



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 04-0286186

APPLICATION OF SABLE ENVIRONMENTAL II, LLC, PURSUANT TO STATEWIDE RULE 8 FOR A PERMIT TO OPERATE A COMMERCIAL SEPARATION, RECLAMATION AND DISPOSAL FACILITY, APPLICATION CONTROL NOS. STF 059, R9 04-1301, PITS 011946 A/B/C, 011947 A/B/C, 011948 AND 011949, JIM WELLS COUNTY, TEXAS

HEARD BY: Paul Dubois – Technical Examiner
Laura Miles-Valdez – Hearings Examiner

APPEARANCES:

REPRESENTING:

Applicant

Clay Nance
Cody Bates
Rolland Boehm, P.E.
David Vogt, P.E.
Ray Gonzales

Sable Environmental II, LLC

Protestants

Jacob Arechiga
Edward Small

Renee Mitchell, Allen Green, Gail Green

William Rogers

Pro se

Observers

Richard Miller
Travis Vollmering
Stacie Tonne
Charles Tonne
Jonathan Hinze
Otto Siegmund
Cora Chisolm
Jerry Chisolm
Seale Brand
Everette Curnutte
Lindsey Koenig

Jim Wells County District 3 Commissioner

PROCEDURAL HISTORY:

Application Received:	January 31, 2013
Protest Received:	February 19, 2013
Hearing Requested:	October 21, 2013
Hearing Dates:	February 5, 2014, and July 14, 2014
Final Transcript Received:	July 28, 2014
Proposal for Decision Issued:	October 9, 2014

STATEMENT OF THE CASE

This is the application of Sable Environmental II, LLC (Sable) (P-5 Operator No. 742239), pursuant to 16 Tex. Admin Code §3.8 (Statewide Rule 8) for a permit to operate a commercial separation, reclamation and disposal facility in Jim Wells County, Texas. The facility will receive, separate, treat and dispose of non-hazardous oilfield wastes. Waste liquids derived from the separation processes will be sent off-site for disposal. The application was assigned the following control numbers: the stationary treatment facility (STF) as a whole is designated by Commission staff as STF 059 and a permit to operate a reclamation plant (Form R-9) is assigned No. 04-1301. The application includes eight individual pits, identified by Draft Permit Nos. 011946 A/B/C, 011947 A/B/C, 011948 and 011949, the latter two being permanent disposal cells.

Notice of the application was published in the *Alice Echo News Journal*, a newspaper of general circulation in Jim Wells County, on February 8 and 25, 2013. Notice of the application was mailed to the surface owner of the facility tract and to the surface owners of all adjacent tracts on February 1, 2013.

The application was protested by several adjacent landowners, nearby residents and Jim Wells County District 3 Commissioner Richard Miller. At Sable's request, the matter was set for a hearing. The following paragraphs provide an overview of the hearing processes, including protests, standing, and documentary evidence.

Hearing, February 5, 2014

A hearing was convened on February 5, 2014, at the Commission's offices in Austin, Texas. The Applicant stated its position that some of the Protestants were not "affected parties" entitled to protest pursuant to Statewide Rule 8¹. The Applicant presented its direct case, which was open to cross-examination by all of the Protestants. Several of the

¹ 16 Tex. Admin. Code §3.8(a)(22).

Protestants put on direct evidence in opposition to the permit, and several other interested persons present at the hearing were given the opportunity to participate.

Protest by Renee Mitchell

On February 28, 2014, the Commission received a letter from Ms. Renee Mitchell protesting the application. Ms. Mitchell owns property directly adjacent to the proposed facility. Ms. Mitchell received notice of the application and did file a written protest. However, she did not receive notice of the hearing. The examiners determined Ms. Mitchell should have been notified of the hearing in accordance with Statewide Rule 8. By letter dated March 19, 2014, the examiners afforded Ms. Mitchell the opportunity to request the hearing be reopened for her participation. On March 25, 2014, Ms. Mitchell requested the hearing be reopened, and a hearing date was set for May 13, 2014.

Ms. Mitchell subsequently obtained legal representation. At about the same time, the examiners were notified that several of the Protestants who attended the February 5, 2014, hearing—Allen Green, Gail Green, Jonathan Hinze, Stacie Tonne and Charles Tonne—had also retained legal representation and requested the opportunity to further participate in the matter.

Pre-Hearing Conference on Standing, May 13, 2014

The hearing on May 13, 2014, was converted to a pre-hearing conference to determine which of the Protestants had standing to protest the application. The Applicant had expressed its opinion that: (1) not all of the Protestants were “affected parties” according to Statewide Rule 8 and therefore did not have standing to protest the application; and (2) some Protestants had already had an opportunity to protest at the February 5 hearing and were not entitled to a second opportunity to do so.

Under Statewide Rule 8 an affected person is a “person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public.”² The examiners issued a letter ruling dated May 16, 2014, finding:

- Renee Mitchell and her son John Joseph Williams own property adjacent to the proposed facility and therefore have standing as affected parties³;
- Allen and Gail Green own property adjacent to the proposed facility and therefore have standing as affected parties;

² 16 Tex. Admin. Code §3.8(a)(22).

³ Mr. Williams withdrew as a party on June 20, 2014.

- William Rogers owns property adjacent to the proposed facility and therefore has standing as an affected party;
- Jonathan Hinze is not an adjacent landowner and the failed to demonstrate the potential injury he may incur will be greater than any other member of the general public, and therefore he does not have standing to protest as an affected party;
- Stacie and Charles Tonne are not adjacent landowners and they failed to demonstrate the potential injury they may incur would be greater than any other member of the general public, and therefore they do not have standing to protest as affected parties; and
- Any party with standing will be allowed to participate in the second day of hearing.

Hearing, July 14, 2014

The hearing re-convened on July 14, 2014. The examiners took notice of the evidence in the record from the February 5, 2014, hearing; therefore, the Applicant did not need to re-present its direct case. The Applicant's witnesses were cross-examined by the Protestants, and the Protestants presented their direct case in opposition to the application.

Revised Draft Permit, September 3, 2014

On August 25, 2014, the examiners requested clarification from the Oil & Gas Division regarding on several permit conditions in the December 9, 2013 draft permit transmitted to the Hearings Division with the application file. On September 3, 2014, the Oil & Gas Division submitted a revised draft permit for the examiner's consideration. The parties were provided the opportunity to comment on the revised draft permit. By letter dated September 9, 2014, Sable concurred with the provisions of the revised draft permit. The Protestants, however, objected to the revised permit on the grounds that: (1) the revised draft permit contains substantive changes that materially affect original draft permit; and (2) these changes are not in the evidentiary record, the inclusion of which violates the Protestants' due process rights.

The examiners disagree with the Protestants. Draft permits are prepared by commission staff when a matter is referred for a hearing, and include staff's request that the examiners consider the provisions of the draft permit if approval of the application is recommended to the Commissioners. Ultimately, however, it is the Commission who will issue or deny the permit; Commission may issue a permit with any conditions it deems necessary to ensure compliance with Statewide Rule 8.

Correspondence Not Admitted Into the Record

The examiners have received numerous correspondence from various persons in protest and in opposition to Sable's application. The Applicant maintained a running objection to any of the correspondence being admitted into evidence, which the examiners sustained. All correspondence received by the examiners has been placed in the docket file and will be maintained therein. None of the post-hearing correspondence were deemed evidence or were otherwise considered the development of the examiners' report and proposal for decision.

DISCUSSION OF THE EVIDENCE**Applicant's Evidence**

Sable proposes to construct a stationary commercial facility that will receive, separate, reclaim, store, treat and dispose of non-hazardous oilfield wastes. The facility will be located northwest of County Road 308 in Jim Wells County and approximately 5 miles southwest of the town of Orange Grove and 13 miles north-northeast of the town of Alice. The facility will be located on a 234.22 acre tract of land on the northwest corner of County Road 308 where it makes a sharp (greater than 90 degree) turn. Approximately 40 acres of the tract is occupied by a caliche quarry. A gravel road links the caliche quarry on site to County Road 308.

Environmental Setting

The applicant describes the proposed facility as located in a rural area.⁴ The site is on rolling terrain sloping toward the east and southeast. The location of the facility boundaries superimposed on a topographic map are shown on a site location map (See Exhibit A attached hereto⁵). The property outline exhibits a 'kite' shape. The site drains to Agua Dulce Creek, which is located about 4,000 feet to the north and east of the site, and flows to the southeast.

The natural elevation profile of the property (See Exhibit A) before onsite quarrying indicates a shallow ridge running from the northwest corner to the southeast; the surface topography dips away from the ridge to the northeast and southwest. The highest natural elevation is about 243 feet near the northwest corner of the tract, and the lowest natural elevation is about 218 feet on part of the north property line. Intermittent drainage pathways are evident along the southwest property line and adjacent to the north and northeast property lines.

⁴ Tr. Vol. I, p. 28, ln. 15.

⁵ Applicant's Exh. 8, Sheet 2-2.

The caliche quarry is located on the northwest part of the tract, in an originally undisturbed, topographically-high position. Overburden soils removed during quarrying are stockpiled in a mound by the northeast part of the quarry. Sable will reserve the overburden soil stockpile for final facility cover and closure activities. The quarry itself occupies about 40 acres and has been excavated to an elevation of about 216 feet.⁶ The quarry was excavated down to a clay stratum defining the base of marketable caliche.⁷

A wetlands survey was conducted and it concluded that no wetlands are present on the subject tract.⁸ The property is not located within a special flood hazard area as defined by the Federal Emergency Management Administration.⁹

A geotechnical engineering investigation of the subject tract included drilling four soil borings, collecting soil samples, and analyzing samples for engineering properties. Two of the soil borings were drilled in the location of the two proposed disposal cells. The investigation indicates the shallow subsurface soils consist of clays with: (1) liquid limits greater than 50; (2) plasticity indices ranging from 28 to 69; and (3) 70 percent or greater material passing a No. 200 sieve. Laboratory tests of remolded composite samples indicate permeability ranges from 10^{-6} to 10^{-8} cm/sec. One three-foot section of clayey sand was encountered on the surface of one borehole.¹⁰ An additional borehole was drilled to a depth of 100 feet to explore the potential occurrence of shallow groundwater. Moisture was encountered at a depth of about 95 feet. This deep borehole was not logged or sampled.¹¹

The site is located over the Lissie Formation, which consists of undifferentiated sands, clays and silts. The Goliad Formation underlies the Lissie and is a local aquifer.¹² The altitude of the base of fresh to slightly-saline water in the Goliad Formation is estimated to be at about 500 feet below sea level, or about 730 feet below ground surface. The groundwater gradient in the Goliad is toward the southeast.¹³ The Applicant identified three registered water wells within a one mile radius of the proposed facility boundary, the closest

⁶ Applicant's Exh. 8, Sheets 2-4 and 2-5.

⁷ Tr. Vol. I, p. 29, Ins. 8-17.

⁸ Applicant's Exh. 8, Tab 6.

⁹ Applicant's Exh. 8, Sheet 2-15.

¹⁰ Applicant's Exh. 8, Tab 3; Applicant's Exh. 26.

¹¹ Applicant's Exh. 14, p. 6.

¹² Tr. Vol. I, p. 181, Ins. 12-21.

¹³ Applicant's Exh. 8, Sheet 2-12.

being about 3,000 feet to the southwest.¹⁴ The data query provided by the Applicant appears to include only those wells for which the Texas Water Development Board (TWDB) has record of water level and quality data.

Facility Design and Operation

The proposed facility will receive, separate, reclaim, store, treat, and dispose of non-hazardous oilfield wastes. A site plan is attached hereto as Exhibit B.¹⁵ The waste management areas are indicated on the site plan. These include the material processing station and two disposal cells. The site plan also identifies a storm water pond, monitoring well locations, and areas that may be developed in the future. A detailed layout of the material processing station is attached hereto as Exhibit C.¹⁶

The material processing station contains the waste management facilities to receive, separate, reclaim, store, and treat incoming waste streams. These facilities include the separation area with six separation pits (two parallel batteries of pits, with each battery containing three pits in series), associated tankage, access pad, the working area (including truck ramps and wash bays), and the drying pad. The waste management process flow and design features of the material processing area are described below:

- **Separation Pits:** six below-grade separation pits will receive liquid waste and provide a means for gravity separation of solid and liquid components. There will be two parallel banks (Nos. 1 and 2) of three pits each (A, B, and C pits). The A, B and C pits in each bank will be one structure, subdivided by vertical weirs allowing liquids to gravity flow between the pits. In terms of process flow, liquid wastes will be moved toward the separation area (to the right in Exhibit C), and solid waste material will be moved toward the working area (to the left).

Each separation pit bank will have a total storage capacity of 6,632 bbl when operated with the minimum 2-feet of freeboard. The A pit will be 54 feet long, 38 feet wide and 12 feet deep; the B pit will be 24 feet long, 38 feet wide, and 12 feet deep; and the C pit will be 20 feet long, 38 feet wide and 12 feet deep. The separation pits will have 10-inch thick floors and 8-inch thick walls constructed of reinforced concrete. The pits will be underlain by a 2-foot thick compacted clay liner.

- **Access Pad:** the reinforced concrete access pad between the two pit banks

¹⁴ Applicant's Exh. 8, Sheet 2-13 and Tab 21.

¹⁵ Applicant's Exh. 8, Sheet 2-14.

¹⁶ Applicant's Exh. 8, Sheet 2-8.

will be 24 feet wide, 98 feet long, and 10 inches thick. The access pad will allow heavy equipment to access and move solid waste material between the pits and the working area.

- **Working Area:** the working area will receive waste material with high solids content and solid waste material from the separation pits. The working area will be 216 feet long and 184 feet wide, and will hold approximately 7,120 bbl of waste with a maximum height of 1 foot. The concrete pad will be sloped for drainage into a concrete channel.

Twelve associated truck ramps and a truck wash station with four wash bays will be a part of the working area. The truck wash station will include a drainage channel in which washout fluid and residual wastes will gravity drain back to the separation pits.

The entire working area will include a reinforced concrete pad underlain by a 2-foot thick compacted clay liner.

- **Drying Pad:** the drying pad is a two acre area that will temporarily hold the moist solids for further drying before final burial in the disposal cells. The drying area floor consists of a scarified and recompactd subgrade overlain with a 2-foot thick compacted clay layer; the drying pad will not be underlain by concrete. A 1-foot nominal thickness soil layer will be maintained atop the compacted clay liner; this will be a 'sacrificial' feature that will be replaced as necessary, maintaining a nominal 1-foot protective layer over the clay liner. The drying pad may store up to 15,500 bbl of waste, in a pile not to exceed 1-foot in height. The drying pad will be surrounded by a drainage channel to direct drainage (residual liquids and contact storm water) from the treated waste back to the separation pits; a perimeter berm will prevent the onflow of non-contact storm water.
- **Separation Area:** the separation area contains various tanks, separators, and transfer equipment for liquids. Oily liquids will be reclaimed from the waste materials for resource recovery, and other liquids will be stored in tanks for off-site disposal. The separation area will be underlain by a 10-inch thick reinforced concrete pad.

The Applicant states all structural concrete work will be performed in accordance with American Concrete Institute (ACI) Standard 318. Water stops will be placed at all construction joints within the pits and working area to prevent liquids from leaving the concrete containment.

This application includes the construction and operation of two disposal cells. The design features of the disposal cells are described below:

Disposal Cells: The Applicant proposes two disposal cells in the caliche quarry area with waste capacities of 223,457 cubic yards and 222,332 cubic yards. Solid waste material that has dried sufficiently to pass a paint filter test will be placed in the cells for disposal. The disposal cells will have natural and artificial liners, a leak detection system, and a leachate collection system. The basal and side slope liner system will consist of the following elements, from the ground up:

- 20 feet of hard fat natural clay (minimum, based on geotechnical investigation);
- 2 feet of scarified and recompactd clay;
- Geotextile;
- 60 mil high density polyethylene (HDPE) liner;
- Geonet leak detection layer, with a sump and monitoring riser;
- 60 mil HDPE liner;
- Geonet leachate collection layer, with a sump and collection system;
- Geotextile; and
- 12 inches of protective cover for the liner system.

Waste material will be placed on top of the 12-inch protective cover layer – a layer that will protect the underlying liner and collection/detection systems from physical damage. Each cell will have a perimeter containment berm with a top elevation of 240 feet, 3:1 horizontal to vertical side slopes, and the top of the berm will be 12 feet wide to accommodate vehicular traffic. The liner system will extend over the top of the berm and be secured in an anchor trench. Upon closure, the top of each disposal cell, including cap, will be at an elevation of 247 feet, which is above the current land surface.¹⁷ Closure of the disposal cells will include the following cap design:

- 40 mil HDPE liner;
- 18 inches of fill material from onsite soil stockpile; and
- 6 inches vegetative cover layer.

¹⁷

Applicant's Exh. 8, Sheet 2-11.

Storm water that falls on the site will be segregated. Contact water, that is, water that may come into contact with waste material, will be evaporated or be moved by gravity or mechanically towards the separating pits, from which it will be eventually disposed off-site. As proposed, contact water will not drain onto adjacent properties. Non-contact water will be rainfall that lands outside of the bermed or contained areas and as proposed, will be channeled to a storm water detention pond with adequate capacity to manage a 25-year, 24-hour storm event.

Three groundwater monitoring wells will be drilled and installed on the site. The locations of the monitoring wells are shown on Exhibit B. The wells will be drilled to depths of 100 to 160 feet.

Sable plans to improve access between the facility property and County Road 308 (CR 308), providing more space along the road to ease ingress and egress onto the facility.¹⁸ Sable notes that a load-zoned bridge exists on CR 308 northwest of the facility, and it will discourage haulers from taking that route, although Sable acknowledges it has no control of route selection by waste haulers.

Sable is not currently seeking a permit for a saltwater disposal well on the site, but may do so in the future. Sable and its associated companies currently operate four salt water disposal wells in Texas, with an additional well permitted but not yet drilled and another six disposal applications pending. Sable asserts it has experience managing oil and gas waste in compliance with statutes and Commission rules.

Sable estimates the costs to close the facility to be \$1,750,340. Commission staff has approved the closure cost estimate. Sable must provide sufficient evidence of financial security to the Commission before waste is received.

Protestants' Evidence

The Protestants objected to the proposed facility out of concern that it would result in the pollution of surface and ground water. In addition, the Protestants asserted that the proposed location is poorly chosen as it is: (1) far removed from the current industry activity in the Eagle Ford play; (2) within a residential community they do not consider to be rural; and (3) served by a narrow and deteriorating public road (County Road 308) that will not safely carry heavy trucks to and from the site and may harm other users of the road.

The proposed disposal pits are located within the confines of an existing caliche quarry. Several protestants testified that water accumulates in the quarry following rains, and that the water may reach depths of many feet in some areas. The Protestants questioned how the facility (the disposal pits) could operate if it was under water, which the

¹⁸ Tr. p. 98, lns. 6-9.

Protestants stated would occur after certain weather events. The Protestants' expert geological witness testified that some storm water would flow onto the site and into the quarry pits from the northwest.

The Protestants believe the proposed facility does not have sufficient capacity to store contact storm water that will be generated by a 25-year, 24-hour storm event (about 8.43 inches). In fact, the Protestants estimate the volume of a 4-inch rainfall event will be six times the volume of designed storage capacity of the facility for contact storm water. The Protestants' analysis included calculating precipitation volumes, facility surface areas, and estimating storage volumes of the collection channels and pits; it did not consider the storage capability of perimeter berms. Further, the Protestants believe anticipated precipitation from a 25-year, 24-hour event significantly underpredicts the amount of rainfall the area has received in a comparable period earlier this year. The Protestants also assert some precipitation runoff would flow onto the facility from the tract immediately to the west.

The Protestants' challenged the number and location of water wells identified by the Applicant within a one-mile radius of the proposed. The Applicant identified three such wells.¹⁹ In comparison, the Protestants' identified fourteen water wells within a one-mile radius of the proposed site from an on-line query of the Texas Water Development Board, Water Information Integration and Dissemination System.²⁰ The Protestants stated the wells all produced from the Goliad Formation. At least one of the wells appeared to be mislocated, but still within the one-mile radius.

The Protestants assert that the proposed facility location is inappropriate and unsafe. The Applicant described the surrounding area as industrial and rangeland. However, the Protestants, and a number of persons in the greater area who did not have standing to protest, consider the area to be a community unto itself; a part of the greater Orange Grove area, a suburban area to Alice and Corpus Christi. Several Protestants expressed a belief that a more suitable location would be, perhaps, to the west of the proposed site in an area less densely populated. The Protestants believe the waste materials generated in the Eagle Ford play should be disposed closer to the point of origin; the proposed facility is far from the currently active Eagle Ford development areas.

The Protestants expressed concerns about the condition of County Road 308 on which the proposed facility is located. The road is narrow with deteriorating pavement; the pavement is not wide enough to accommodate more than one vehicle.²¹ The facility

¹⁹ Applicant's Exh. 8, Sheet 2-13.

²⁰ Mitchell Exh. 2 (July 14, 2014 hearing).

²¹ Protestant's Exh. 2 (February 5, 2014 hearing), photographs submitted by Mr. Allen Green.

entrance is located on a sharp bend in the road, and the Protestants are concerned about sight distances and oncoming traffic. Further, there is a load-zoned bridge on County Road 308 northwest of the proposed facility. This bridge is not capable of safely supporting loaded waste hauling trucks over Agua Dulce Creek, and the Protestants are concerned it will inevitably be used by waste haulers, regardless of the weight prohibition, to access the facility from Highway 624.

Protestant William Rogers drew on his own experience in oil field work to question whether Sable had the understanding or experience to handle wastes that included oil-based drilling mud. Mr. Rogers is also concerned about two water wells on his property, which is adjacent and west of the proposed disposal facility.

The Protestants also were concerned about odors and degradation of air quality associated with the operation of the proposed facility. They believe all of these factors will contribute to their declining property values, and negatively impact their own use and enjoyment of their property.

Public Comments

Several persons were determined by the examiners to not have standing as affected parties to protest the application under Statewide Rule 8. However, these persons were provided the opportunity to make public comments on the record during the evidentiary portion of the hearing and to question the Applicant's witnesses. Below is a summary of their stated concerns and positions.

Jonathan Hinze is a life-long resident of the area and owns property east of the facility. His property does not adjoin the facility's boundary, but it does adjoin the larger Mosser tract from which the facility tract was subdivided. That is, while his property does not directly abut the facility boundary, his property does abut what has historically been known as the Mosser tract. Therefore, he considers himself to be an adjacent property owner, and he believes the subdivision of the larger tract by Mosser and Sable unfairly and improperly removes him from notice requirements. Mr. Hinze's property is topographically downgradient from the facility; surface water drainage from the facility will flow through his property, including a pond he uses for sport and recreation. He lives on Highway 624 and owns other property in the area. He is concerned about surface water and waste constituent drainage from the facility onto his property and surface water resources.

Charles and Stacie Tonne live on CR 308 northwest of the proposed facility. The Tonnes are very concerned about the volume of traffic and traffic safety, and especially the potential for harm to students, including their children, who ride the school busses in the area. Ms. Tonne offered photographs of Texas Horned Lizards that are found on her property, and other persons at the hearing acknowledged these animals live on their properties, too. Mr. Tonne stated that Texas Department of Parks and Wildlife told him that Texas Horned Lizards were an endangered species in the State.

Travis Vollmering owns property southeast of the proposed facility. He cited the Applicant's statements that the groundwater gradient was to the southeast, which would be directly toward his property. He has two water wells on his property that are about 468 feet deep.

Jerry and Cora Chisolm live in the area and operate an organic farm. They sell produce from their farm at a farmer's market in Corpus Christi. They are concerned that waste constituents and contaminants from the proposed facility may migrate by air or water and affect their crops, and thus threaten their livelihood by possibly removing their inability to claim their produce as 'organic' at market.

EXAMINERS' OPINION

A permit to maintain or use a pit for storage or disposal of oil field fluids or oil and gas wastes may only be issued if the Commission determines that the maintenance or use of, and disposal in, such pit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface waters.²² The applicant has demonstrated and the examiners find that the proposed facility meets these Statewide Rule 8 requirements. The examiners recommend that Sable's application be approved.

Waste of Oil, Gas or Geothermal Resources

The operation of the proposed facility will not result in the waste of oil, gas or geothermal resources. Waste treatment and disposal is a necessary component of energy development. The proposed facility includes provisions to recover usable hydrocarbons from the various incoming waste streams. Sable may, at a future date, determine that the installation of mechanical equipment (centrifuges) for resource reclamation is warranted.

Pollution of Surface Waters

The construction and operation of the proposed facility as designed will not result in the pollution of surface waters. The proposed facility meets the design requirements of the Commission to prevent the runoff of waste materials and contact storm water.

The proposed disposal pits will be constructed in a former caliche quarry. The Protestants testified that the quarry has at times contained varying amounts of accumulated water following rainfall events. The examiners note that the original land surface of the quarry is on a topographic high. Indeed, comparing the topographic and aerial photographic exhibits, the examiners note a positive correlation between topographic highs and other

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16 Tex. Admin. Code §3.8(d)(6)(A) Standards for permit issuance.

quarries in the area.²³ The natural, unaltered topography does not appear to support the Protestants' contention that surface water will run-on to the property; in fact, the topographic exhibits indicate the opposite, especially in regards to the quarry area.

The Application indicates the disposal pits will be constructed in such a manner to "fill" the quarry excavation. The liner systems will provide, effectively, a basin, and the perimeter berms surrounding the waste management units will prevent the surface water runoff from entering the waste containment structures. Upon closure, the disposal pit surfaces will be above grade with positive drainage away from the units.²⁴ Precipitation which falls within the confines of the disposal cells while the units are in operation is contact water; permit conditions require such contact storm water to be disposed of in an approved facility, and not discharged to surface drainage. Thus, the examiners conclude the application as designed properly segregates contact from non-contact storm water, and that management of these storm water regimes in accordance with Commission rules and permit conditions reflected in the proposed design will prevent the pollution of surface waters.

Pollution of Subsurface Waters

The natural environmental features and the engineered liner and waste management systems meet Commission requirements and will prevent the pollution of subsurface waters. The Applicant has conducted a geotechnical investigation of the proposed site that included drilling soil borings, collecting soil samples, and analyzing soil samples for physical parameters. Based on its study, the Applicant determined the area is underlain by at least 20 feet of clay suitable as undisturbed and re-compacted natural liners. Further, the shallowest expression of groundwater was observed at a depth of about 95 feet below ground surface. The Applicant is required to drill and install three (3) groundwater monitoring wells to monitor this interval. In addition to the natural environmental features, the facility design includes a combination of natural and artificial liners for all of the waste management areas, and the disposal pits include systems for leachate collection and leak detection.

The Applicant and Protestants presented differing data regarding the number and location of existing groundwater wells within a one-mile radius of the proposed facility. The Applicant identified three wells, and the Protestants identified fourteen. The examiners believe this discrepancy is the result of each party querying different State databases, or querying the same database based on differing criteria. The three wells identified by the Applicant appear to be wells for which the Texas Water Development Board (TWDB) has obtained groundwater depth and quality data; the fourteen wells identified by the Protestants appear to be wells for which well drilling and completion reports were submitted via an online reporting system by licensed water well drillers. Both sets of data indicate local water use

²³ Applicant's Exh. 4 and 8, Sheet 2-2.

²⁴ Applicant's Exh. 8, Sheets 2-4, 2-5 and 2-11.

from the Goliad Formation. The Applicant has identified groundwater at a depth of about 95 feet in one borehole, and three (3) groundwater monitoring wells will be installed to observe this zone. The regional groundwater gradient is to the southeast, and the monitoring wells are proposed to be located along this vector, up and down gradient from the waste management areas.

Other Issues Raised

The Applicant provided testimony that there is an existing need for the proposed facility as indicated in conversations with its existing clients. The Protestants provided testimony that there is no need for the proposed facility in this location; the proposed location is far from the currently active development of the Eagle Ford Shale. The permitting requirements in Statewide Rule 8 do not require the Applicant to demonstrate, and the examiners are not required to find, that the proposed facility is in the public interest or that there is an ongoing need for such a facility.

The Protestants are concerned about the condition of County Road 308 and the impact of vehicles associated with the facility. Evidence offered by both parties indicates that the roadway is, indeed, stressed. However, the Railroad Commission does not have jurisdiction over issues relating to traffic and roadway conditions; such issues are appropriately handled by County and/or State agencies, including the Texas Department of Transportation.

The Texas Horned Lizard is identified as a threatened species by the State of Texas and has been documented in the general area of the proposed facility. The Railroad Commission does not regulate activities associated with species listed by the State as threatened.

The Protestants' concerns about odors and air quality are not within the jurisdiction of the Railroad Commission. The Texas Commission on Environmental Quality is the appropriate regulatory agency overseeing such matters.

FINDINGS OF FACT

1. Sable Environmental II, LLC (Sable) (Operator P-5 No. 742239), pursuant to 16 Tex. Admin Code § 3.8, applied for a permit to operate a commercial waste separation, reclamation, and disposal facility under application control nos. STF 059, Form R9 04-1301, pits 011946 A/B/C, 011947 A/B/C, 011948 and 011949, in Jim Wells County, Texas.
2. Sable gave notice of the application by mailing or delivering a copy of the application to the owner of record of the surface tract on which the facility is located and to each owner of record of tracts adjacent to the subject tract.

3. Notice of the application was published on February 8, and 15, 2013, in the *Alice Echo News Journal*, a newspaper of general circulation for Jim Wells County.
4. Notice of this application and hearing was provided at least ten (10) days prior to the date of the hearing.
 - a. Ms. Renee Mitchell, an adjacent property owner, was not provided notice of the February 5, 2014 hearing. Following discovery of this defect, the hearing was reconvened to provide for Ms. Mitchell's participation. All notice requirements have been satisfied.
5. The facility will receive, separate, treat, and dispose of non-hazardous oilfield wastes. Recoverable hydrocarbons will be reclaimed. Waste liquids derived from the separation processes will be sent off-site for disposal.
6. The facility will include a separation area with six separation pits (two parallel batteries of pits, with each battery containing three pits in series), access pad, working area (including truck ramps and wash bays), drying pad, and two disposal cells.
 - a. The separation pits, access pad, and working area will include recompacted clay liners and reinforced concrete.
 - b. The drying pad will include a two-foot compacted clay liner.
 - c. The disposal cells will include natural and synthetic liners, leachate collection systems, and leak detection systems.
7. The facility tract is underlain by 20 feet of clay, and shallow groundwater was observed at a depth of 95 feet.
8. The disposal cells will be located in a former caliche quarry, which was located on an originally topographic high; there is no off-site drainage onto the disposal area.
9. Contact and non-contact water will be segregated and managed separately; contact water will be evaporated or disposed of off-site at an appropriate facility.
10. Commission staff has approved the closure cost estimate of \$1,750,340; Sable will provide sufficient evidence of financial security to the Commission before waste is received.

11. Operation of the proposed facility will not result in the waste of oil, gas, or geothermal resources.
12. Construction and operation of the proposed facility as designed will not result in the pollution of surface waters.
13. Construction and operation of the proposed facility as designed will not result in the pollution of subsurface waters.
14. 16 Tex. Admin. Code § 3.8 does not require the Applicant to demonstrate, and the examiners are not required to find, that the proposed facility is in the public interest or that there is an ongoing need for such a facility.
15. Matters regarding State-listed threatened species, public roadway conditions, traffic safety, odors and air quality are not subject to Commission jurisdiction.

CONCLUSIONS OF LAW

1. Resolution of the subject application is a matter committed to the jurisdiction of the Railroad Commission of Texas. Tex. Nat. Res. Code § 81.051.
2. All notice requirements have been satisfied. 16 Tex. Admin. Code § 3.8.
3. The proposed waste treatment, storage, reclamation, and disposal operations will not result in waste of oil, gas, or geothermal resources or the pollution of surface or subsurface waters. 16 Tex. Admin. Code § 3.8.

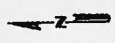
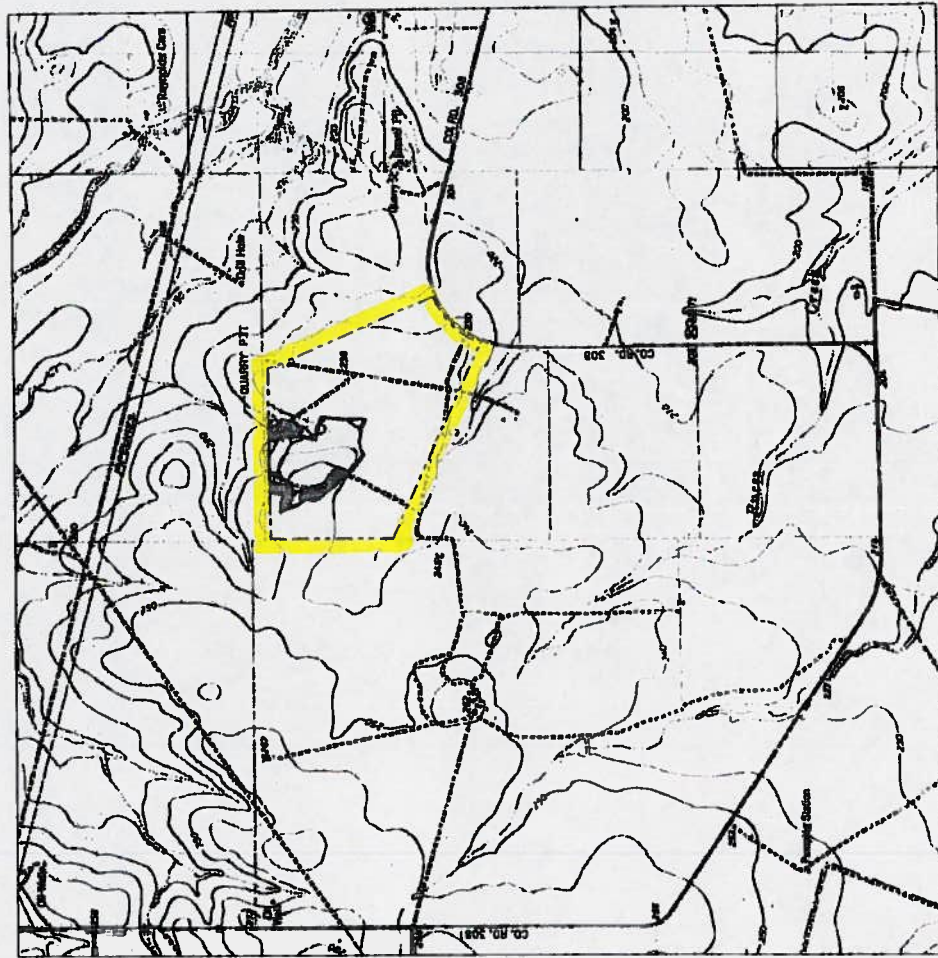
RECOMMENDATION

The examiners recommend the application of Sable Environmental II, LLC for a commercial waste treatment, storage, reclamation, and disposal facility in Jim Wells County, Texas, be approved and a permit ISSUED.

 Respectfully,

Paul Dubois
Technical Examiner


Laura Miles-Valdez
Hearings Examiner

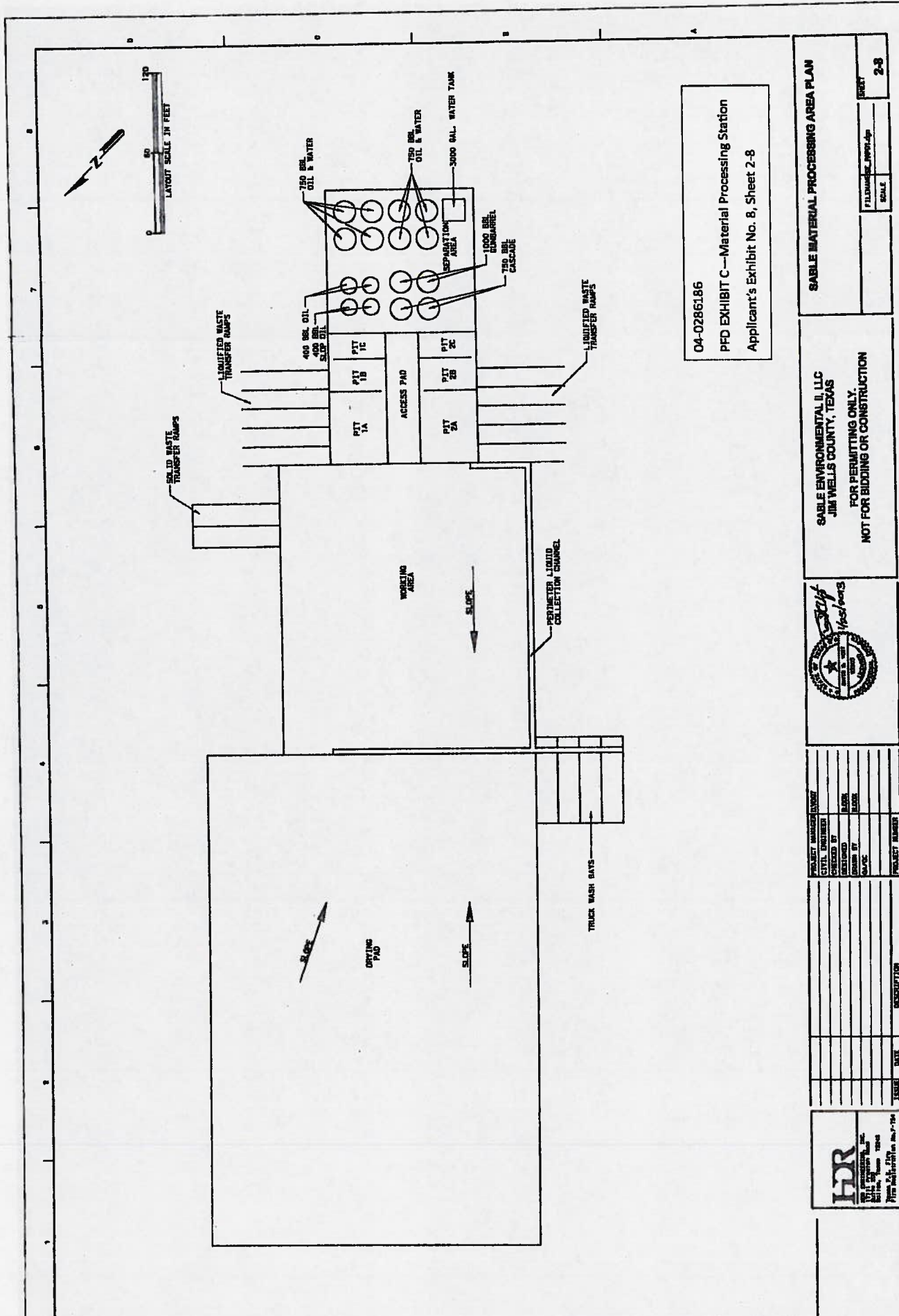


04-0286186
PFD EXHIBIT A—Site Location
Applicant's Exhibit No. 8, Sheet 2-2

SOURCE: 7.5-MIN. SAN DIEGO NE QUAD, MAP (2758-444) AND ORANGE GROVE QUAD, MAP (2757-333) JIM BELLS CO. TX. USGS, DENVER, CO. OR RESTON, VA.

GLASSY PIT CONTIGUOUS PROVIDED BY HOWARD SURVEYING, L.L.C. 4C2 STATE HWY 173 SOUTH, MONROE TEXAS

<h1 style="margin: 0;">HDR</h1> <p style="margin: 0;"> THE ENGINEERING & CONSTRUCTION GROUP, INC. 10000 WEST 10TH AVENUE, SUITE 100 DENVER, COLORADO 80231 PHONE 303-733-1377 FAX 303-733-1378 </p>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">PROJECT NUMBER</td> <td style="width: 50%; text-align: center;">DATE</td> </tr> <tr> <td style="text-align: center;">CIVIL ENGINEER</td> <td style="text-align: center;">11/05/97</td> </tr> <tr> <td style="text-align: center;">DESIGNED BY</td> <td style="text-align: center;">BY</td> </tr> <tr> <td style="text-align: center;">CHECKED</td> <td style="text-align: center;">CHECKED</td> </tr> <tr> <td style="text-align: center;">DESIGNED BY</td> <td style="text-align: center;">CHECKED</td> </tr> <tr> <td style="text-align: center;">DATE</td> <td style="text-align: center;">DATE</td> </tr> <tr> <td style="text-align: center;">PROJECT NUMBER</td> <td style="text-align: center;">PROJECT NAME</td> </tr> </table>		PROJECT NUMBER	DATE	CIVIL ENGINEER	11/05/97	DESIGNED BY	BY	CHECKED	CHECKED	DESIGNED BY	CHECKED	DATE	DATE	PROJECT NUMBER	PROJECT NAME
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<h2 style="margin: 0;">AREA TOPOGRAPHIC MAP</h2> <p style="margin: 0;">(USGS)</p>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">FUT. ELEVATION</td> <td style="width: 50%; text-align: center;">UNIT</td> </tr> <tr> <td style="text-align: center;">SCALE</td> <td style="text-align: center;">SCALE</td> </tr> <tr> <td style="text-align: center;">DATE</td> <td style="text-align: center;">DATE</td> </tr> </table>		FUT. ELEVATION	UNIT	SCALE	SCALE	DATE	DATE								
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PFD EXHIBIT C—Material Processing Station
Applicant's Exhibit No. 8, Sheet 2-8

**SABLE ENVIRONMENTAL II, LLC
JIM WELLS COUNTY, TEXAS**



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HDR
HDR ENGINEERING, INC.
1911 Canyon Blvd.
Suite 2000, Denver, CO 80202
Phone: 303.733.7100
Fax: 303.733.7101

SABLE MATERIAL PROCESSING AREA PLAN

FILE NUMBER	100-1000000000
DATE	2-28-68

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