



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

OIL AND GAS DOCKET NO. 06-0264337

**THE APPLICATION OF DON H. WILSON, INC. FOR COMMERCIAL INJECTION
AUTHORITY FOR ITS DOE-CO NO. 2A, BROOM CITY (UPPER WOODBINE) FIELD,
ANDERSON COUNTY, TEXAS**

HEARD BY: Donna K. Chandler, Technical Examiner
Mark J. Helmueller, Hearings Examiner

APPEARANCES:

APPLICANT:

George Neale
Rick Johnston
Kelly Parma
Steve Barron

REPRESENTING:

Don H. Wilson, Inc.

PROTESTANTS:

Bill Chapline
Shirley Chapline

Himself
Herself

PROCEDURAL HISTORY

Application Filed:	September 29, 2009
Request for Hearing:	January 7, 2010
Notice of Hearing:	January 27, 2010
Date of Hearing:	March 16, 2010
Transcript Received:	June 7, 2010
Proposal For Decision Issued:	July 13, 2010

EXAMINERS' REPORT AND PROPOSAL FOR DECISION

STATEMENT OF THE CASE

Don H. Wilson, Inc. ("Wilson") requests authority pursuant to Statewide Rule 46 to inject fluids into its DOE-Co. Well No. 2A in the Broom City (Upper Woodbine) Field in Anderson County. It is proposed that the well be used as a commercial disposal well.

This application is protested by the Bill and Shirley Chapline. The Chaplines allege that Wilson does not own the minerals under the subject tract and therefore does not have the right to inject into a productive formation. The Chaplines are also concerned about noise and traffic issues resulting from operations of the proposed disposal well.

Embry Solutions, Inc., the operator of a commercial disposal well located 900 feet from the proposed disposal well, filed a protest but did not appear at the hearing.

DISCUSSION OF THE EVIDENCE

Applicant's Evidence

The subject well was drilled in 2000 to a total depth of 5,701 feet. It was completed as a producer in the Broom City (Upper Woodbine) Field, with perforations between 5,428 feet and 5,431 feet. There is one other well on the lease, the DOE-Co. No. 1R. The last production from the lease was in September 2008. Wilson owns the surface of the 1.652 acre tract on which the No. 2A well is located, having purchased the tract in 1999 from Joe and Patricia Hudgins.

The No. 2A well has 777 feet of 8 5/8" surface casing with cement circulated to surface. Intermediate 7" casing is set at 2,580 feet with cement circulated to surface. Production casing is set at 5,679 feet, with top of cement at 3,970 feet based on a cement bond log. A cement squeeze was performed in the production casing at 2,900 feet. The Texas Commission on Environmental Quality recommends that usable-quality ground water be protected to the base of the Wilcox sands at a depth of 2,850 feet, with isolation of the Carrizo at 775 feet and the Simsboro at 2,050 feet. (See attached wellbore diagram.)

The proposed injection interval is the Woodbine between 5,400 and 5,700 feet. Injection of fluids will be through 2 3/8" tubing set on a packer at approximately 5,328 feet. The proposed maximum injection volume is 10,000 BWPD and the proposed maximum injection pressure is 2,700 psig. Injected fluids will be salt water and other RCRA exempt wastes.

There are six wellbores within a ¼ mile radius of the proposed injection well. The status of these wells is summarized below:

1. DOE-Co. Well No. 2 has a total depth of 4,527 feet and was plugged as a dry hole in 1999.
2. Evelyn May No. 1-ST drilled in 1994 and produced from the Woodbine; currently shut-in.
3. May/Wolf No. 1 drilled in 1994 and produced from the Woodbine; currently shut-in.

4. DOE-Co. No. 1R drilled in 1995 and produced from the Woodbine; currently shut-in.
5. Lena May No. 1 drilled in 1998 and produced from the Woodbine; currently permitted as commercial disposal well in Broom City (Upper Woodbine) Field; operated by Embry Solutions, Inc.
6. DOE-Co. No. 1 drilled in 1997 to a total depth of 1,900 feet and plugged as a dry hole in 1997.

All of the wells which penetrated the Woodbine are cased and cemented in a manner which will prevent fluids from migrating out of the Woodbine. Additionally, a log of the No. 2A well indicates several hundred feet of shale above the Woodbine disposal interval.

The proposed commercial disposal well is located on County Road 188, which is 18-20 feet wide. This county road is accessed from either State Hwy. 294, which is a two lane highway, or from County Road 189, which also intersects State Hwy. 294. Daily traffic on Hwy. 294 in the subject area is approximately 2,000 vehicles. A traffic study was presented showing that adequate sight distance is available for left and right turns off both County Road 188 and County Road 189 onto Hwy. 294. Based on the study, Wilson does not believe that the operations of the well will present an unacceptable traffic or safety hazard.

There are currently seven commercial disposal wells in Anderson County. Two of the wells do not take water from third parties. Of the five remaining wells, four are operated by Don H. Wilson, Inc., with one of the four wells currently inactive. The remaining well is the Embry Solutions - Lena May No. 1 well located about 900 feet from the DOE-Co. No. 2A. Four additional commercial wells are in Cherokee County to the east. Two of those four wells are private wells and Wilson operates the other two. The only well in Anderson County which has specific authority to accept flow-back water from fracture stimulations is the Embry well. All of the other commercial disposal wells in Anderson County have authority to dispose of salt water.

Wilson believes there is a need for additional disposal capacity in the area. Wilson presented testimony that some trucks were diverted away from the Embry disposal well due to long waiting time on one occasion. Wilson also believes that with increased drilling activity, the need for disposal facilities will increase.

Notice of the subject application was published in the *Palestine Herald Press*, a newspaper of general circulation in Anderson, Houston and Leon Counties, on August 14, 2009. A copy of the application was mailed to the Anderson County Clerk's Office on September 9, 2009. Also on September 9, 2009, Applicant mailed copies of the application to all adjacent surface owners and to all operators within ½ mile of the proposed well.

Commission records indicate that Don H. Wilson, Inc. has a current P-5 with the Commission and has financial assurance posted in the amount of \$50,000.

Protestant's Evidence

In 1978, the minerals associated with the 1.652 acre tract on which the No. 2A well is located, were severed from the surface estate when the surface was sold to Joe and Patricia Hudgins by Norman and Ora Polk. The surface of this tract was sold to Don H. Wilson, Inc. in June 1999. However, because the minerals had been reserved, Wilson does not own the minerals under the tract. The minerals are owned by the Chaplins and others, who are heirs of the Polks. An oil, gas and mineral lease was executed in 1993 between the Polks and J.A.R. Operations for 278 acres of land, including the subject 1.652 acres. Wilson took over operations of the lease in 1998. According to Commission records, there has been no production from the DOE-Co. Lease since September 2008. The lease has lapsed under its own terms and the Chaplins do not believe that Wilson has a good faith claim to inject fluid into the productive formation beneath the 1.652 acres.

In addition to the allegations concerning the mineral ownership, the Chaplins are residents on County Road 188 and are concerned that the operations of the proposed commercial disposal well will pose safety hazards on County Road 188. County Road 188 is an "L" shaped road which is approximately 1.5 miles long, connecting to Hwy. 294 and County Road 189. There are 17 homes along this road, with homes immediately adjacent to the 1.652 acre tract and across the road. Of the 17 homes, 15 are occupied and several have small children. The Chaplins believe that the truck traffic associated with the disposal operations will be dangerous to the families who live in the area.

Matters Officially Noticed

The examiners took official notice of reports from the Commission's Production Data Query System for the subject well from February 1998 through January 2010. Commission records indicate that the cumulative production for the subject well was 29,365 barrels of oil and 34,022 Mcf of casinghead gas.

EXAMINERS' OPINION

The most significant issue raised in this case is whether applicant possesses a good faith claim to the legal right to operate the proposed commercial disposal well by injection into a productive formation. The examiners conclude that applicant has not established it possesses such a good faith claim and the application should therefore be denied. Additionally, the examiners believe that applicant failed to establish an industry need for a commercial disposal well at the proposed location.

Applicant's claim that it possesses a good faith claim to the legal right to use the subject well for commercial disposal into a productive zone is based on its ownership in fee of the surface tract where the well is located. Ownership of the surface tract is a legal basis for the operation of a commercial disposal well into a non-productive zone as recognized by the Commission in *Oil & Gas Docket No. 03-0248561: The Application of*

K-3 Resources, LP For Commercial Disposal Authority in the E. Richers Lease, Well No. 2, Hamman Field, Matagorda County, Texas. In this case, K-3 had the right to use the surface estate, but the mineral interest owner in the tract protested use of the well for disposal activity without the mineral interest owner's consent. The Commission rejected this argument, noting that because the disposal was in a non-productive zone, K-3 had established a good faith claim of the legal right to use the well for disposal purposes through its right to use of the surface estate.

This case is different from the *K-3* case because applicant is seeking authority for commercial disposal into a productive formation in a well which produced almost 30,000 barrels from the proposed injection interval during the past 12 years. It is not contested that applicant does not own the right to develop the minerals on the tract where the well is located and that the injection will be into a productive formation. Commercial disposal into the Woodbine at the volumes requested would preclude any future development of the mineral estate on the 1.65 acre tract. Accordingly, the examiners conclude that applicant has not established a good faith claim to the legal right to operate the subject well for commercial disposal into a productive formation because it did not secure consent from the mineral interest owner in the tract.

The examiners also believe that even if applicant had established a legal right to operate the subject well for commercial disposal, that it failed to present sufficient evidence to establish an industry need for additional commercial disposal capacity in this area. The only basis for showing industry need is a single report that three trucks were diverted from the Embry Solutions - Lena May No. 1 on one day. There was no showing that current disposal capacity in the area has reached its limit, and no evidence to support statements regarding increased future drilling activity in the area which would necessitate another commercial disposal well.

The examiners further note that the proposed disposal well is located on a 1.652 acre tract in the middle of a community of several homes. Standard conditions included in permits issued by the Commission for commercial disposal facilities require various tanks and/or pits for storage of waste. Applicant did not present any evidence showing that this small tract could support the equipment and facilities necessary to conduct commercial disposal operations.

Accordingly, the examiners recommend that the application be denied.

FINDINGS OF FACT

1. Notice of this application was provided by Don H. Wilson, Inc. to all persons entitled to notice pursuant to Statewide Rule 46. Notice of the application was published in the *Palestine Herald Press*, a newspaper of general circulation in Anderson, Houston and Leon Counties, on August 14, 2009.

2. Don H. Wilson, Inc. ("Wilson") requests commercial disposal authority pursuant to Statewide Rule 46 to inject fluids into its DOE-Co. Well No. 2A in the Broom City (Upper Woodbine) Field in Anderson County.
3. The subject well was drilled in 2000 to a total depth of 5,701 feet. It was completed as a producer in the Broom City (Upper Woodbine) Field, with perforations between 5,428 feet and 5,431 feet.
4. The last reported production from the lease was in September 2008.
5. Wilson owns the surface of the 1.652 acre tract on which the No. 2A well is located.
6. Wilson does not own the minerals on the 1.652 acre tract where the proposed disposal well is located
 - a. In 1978, the minerals associated with the 1.652 acre tract on which the No. 2A well is located, were severed from the surface estate when the surface was sold to Joe and Patricia Hudgins by Norman and Ora Polk.
 - b. The surface of this tract was sold to Don H. Wilson, Inc. in June 1999.
 - c. The minerals are owned by the Chaplines and others, who are heirs of the Polks.
 - d. An oil, gas and mineral lease was executed in 1993 between the Polks and J.A.R. Operations for 278 acres of land, including the subject 1.652 acres.
 - e. Wilson took over operations of the lease in 1998 but the lease has lapsed under its own terms due to non-production.
7. Approval of the subject application is not in the public interest.
 - a. There was no showing that current disposal capacity in the area is inadequate for current disposal needs.
 - b. There was no showing that the 1.652 acre tract can support the equipment and facilities necessary to conduct commercial disposal operations pursuant to the standard conditions required in Commission permits to operate commercial disposal wells and the associated facilities.

CONCLUSIONS OF LAW

1. Proper notice was issued in accordance with the applicable statutory and regulatory requirements.
2. All things have occurred to give the Railroad Commission jurisdiction to consider this matter.
3. Applicant did not establish a good faith claim to the legal right to use the subject well for commercial disposal into a formation productive of oil and gas.
4. Applicant did not establish that the proposed commercial disposal well was in the public interest under Texas Water Code Section 27.051, because it did not provide evidence of an industry need for additional disposal activity in the area.

EXAMINERS' RECOMMENDATION

Based on the above findings and conclusions, the examiners recommend that the application be denied as set out in the attached Final Order.

Respectfully submitted,



Donna K. Chandler
Technical Examiner


Mark J. Helmueller
Hearings Examiner