney first will have all tanks on the subject lease emptied of BS&W. He also intends to apply for a minor landfarming permit in order that he may address contaminated soil on the subject lease. Oney estimated that he should be able to correct all of the violations within a period of about ten days, once the work is under way. Oney also stated a willingness to pay a penalty in the amount of \$2,000.00, which apparently is the amount of an earlier settlement offer made by Enforcement. Oney believes that it will be possible to put the subject disposal well back into service, but it is his intent to clean up the subject lease regardless of this.

EXAMINER'S OPINION

Bryant became the operator responsible for regulatory compliance on the subject lease effective May 1, 1988. While Bryant was the responsible operator, oil and gas wastes were discharged on the subject lease, and Bryant did not have a permit authorizing such discharges. The unauthorized discharges were continuing at least as of June 11, 2004, and contaminated soil had not been remediated. In addition, during the period when Bryant was the responsible operator, Bryant violated a condition of the disposal well permit for the subject well by failing to conduct an annual pressure test on the well. This test was scheduled on October 6, 2000, but not performed until February 10, 2003. The violations alleged by Enforcement clearly were committed by Bryant, and this is not disputed by Bryant.

At the conclusion of the hearing, the record was held open until August 16, 2004, to allow Bryant additional time to receive the proceeds of the settlement of its lawsuit seeking damages for the ruination of its disposal well, to correct the violations in this docket, and to settle with Enforcement. The examiner received no report from any party on or before August 16, 2004, that any of these things had been accomplished. More than three years have passed since the District Office first observed unauthorized discharges of oil and gas wastes on the subject lease, and almost two years have passed since the complaint in this docket was filed. There is no reason to doubt the sincerity of Bryant's pledge to correct the violations involved in this docket upon receipt of the proceeds from the settlement of Bryant's lawsuit, but further delay in disposition of this enforcement case is not justified.

The penalty recommended by Enforcement is small in relation to the extent of the unauthorized discharges for which Bryant was responsible and the amount of time out of compliance. Nonetheless, the examiner agrees with the recommendation in view of the mitigating circumstances. The poor financial circumstances of Bryant and James Oney during the past four years appear to have resulted from factors beyond their control. There is no evidence that Bryant has any history of prior final orders entered against it for violations of Commission rules, and Enforcement has judicially admitted in the complaint that there is no such history. Bryant belatedly corrected the Statewide Rule 9(12) violation alleged by Enforcement. It also showed a modicum of good faith by using what little money was available to it to empty and patch tanks and spread fresh soil on contaminated areas. These efforts were not effective to cure the violations, but James Oney gave credible testimony that these steps were all he was able to afford, pending receipt of the proceeds of settlement of Bryant's lawsuit. The recent renewal of Bryant's Form P-5 Organization Report and the filing of a \$25,000 letter of credit as financial security are also indicators of Bryant's good faith. The examiner concludes that assessment of a penalty in the amount of \$4,000.00 is appropriate. In addition, Bryant should be ordered to place the subject lease in compliance with Commission rules.

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

FINDINGS OF FACT

1. Bryant Salt Water Disposal, Inc. ("Bryant"), was given at least ten (10) days notice of this proceeding by certified mail, addressed to Bryant's most recent Form P-5 Organization Report address. Bryant appeared at the hearing and presented evidence.
2. Bryant is a corporation. Bryant's officers are James Oney, President, and Penny Bryant Oney, Secretary/Treasurer. Bryant currently has an active Form P-5 Organization Report and has filed financial security in the form of a \$25,000 letter of credit.
3. James Oney and Penny Bryant Oney were persons in a position of ownership or control of Bryant at the time the violations involved in this docket occurred.
4. The violations committed by Bryant are violations of Commission rules related to safety and the prevention or control of pollution.
5. Bryant has no history of prior Commission orders entered against it for violations of Commission rules.
6. Bryant designated itself to the Commission as the operator of the N. W. "B" Willard (61337) Lease ("subject lease"), Well No. 1 ("subject well"), by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, approved on March

- 17, 1989, and effective May 1, 1988.
7. The subject well is a disposal well, and was authorized as such by permit issued on May 24, 1957.
 8. On September 13, 2000, the subject well was damaged and rendered inoperable as a result of unauthorized dumping by a third party of drilling mud into the well. This led to the filing of a lawsuit in 2000 by Bryant, James Oney, and Penny Bryant Oney against the parties responsible for the damage.
 9. Prior to September 13, 2000, operation of the subject disposal well accounted for about 90% of the income of James Oney and Penny Bryant Oney. The damage to the subject well required James Oney to seek other employment. James Oney obtained other employment, but his income after September 13, 2000, was reduced by about 80%, and was barely sufficient to cover monthly living expenses.
 10. The lawsuit filed by Bryant, James Oney, and Penny Bryant Oney against the parties responsible for the damage to the subject disposal well has been pending for four years, due at least in part to continuances obtained by the defendants. This suit reached settlement only as of April 22, 2004.
 11. The disposal well permit for the subject well contains a condition requiring the operator of the well to perform an annual pressure test on the well and to report the test results on Commission Form H-5 (Disposal/Injection Well Pressure Test Report).
 12. Bryant was scheduled by the Commission to perform an annual pressure test on the subject well on October 6, 2000, and file Form H-5 on or before January 30, 2001. Bryant did not perform an annual pressure test of the subject well until February 10, 2003.
 13. Between May 9, 2001, and June 11, 2004, the District Office inspected the subject lease on 14 separate occasions. During this period, oil and produced water were discharged onto the lease as a result of leaks that developed in tanks, piping, valves, and connections, and at the wellhead of the subject well. Bryant had no permit that authorized these discharges of oil or gas wastes.
 14. Bryant attempted to repair the leaks and remediate contaminated soil on the subject lease by emptying and patching some tanks and by spreading fresh soil on top of contaminated soil, but was not able to completely stop the discharges or completely remediate contamination due to the dire financial circumstances of Bryant, James Oney, and Penny Bryant Oney caused by third party ruination of the subject disposal well.
 15. Bryant intends to correct all unauthorized discharges and to remediate all contamination on the subject lease immediately upon receipt of the proceeds of the settlement of the lawsuit against the parties responsible for the damage to the subject disposal well.

16. Failure to comply with a condition of a disposal well permit requiring annual pressure testing of a disposal well is a serious violation in that it risks pollution of usable quality water and threatens the safety of the public. Compliance with this permit condition is necessary to establish that a disposal well is not leaking and that waste is being confined to the permitted injection interval.
17. Unauthorized discharges of oil or gas wastes are serious violations in that any such discharge is a potential source of pollution to surface and subsurface waters if not remediated to prevent seepage and run-off.

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. Bryant Salt Water Disposal, Inc. (“Bryant”) is the operator of the N. W. “B” Willard (61337) Lease, Well No. 1, Levelland Field, Hockley County, Texas, as defined by Commission Statewide Rules 58 and 79 [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §§3.58 and 3.79] and Chapter 85 of the Texas Natural Resources Code.
4. As operator, Bryant has the primary responsibility for complying with Statewide Rule 8(d)(1) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.8(d)(1)], Statewide Rule 9(12) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.9(12)], the conditions of the disposal well permit for the subject well, Chapter 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject lease and well.
5. Bryant violated Statewide Rule 8(d)(1) by causing or allowing the unauthorized discharge of oil or gas wastes onto the subject lease. This violation occurred during the period from at least May 9, 2001, through at least June 11, 2004, and the subject lease was out of compliance with Statewide Rule 8(d)(1) during all of this period.
6. Bryant violated the conditions of the disposal well permit for the subject well (Permit No. 09409) and Statewide Rule 9(12) by failing to conduct an annual pressure test on the subject disposal well and file the test results on Form H-5 (Disposal/Injection Well Pressure Test Report). This violation occurred on October 6, 2000, and continued until February 10, 2003, and the subject well was out of compliance with the conditions of the disposal well permit and Statewide Rule 9(12) during all of this period.
7. The documented violations committed by Bryant constitute acts deemed serious and a hazard to the public health within the meaning of Texas Natural Resources Code §81.0531(c).
8. As officers in positions of ownership or control of Bryant at the time Bryant violated Commission rules related to safety and the prevention or control of pollution, James Oney and Penny Bryant Oney, and any organization in which they may hold a position of ownership or control, are subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring the operator Bryant Salt Water Disposal, Inc., to:

1. Pay an administrative penalty in the amount of FOUR THOUSAND DOLLARS (4,000.00); and
2. Clean up and otherwise place into compliance with Commission rules the N. W. “B” Willard (61337) Lease, Levelland Field, Hockley County, Texas.

Respectfully submitted,

James M. Doherty
Hearings Examiner