



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 04-0286726

**THE APPLICATION OF SURFACE EQUITIES ENVIRONMENTAL, LLC,
PURSUANT TO STATEWIDE RULE 8 FOR A PERMIT TO MAINTAIN AND
OPERATE A PIT AT THE MATEO LUERA PROPERTY, JIM WELLS COUNTY,
TEXAS.**

AMENDED PROPOSAL FOR DECISION

HEARD BY: Richard Atkins, P.E. – Technical Examiner
Marshall Enquist – Hearings Examiner

PFD WRITTEN BY: Paul Dubois – Technical Examiner

PROCEDURAL HISTORY

Application Filed:	June 17, 2013
Protest Received:	June 24, 2013
Request for Hearing:	July 29, 2013
Notice of Hearing:	January 17, 2014
Date of Hearing:	February 21, 2014
Transcript Received:	March 10, 2014
Proposal For Decision Issued:	June 2, 2014
Amended Proposal For Decision Issued:	October 6, 2014

APPEARANCES:

APPLICANT:

Jay Stewart
Wes McGuffey
Alfonso Gonzales
Andre L. Willie, P.E.
Mateo Luera
David Luera
Hugo Berlanga
Moe Saenz
Yvette Saenz
Rosalinda Luera
Tracey O'Shay
Mark McCoury

REPRESENTING:

Surface Equities Environmental, LLC

INTERESTED PARTIES :

Judge Arnaldo Saenz
Commissioner Richard Miller
Jacob P. Arechiga

Jim Wells County
Jim Wells County Precinct 3
W. Everett Curnette, II, Jonathan
Hinze, and Stacie Tonne

W. Everett Curnutte, II
Jonathan Hinze
Tom Freund
Lindsey A. Koenig
Lindsey A. Koenig, II
Stephen E. Dewveall
Stacie Tonne
Katie Curnutte
Seale Brand
Pamela Couvillon
Howard Couvillon
Charles Tonne
Waldyne Nesloney
John Reichert
Thomas James Teenier, MD
Jenney Karasek
Randy Collins
Lela Collins
Janie Dewveall
Margarita Elizondo
Daniel Elizondo
Jerry & Cora Chisolm
Vernice Thomas
Allen Green
Serapio Serna, Jr.
Ida Gonzalez-Garza
A. Pinkston
Susy Cobb
Larry Cobb

OBSERVERS:

Josh Reyna
Matt Lamon
Lamar Clemens
Spike Johnson

Senator Juan "Chuy" Hinojosa
Representative J. M. Lozano

STATEMENT OF THE CASE

Pursuant to Statewide Rule 8, Surface Equities Environmental, LLC (Surface Equities) requests authority to operate a Commercial Permit to Maintain and Operate a Pit at the Mateo Luera Property, Jim Wells County, Texas. Surface Equities proposes to build a commercial washout pit facility to clean trucks, tanks and containers of oil and gas waste and waste residue on the property. Waste and waste residue will be temporarily stored on-site in a below-grade washout pit. From time to time waste accumulated in the washout pit will be removed for disposal at an off-site facility. No disposal will occur on-site. Surface Equities' application is protested by many interested parties, including two elected officials in Jim Wells County. Attachment A contains a summary of the public comments offered at the hearing.

The Proposal for Decision (PFD) in this matter originally issued on June 2, 2014, is hereby amended. Upon careful review and consideration of the statements contained in the Exceptions and Replies to Exceptions received from the Applicant and Protestants, the examiners conclude that the original recommendation to deny the application is in error. The examiners revise their original recommendation, and hereby recommend that the application be approved and the permit issued.

Matters Officially Noticed

Surface Equities filed its original application (Form H-11, Application for Permit to Maintain and Use a Pit, and supporting material) on June 17, 2013. In accordance with the requirements of 16 Tex. Admin. Code §3.8, notice of the original application was given to the surface owner of the proposed facility, Mr. Mateo Luera. Notice by publication is not required for this pit under Statewide Rule 8 as the washout pit is not a disposal or treatment facility, and the Commission's Oil & Gas Division did not require publication as a matter of discretion. At the time of the application, the Oil & Gas Division did not require notice to adjoining landowners for facilities such as this. On August 13, 2013, Commission staff requested additional information regarding the application. On November 14, 2013, Surface Equities filed a response to staff's questions and an amended application.

Within 15 days of the initial application being filed, the Commission received protests from many officials and residents near Orange Grove, Texas. These persons were added to the service list for the matter and were sent notice of the hearing.

The Commission experienced difficulty in providing notice to a few protestants that previously requested to be noticed. Several hearing notices were returned to the Commission by the U.S. Postal Service as undeliverable. In most of these cases the Applicant was able to provide an alternate address—typically a post office box number—and a second attempt at service was made. Within 10 days of the hearing date, the notice to Mr. Steven Overton, an owner of property adjoining to the proposed facility, was returned

as undeliverable. According the Surface Equities, Jim Wells County tax records identify Steve Overton's mailing address to be the same address as the one the Postal Service deemed undeliverable. Mr. Alfonso Gonzalez, Surface Equities General Manager, testified that he made an unsuccessful attempt to hand deliver the notice.

The hearing was held on February 24, 2014. On March 12, 2014, the examiners received a letter from Tony and Denise Overton, stating that they are adjoining land owners who "did not receive any type of notice of the hearing and did not know about it until after the fact." Letters of protest from the Overtons were received by the Commission on July 1, 2013, and the Overton's were placed on the service list. The examiners offered the Applicant an opportunity to respond to the complaint. Mr. Jay Stewart, counsel for Surface Equities, provided evidence of service, to which the examiners agreed. The examiners notified the Overtons of the presumption that service was achieved and afforded them the opportunity to rebut the presumption; no rebuttal was received.

Protestants and Matters of Standing

Surface Equities' application was protested by many persons in and around Jim Wells County. The hearing was well attended, including thirty-one (31) protestants and four (4) observers that filed appearances.

All Commission hearings are open to the public, and public participation is welcomed. In an administrative hearing one party applies for a certain authority or privilege provided for by statute or rule. Other parties may be similarly provided certain grounds on which they may support, protest or intervene in a matter. Statutes and rules also provide the Commission with the basis by which these matters are to be adjudicated. Therefore, in an administrative proceeding it is necessary for judicial efficiency and due process that persons entitled by rule to protest an application are identified apart from those persons who have not established standing to protest the matter to be heard. Nonetheless, typically all members of the general public who desire to give a public statement on a matter are afforded the opportunity to do so on the record.

The controlling rule in this matter is 16 Tex. Admin. Code § 3.8, which is also referred to as "Statewide Rule 8", or, simply, "Rule 8". Rule 8(d)(6)(D), which applies to protests and hearings, states, "*If a protest from an affected person is made to the commission within 15 days of the date the application is filed, then a hearing shall be held on the application after the applicant requests a hearing.*" Further, an affected person is defined by Rule 8(a)(22) as "*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.*"

The examiners determined that the protestants appearing at the hearing consisted of members of the general public, as opposed to "affected parties" as defined by Rule 8.

The Environmental Permits & Support (EPS) unit of the Oil & Gas Division did not require Surface Equities to notify adjoining landowners of its application; only the surface owner of the proposed facility, Mr. Mateo Luera, was notified per the requirements of Rule 8¹ (Attachment B). As none of the protestants in attendance were identified as adjoining land owners, the examiners limited the protestants' participation to public statements given on the record prior to the Applicant's presentation of its evidentiary case.

Upon review, the examiners note that the hearing transcript records Mr. Tom Freund, in his public comment, making a reference to "Mr. Elizondo" as an owner of an adjoining property². Daniel and Margarita Elizondo attended the hearing and filed appearances in protest to the application. The appearance slips indicate the Elizondos are co-owners of Rancho Elizondo at 3165 W. FM 624, which appears to be the property immediately east of the proposed facility.

In similar cases, examiners routinely grant standing to adjoining land owners who can demonstrate they are affected parties. The examiners would have likely granted Daniel and Margarita Elizondo standing as affected parties if they had identified themselves as adjoining land owners. When the examiners asked if any other persons in attendance wished to make a public statement³, the Elizondos were silent. Daniel and Margarita Elizondo did not present evidence in opposition to Surface Equities' application.

Twelve protestants gave public statements in opposition to the application and the Applicant's counsel gave a public statement in support of it. A summary of the public statements is attached to the PFD (Attachment A). The public statements were not considered by the examiners in forming the following recommendation. The complete record of all public comments was recorded and transcribed in the official hearing transcript.

Following the hearing three Protestants—W. Everett Curnette, II, Jonathan Hinze, and Stacie Tonne—obtained legal representation. They dispute the examiners determination that they are not affected parties entitled to participate in the hearing as protestants under Rule 8, and they request to be allowed to continue to participate in the matter. The examiners have maintained these persons and their counsel on the service list and have accepted their Replies to Exceptions submitted for the initial PFD.

¹ RRC Memorandum dated August 22, 2014, from Grant Chambless, P.G., Manager, Environmental Permits & Support, to Paul Dubois, Technical Examiner, Hearings Division (Attachment B).

² Transcript page 20, lines 8-11, and page 21, lines 3-5. Public comments offered by Mr. Tom Freund.

³ Transcript page 82, line 22.

Procedural History

On or about June 27, 2013, Surface Equities filed its application for the subject facility. The Commission began receiving written protests on June 24, 2013. On July 29, 2013, Surface Equities requested that its application in this matter be set for hearing. Pursuant to Rule 8, the examiners consider this to be Surface Equities' hearing, called at its request, for the purpose of considering its application. The hearing was convened on February 21, 2014, by technical examiner Richard Atkins, P.E. as the lead examiner, and hearings examiner Marshall Enquist.

Following issuance of the original PFD on June 2, 2014, which recommended the application be denied, the Applicant filed exceptions arguing that the examiners erred by not immediately referring the application back to Commission staff for administrative approval as the matter was no longer protested. This position, however, is inconsistent with the one the Applicant took during the hearing. Specifically, following the public comments, the Applicant expressed its desire to put on its case in support of its application, as opposed to requesting the application be referred to staff for administrative approval.⁴ The examiners have evaluated the evidence offered by the Applicant and admitted into the record at the hearing.

DISCUSSION OF THE EVIDENCE

Applicant's Evidence

Mr. Alphonso Gonzalez, Surface Equities General Manager, and Mr. Andre Willie, P.E., testified on behalf of Surface Equities, which has applied for a commercial permit to maintain and operate a pit on the 50-acre Mateo Luera property on the northeast corner of Farm-to-Market Road (FM) 624 and County Road (CR) 308, seven miles west of Orange Grove, Jim Wells County, Texas. Mr. Mateo Luera is the owner of the surface tract and a principal of Surface Equities. The proposed facility is located about 40 miles from current Eagle Ford Shale oil and gas activity. Generally speaking, the proposed facility will occupy about 2.5 acres situated on the southeast quadrant of the subject 50-acre tract. The

⁴ Mr. Stewart (Counsel for Surface Equities):

"I certainly would like to be able to present a full case for the Commissioners' consideration and the examiners' consideration." Transcript page 10, lines 13-15.

"Thank you, Judge. And I did want to thank all the folks here from Jim Wells County. ... We're going to consider the aspects of the rules today and whether this facility should be permitted by the Railroad Commission on the issues that the Railroad Commission has jurisdiction over. And so that's what we're going to talk about today..." Transcript page 87, lines 3-4 and 10-14.

western half of the 50-acre tract is a former caliche quarry. There are two small ponds on the northeast quadrant. A copy of the site plan is included as Attachment B.⁵

Surface Equities is seeking a commercial permit for a washout pit facility; there will be no on-site disposal of oil and gas waste. The facility will wash oilfield vehicles and containers (tankers, tanks, etc.), inside and out. Solids and sludges – including non-hazardous, RCRA⁶-exempt oil and gas waste residue – will drain to, and accumulate in, the washout pit. The chloride concentration of the waste stream will be less than 6,000 milligrams per liter. In the process, wash water will be re-used. From time to time the accumulated waste in the washout pit will be gathered and hauled off-site for disposal in an appropriate permitted facility.

Trucks will enter the facility by a concrete driveway off of FM 624. The facility will occupy about 2.5 acres of the 50-acre tract and will be paved with concrete. An earthen berm will surround the concrete pavement. The concrete will slope away from the center of the facility at a 1 percent grade.

In the center of the facility, in an area about 100-feet square, will be the washout pit and concrete pit drainage apron.⁷ Whereas the surrounding concrete drains away from the center of the facility, the concrete pit drainage apron will drain towards the washout pit itself near the center of the facility. The grade will change from a 1 percent slope draining away from the center, to a 2 percent slope on the concrete pit drainage apron area draining towards the washout pit. Trucks will back up to the washout pit on the concrete pit drainage apron area; tankage will be oriented towards the lower end, against the pit itself. The grade change in the concrete surfacing (from one percent away from the center to 2 percent towards the center) will segregate drainage by contact: contact water, that is, water that may come into contact with waste material, will drain in towards the pit, and non-contact water that has not come into contact with waste will drain away from the pit, towards an earthen berm encircling the 2.5 acre concrete facility site. Where the grade changes, a 4-inch high concrete mountable curb will be poured to help ensure segregation of contact and non-contact water. Non-contact water will be rainfall that lands outside of the 4-inch high mountable curb.

⁵ Applicant's Exh. 5, Tab B, Figure C2.2.

⁶ Resource Conservation and Recovery Act: Examples of RCRA exempt oil and gas waste includes produced water, drilling fluids, frac flowback fluids, rigwash and workover wastes.

⁷ In drafting the PFD, the examiners adopted the term "concrete pit drainage apron" for descriptive purposes. This term was not used by the Applicant to describe the facility and so is not identified in the transcript or exhibits.

The washout pit itself will be located on the north end of the concrete pit drainage apron and oriented in an east-west direction. The washout pit will be 120 feet long, 12 feet wide, and 10 feet deep. A copy of the Proposed Pit Plan View diagram is included as Attachment C.⁸ The western-most 40 feet of the pit will be a ramp from the surface to allow equipment (i.e., a Bobcat front-end loader or similar) into the pit to remove accumulated waste as necessary. The walls and floor of the pit will be cast-in-place reinforced concrete with sealed expansion joints. The back wall will be 2-feet higher than the front (concrete pit drainage apron side) wall of the pit. The washout pit and the northern half of the concrete pit drainage apron will be covered by a permanent overhead canopy structure. The washout pit itself contains sufficient volume to hold the anticipated precipitation that would fall on the washout pit and concrete pit drainage apron areas during a 25-year, 24-hour storm event of 8.3 inches.

General soils and subsurface information was obtained from the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) internet soil survey information. According to the NRCS the washout pit is located on soils identified as Goliad sandy clay loam. According to the NRCS data, these soils generally consist of sandy clay loam with varying proportions of sand, clay and loam, to a depth of 28 inches below which cemented (caliche) material is encountered. The Applicant submitted online-generated USDA NRCS reports that included general soil and engineering characteristics for this soil type.

The Applicant excavated a test pit at the location of the proposed washout pit to evaluate site-specific subsurface conditions. The test pit was excavated to a depth of about 10 feet, exposing the soil horizon. This survey indicated Goliad sandy clay loam soil in the upper three feet, underlain by 18 inches of sandy clay loam then one foot of clay. Below the clay was a very hard petrocalcic (caliche) horizon. A sandy clay was encountered from about 9 feet below ground surface (bgs) to the bottom of the pit. All of the soil layers were dry and hard. Apart from a photograph of the test pit and soil horizon, no additional information was provided. No information was provided regarding sampling and physical analysis of soil samples for engineering properties to be used in the design of the commercial washout pit.

According to the amended Form H-11, the nearest water well is 1,500 feet from the proposed pit, and the shallowest fresh water in the area is at a depth of 240 feet. The nearest water well is 440 feet deep, produces from a depth of 340 to 380 feet, and has a static water level of 150 feet, as documented on a State of Texas Well Report submitted with the initial application. The initial application stated (without supporting documentation) that 21 water wells were identified within 1.5 miles of the tract, and that the first sands were encountered at 125 feet bgs.

⁸ Applicant's Exh. 5, Tab B, Figure C5.0.

The site is located in the Agua Dulce Creek watershed. Agua Dulce Creek is about one mile south of the site. As the site currently exists, surface drainage from the location of the proposed pit would be initially to the northeast and then to the east and south.⁹ Agua Dulce Creek eventually drains into Baffin Bay.

The surficial soils will be excavated to about 13 feet, a depth sufficient to construct the washout pit, prepare the foundation, and install the liners and leak detection system. The washout pit will be constructed of reinforced concrete with sealed expansion joints. Features of the facility design are summarized below:

1. The engineered base (floor) of the washout pit, including the clean-out vehicle access ramp on the west end, will be constructed as follows (from bottom to top):
 - a. Undisturbed native soils
 - b. 6-inch compacted clay liner
 - c. 60-mil textured high-density polyethylene (HDPE) liner
 - d. 2-foot compacted clay liner
 - e. Reinforced concrete floor
2. The side and east walls will be constructed as follows (from outside to inside):
 - a. Undisturbed native soils
 - b. 60-mil HDPE textured liner
 - c. Masonry sand backfill
 - d. Reinforced concrete walls
3. The underdrain leak detection system will include:
 - a. 6-inch perforated pipe
 - b. Set in a gravel-filled channel
 - c. Wrapped with geo-textile soil filter fabric
 - d. Drains sloped with two monitoring well observation points
4. West of the ramp and outside of the washdown pit will be a small area for cleaning the equipment used to remove solids from the pit. The concrete in this area will drain at a 2.5 percent slope towards the washdown pit.

Four 200-bbl tanks will be installed within a reinforced cast-in-place concrete secondary containment structure on the east end of the washout pit. The tanks will be used to store wash water for reuse. The tanks will be placed upon a reinforced concrete slab with a reinforced secondary containment structure. The secondary containment structure is of sufficient size to contain the volume of water stored in the tanks.

⁹ Applicant's Exh. 6.

A cattle guard will be installed on the exiting side of the concrete driveway. Exiting vehicles will be shaken by traversing the cattle guard so that any remaining solids on the exterior of the truck will fall into the cattle guard and not be carried onto the road. The cattle guard will be on the facility property, not the State right-of-way. Entry to and egress from the facility will be via an existing driveway off of FM 624 to the south. The applicant has obtained a permit from the Texas Department of Transportation to improve the driveway access on highway right-of-way. According to Surface Equities, FM 624 has been designated as an energy sector roadway by TXDOT, and the roadway will be widened in the future.

Surface Equities estimates the facility's closure costs to be \$18,040, which includes disposal costs for the liquid wastes (800 bbl) and the washout pit being full of waste solids (2,140 bbl). The estimate includes trucking costs to haul the material to an appropriate disposal site, although the transport distance was not indicated. Mr. Luera, the property owner, desires that upon closure of the facility the structural and mechanical fixtures and improvements associated with the requested permit be left in place, as-is. Mr. Luera provided a notarized statement acknowledging such. Therefore, the closure cost estimate does not include funds for complete facility demolition and disposal.

Surface Equities also indicated that it would be implementing Best Management Practices (BMPs) and Voluntary Conservation Practices as recommended by the Texas Parks and Wildlife Department and US Fish and Wildlife Service. The Applicant also stated it would comply with all applicable rules and regulations and would implement a Spill Prevention, Control and Countermeasure (SPCC) plan for the facility.¹⁰

EXAMINERS' OPINION

A permit to maintain or use a pit for storage of oil field fluids or oil and gas wastes may only be issued if the Commission determines that *"the maintenance or use of such pit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface waters."*¹¹ Upon consideration of the evidence in the record and the statements of the parties in their Exceptions and Replies to Exceptions¹² to the initial PFD, the examiners conclude that the maintenance or use of the Surface Equities washout pit

¹⁰ Applicant's Exh. 5, Tab B

¹¹ 16 Tex. Admin. Code § 8(d)(6)(A), Standards for Permit Issuance.

¹² Replies to Exceptions were submitted—and accepted—from three protestants who had obtained legal representation after the hearing. Although the examiners concluded that none of the protestants had standing, the examiners granted their request that they be allowed to further participate in the matter.

in accordance with the draft permit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface waters. The examiners therefore recommend that the application be approved.

The examiners note that, unlike applications for commercial disposal wells, Statewide Rule 8 does not require the Applicant to demonstrate or the Commission to find that the proposed facility is in the public interest.

This application is for a commercial washout pit that will hold (temporarily store) oil and gas waste, waste residue and spent wash water below the ground surface. A washout pit is defined as a “*pit located at a truck yard, tank yard, or disposal facility for storage or disposal of oil and gas waste residue washed out of trucks, mobile tanks, or skid-mounted tanks.*”¹³ The Rule anticipates a washout pit to be in association with other pits—and expressly defines such a pit as associated with other pits or facilities. The proposed Surface Equities facility, as proposed, is an autonomous, stand alone washout pit. The proposed facility appears to the examiners to be unique in that it is a commercial washout pit *not associated* with any other related facilities identified in Rule 8 (i.e., truck yard, tank yard, or disposal facility).¹⁴ The examiners know of no other permitted commercial washout pit that exists as a stand-alone facility. The examiners do not believe this situation (lack of association with other on-site waste management units) should preclude commercial permitting for a stand-alone facility; it simply appears to be a novel case.

Statewide Rule 78 defines a “commercial facility” as one in which “*the owner or operator will receive compensation from others for the storage, reclamation, treatment, or disposal of oil field fluids or oil and gas wastes that are wholly or partially trucked or hauled to the facility and whose primary business purpose is to provide these services for compensation.*”¹⁵

Commercial surface waste facilities typically receive a variety of oil and gas wastes from a wide spectrum of sources. Commercial surface waste facilities also typically process large volumes of oil and gas wastes. For these reasons, Commission staff has applied more stringent permitting, monitoring and testing requirements in various forms than would otherwise be required for non-commercial facilities permitted under Rule 8. Statewide Rule 8 grants the Oil & Gas Division a degree of leeway to request additional information in support of particular applications. “*The director (of the Oil & Gas Division) may require the*

¹³ 16 Tex. Admin. Code § 8(a)(15).

¹⁴ The original application (Applicant’s Exh. 5, Tab A, Figure C3.0) did identify a proposed oil-based mud processing pit on the subject site, but to the examiners’ knowledge that pit was never a part of the formal application.

¹⁵ 16 Tex. Admin. Code § 78(a)(3).

*applicant to provide the commission with engineering, geological, or other information which the director deems necessary to show that the issuance of the permit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water.*¹⁶

Thus, the Oil & Gas Division requires certain additional application requirements for commercial facilities in addition to Commission Form H-11, which describes the necessary information and materials required for any pit application. In addition to Form H-11, for Commercial facilities the Oil & Gas Division also requires: (1) the operator meet certain financial security requirements to ensure proper closure; and (2) that engineering and geologic work products must be prepared under seal of a registered engineer or geologist, respectively, as required by the Occupations Code Chapters 1001 and 1002.¹⁷

The Commission's rules and established practices explicitly express a higher standard of care when it comes to permitting commercial facilities as opposed to non-commercial facilities. What is more, applications for commercial disposal facilities require yet more technical scrutiny. The subject facility is commercial, but is not a disposal facility.

For this facility, then, the key aspects of facility design and operation influencing the examiner's recommendation include: (1) the facility's status as a commercial facility and the subsequent regulatory interests and concerns thereof; (2) storage of waste, waste residue, and spent wash water below the ground surface through the normal course of facility operations; (3) the potential for a release of waste or waste constituents to pollute the ground or surface water; and (4) the applicability of Rule 78's financial security and closure cost requirements to this commercial facility.

Protection of Surface Water

To prevent contamination of surface water the facility design discriminates between and attempts to segregate "contact" and "non-contact" water. The Commission does not have jurisdiction over non-contact storm water. With regard to contact storm water, however, Commission rules require that water that comes into contact with oil and gas waste be treated or disposed of at an appropriate facility.

The key design feature in segregating and containing contact water is the concrete pit drainage apron around the washout pit. The concrete pit drainage apron slopes towards the washout pit, so any material, including waste and precipitation, that falls on the concrete pit drainage apron would be expected to flow or be washed into the pit. The

¹⁶ 16 Tex. Admin. Code § 8(d)(6)(B), Application.

¹⁷ RRC Surface Waste Management Manual, online version, accessed on July 18, 2014.

concrete pit drainage apron includes a 4-inch high poured concrete mountable curb at the break in surface grade, dividing the contact and non-contact regimes. These features, as designed, will adequately segregate the contact and non-contact regimes on the site.

Non-contact water will flow on the concrete pavement away from the concrete pit drainage apron towards the perimeter of the facility. An earthen berm will be constructed to encircle this area, except for a gap at the concrete driveway and facility entrance. The driveway will include a cattle guard to shake excess material off of exiting vehicles prior to their entry onto FM 624. Two storm water ponds were identified on the site plan (Attachment B). However, the role of these ponds is uncertain as there is no natural or artificial drainage connection between the bermed area receiving non-contact storm water and the ponds.

There is always a potential for waste spills outside of designed containment areas and during normal and routine facility operation. Federal requirements promulgated in 40 Code of Federal Regulations (CFR) §112 require facilities such as the proposed washout pit to develop, implement, and follow a SPCC plan in accordance with federal requirements. SPCC Plans are designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules. The purpose of an SPCC plan is to form a comprehensive Federal/State spill prevention program that minimizes the potential for discharges. Compliance with 40 CFR §112 does not in any way relieve the owner or operator of a facility from compliance with other Federal, State, or local laws.

Based on the foregoing evidence, the examiners conclude that the Applicant has demonstrated the operation of this facility will not result in pollution of surface water.

Protection of Groundwater

The normal and routine operation of the proposed washout pit will necessarily entail the temporary storage of liquid waste and waste residue below ground. An applicant must demonstrate that the proposed activity will not result in the pollution of ground water. To do so, one must first ascertain a basic but site-specific understanding of the subsurface soils and groundwater regime (or regimes) below the site. This information is necessary for evaluating potential environmental and pollution concerns and for the foundation and structural design of the facility itself. It is the examiners' opinion that the characterization activities conducted by the Applicant met the minimum requirements as established by Statewide Rule 8 and by the Oil & Gas Division's further requirements for commercial facilities.

While the Applicant's subsurface investigation did, apparently, include excavating a test pit at the location of the proposed washout pit and describing the soils and near-subsurface strata in the pit, no *in situ* tests (i.e., standard penetration) were conducted, nor

were soil samples collected and subject to standard geotechnical analysis (i.e., Atterberg limits, moisture content, grain size analysis, compaction, etc.). The only record evidence of the engineering properties of area soils was contained in the very generalized data provided by the Applicant from the USDA NRCS online system.¹⁸ Thus, the geotechnical basis for facility design remains unclear to the examiners. Nonetheless, the design diagrams and specifications in the application and admitted into evidence were signed and sealed by a professional engineer licensed by the State of Texas.

Further, the facility design does include features that are protective of groundwater, such as liners (compacted clay, 60-mil HDPE synthetic, and reinforced concrete) and a leak detection system.

Apart from the Applicant's test pit showing dry subsurface soils, no additional investigation of shallow groundwater on the site or in the area was performed. The Applicant's revised Form H-11 indicates the nearest water well is 1,500 feet from the proposed pit. This well is 440 feet deep, produces from a depth of 340 to 380 feet, and has a static water level of 150 feet, as documented on a State of Texas Well Report.¹⁹

Closure Costs

The examiners believe the proposed closure cost estimate may be inadequate in scope with respect to the requirements of Rule 78 for commercial facilities and in regards to requirements established by the Oil & Gas Division. Rule 78 requires a financial security assurance "equal to or greater than the maximum amount necessary to close the commercial facility, at any time during the life of the permit term in accordance with all applicable state laws". The Applicant did enter a closure cost estimate into evidence at the hearing, which the examiners have considered.²⁰

¹⁸ The USDA NRCS Web Soil Survey website cautions: "*Soil surveys can be used for general farm, local, and wider area planning. Onsite investigation is needed in some cases, such as soil quality assessments and certain conservation and engineering applications.*" The Commission's Surface Waste Management Manual makes a similar statement: "*While data from these (USDA NRCS) sources contain much useful information on the thickness, composition, and permeability of undisturbed soils, site-specific data is often necessary to make good engineering judgments.*" <http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> and the RRC Surface Waste Management Manual, online version, accessed on July 18, 2014.

¹⁹ Applicant's Exh. 5, Tab A

²⁰ Applicant's Exh. 12

The Applicant has estimated \$18,040 to dispose of 800 bbl liquid waste and 2,140 bbl of solids. The estimate included trucking costs. The land owner, Mr. Mateo Luera, has expressed his desire that the improved facilities remain in-place and intact, and not be dismantled or disposed after closure. However, that does not absolve the Applicant of its responsibility to remove all waste materials regulated by the Commission, and to ensure that no residual waste, affected soils, or affected groundwater remain upon facility closure.

The examiners believe that simply removing the waste present at the time of closure may not be sufficient to ensure that groundwater and surface water resources will not be polluted after facility closure. Therefore, the examiners recommend that Technical Permitting staff revisit the closure cost estimate, considering the following:

- Conduct and submit a screening survey for naturally occurring radioactive material (NORM).
- Clean all tanks, pipes, pumps and other facility equipment—not simply empty them.
- Clean all concrete surfaces, especially the walls and floors of the washout pit and the concrete pit drainage apron area.
- Clean out the cattle guard ‘shaker’ on the driveway, removing any accumulated material.
- Disposal of solid and liquid wastes generated during cleanup
- Sampling and analysis of the perimeter earthen berm and other areas, as appropriate, for the presence of waste constituents incidental to facility operations.

The examiners believe that such activities are prudent and necessary to prevent pollution of ground and surface water upon and after closure of the facility, and the facility’s closure cost estimate should account for such activities, which are anticipated by Statewide Rule 78 and existing Oil & Gas Division guidance.

FINDINGS OF FACT

1. On June 17, 2013, Surface Equities Environmental, LLC, submitted to the Commission its initial application for a commercial washout pit on the Mateo Luera property near Orange Grove, Jim Wells County, Texas. Notice of application was sent to the surface owner of the subject tract.

- a. Publication was not required for this application.
 - b. Within 15 days of the initial application being filed, the Commission received protests from many officials and residents.
 - c. Surface Equities Environmental, LLC, filed an amended application on November 14, 2013.
 - d. Notice of the hearing was sent to all persons entitled to notice.
2. The examiners determined that none of the protestants at the hearing established their standing as “affected persons” under 16 Tex. Admin. Code §3.8.
 - a. Some of the Protestants dispute this finding.
 - b. Although the finding of Protestants’ lack of standing is a part of this PFD, the examiners have continued to afford the protestants the privilege to be informed and heard in this matter.
3. The proposed commercial facility will wash oil field vehicles and containers, inside and out.
 - a. Solids and sludges—including non-hazardous, RCRA-exempt oil and gas waste and waste residue—will drain to and accumulate in the washout pit.
 - b. The proposed washout pit will store waste and waste residue below the ground surface.
 - c. There will be no on-site disposal of oil and gas waste.
4. Commercial surface waste facilities typically receive a variety of oil and gas wastes from a wide spectrum of sources. Commercial surface waste facilities also typically process large volumes of oil and gas wastes. For these reasons, commercial facilities are subject to more stringent permitting, monitoring and testing requirements in various forms than would otherwise be required for non-commercial facilities permitted under 16 Tex. Admin. Code §3.8.
5. Surface Equities Environmental, LLC, has demonstrated that the proposed facility will not result in the pollution of surface water or groundwater.

- a. The washout pit design includes reinforced concrete, natural and synthetic liners, and a leak detection system.
- b. The facility design includes features to manage contact and non-contact water such as graded concrete pavement, mountable curbing, and an earthen perimeter dike.
- c. Surface Equities will develop and implement a spill prevention, control and countermeasure plan in accordance with federal requirements.
- d. Non-contact storm water, which is not subject to Commission jurisdiction, may accumulate on the concrete-paved area within the earthen perimeter dike. No means of managing the storm water/non-contact water or otherwise moving it off of the paved area has been provided.
- e. The facilities were designed by, and the design documents were signed and sealed by, a professional engineer licensed by the State of Texas.

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 washout pit operations will not endanger oil, gas or geothermal resources or cause the pollution of surface or subsurface waters. 16 Tex. Admin. Code § 8(d)(6)(A).

EXAMINERS' RECOMMENDATION

The examiners recommend that the application of Surface Equities Environmental, LLC, to maintain and operate a washout pit on the Mateo Luera property near Orange Grove, Jim Wells County, Texas, be approved, with the provision that Commission staff revisit the closure cost estimate and revise it, as necessary, to account for activities that will ensure no residual waste, affected soils, or affected groundwater remain upon facility closure.

Respectfully Submitted,



Paul Dubois
Technical Examiner



Marshall Enquist
Hearing Examiner

ATTACHMENT A**Public Comments Made Prior to the Presentation of the Applicant's Case**

Several persons – protestants and counsel for the Applicant – made public comments on the record before the evidentiary portion of the hearing began. Below is a summary of their stated concerns and positions.

Richard Miller, Jim Wells County Commissioner, Precinct 3, expressed his opposition to the permit. Mr. Miller is concerned that the location of the facility is poorly selected and dangerous. The facility will be located at the intersection of State Highway 624, which is a major thoroughfare for heavy truck traffic, and County Road 308. The highway has right-of-way at the intersection and does not stop. Additionally, the intersection is in a low spot on 624 with poor visibility. Mr. Miller also expressed concerns about surface water during times of heavy rainfall events, and the potential for containment failure during a storm event.

Judge Lawrence Saenz, Jim Wells County Judge, echoed Mr. Miller's concerns and also expressed more general concern about the growing number of surface waste management facilities in the county. He cited another facility that has caused the County some difficulty by trucks dropping waste on roadways. Some surface water in the area drains towards Lake Corpus Christi, which is the water supply for the cities of Corpus Christi and Alice. Judge Saenz stated that the County had a pro-business posture, but the influx of such industries has caused them concern.

Tom Freund, an environmental consultant raised a number of concerns with the initial application and with general issues. Mr. Freund stated the surrounding land use and soils were not accurately characterized in the initial application. Mr. Freund is concerned that the stormwater pond is inadequate and the addition of concrete beyond that which will drain into the pit itself will further stress the stormwater capacity. He does not believe the facility has an adequate water supply, and its water demand will affect nearby wells and groundwater users.

Lindsey Koenig owns a ranch about one mile north of the proposed facility. Mr. Koenig believes the proposed location is not suitable for such a facility. He believes the facility will adversely impact nearby farms, ranches, communities, and groundwater and surface water resources. He cited several historical incidences of severe weather and flooding in nearby creeks.

Stephen Dewveall lives about 1.5 miles southeast of the proposed facility. Mr. Dewveall expressed very general concerns about safety and environmental impact from oilfield waste facilities, and he reiterated the storm water runoff concerns voiced by others. He also expressed doubts that emergency responders in Jim Wells County would be able to quickly respond to an emergency situation at the proposed facility.

Everett Curnutte lives about 2,100 feet from the proposed facility. Mr. Curnutte is concerned about oilfield wastes at the facility that may contain naturally occurring

radioactive materials (NORM), with overspray from the facility contaminating adjoining properties, and effects on wildlife. Mr. Curnutte—and others before him—suggest that the area surrounding the facility (Orange Grove) is becoming less rural and more residential. He stated four school buses pass by the location of the proposed facility daily. Therefore, he believes, the proposed facility is poorly located and should instead be located in a less populated area.

Seale Brand owns land in Orange Grove. Mr. Brand taught school in the area for many years, served on the city council, was mayor for 10 years, and served as a municipal judge. Mr. Brand stated that the school district's attendance has increased about 45 percent in 10 years, and that less than one percent of the district's tax base comes from oil and gas production. He stated that most of the people in the area live west and southwest of Orange Grove proper, towards the location of the proposed washout pit.

Jonathan Hinze is a life-long resident of the area. He lives on Hwy. 624 and owns other property in the area. His primary concern was flooding from heavy storm events; he was very confident that the proposed facility location would flood.

Stacie Tonne lives on CR 308. She is very concerned about the volume of traffic and traffic safety, and especially the potential for harm to students who ride the school busses in the area. She stated the curve on Hwy. 624 near the intersection with CR 308 is awful.

Waldyne Nelsony is a life-long resident in the area. She has two water wells on her property and she is very concerned about the potential for groundwater and surface water contamination.

John Reichert, President of Eco-Mud Disposal, an oil and gas waste disposal facility located in southern Jim Wells County, stated that he does not believe there is demand for another such facility in the county.

Tom Teenier is a landowner in the area of the proposed facility. He raises cattle and has a commercial hunting operation on his property. He believes the area is a bedroom community and not a rural area. He is concerned about groundwater and surface water contamination, especially in relation to significant storm events. Mr. Teenier expressed concern that the operators of the proposed facility were not adequately vetted to ensure their competence.

Jay Stewart, counsel for Surface Equities, provided additional public comment in the form of letters of support that he identified to the examiners but did not offer as evidence. A number of entities indicated that the proposed facility would be beneficial to their business interests in the area. These entities identified by Mr. Stewart were Mo-Vac Service Company, Earl Freeman of Talisman Energy, Baker Hughes, Sanchez Oil and Gas, Forbes Energy, Oil Stage Oil Services, Tri-Element Inc., and Precision Drilling. Mr. Stewart revealed the authors of the letters, but not the content of the letters.

RAILROAD COMMISSION OF TEXAS

CHRISTI CRADDICK, *CHAIRMAN*
DAVID PORTER, *COMMISSIONER*
BARRY T. SMITHERMAN, *COMMISSIONER*

INTERNAL
OIL AND GAS DIVISION
GIL BUJANO, P.E., DIRECTOR

MEMORANDUM

TO: Paul Dubois, Technical Examiner
Hearings Division

THROUGH: Gil Bujano, P.E., Director *GB*
Oil & Gas Division

FROM: Grant Chambless, P.G., Manager *GC*
Environmental Permits & Support

DATE: August 22, 2014

SUBJECT: Oil & Gas Docket No. 04-0286726: The Application of Surface Equities
Environmental, LLC, Pursuant to Statewide Rule 8 for a Permit to Maintain and
Operate a Pit at the Mateo Luera Property, Jim Wells County, Texas.

OPERATOR: Surface Equities Envir, L.L.C.

FACILITY: Mateo Luera Property

COUNTY: Jim Wells

APPLICATION
CONTROL NOS: 012012

RRC DISTRICT: Corpus Christi / 04

FILED
2014 AUG 25 AM 8:35
DOCKET SERVICES
RAILROAD COMMISSION
OF TEXAS

In a letter dated August 4, 2014, you requested "the Oil & Gas Division's position on whether or not adjacent landowners to the proposed facility were (1) entitled to notice, and if so (2) given notice of the application, in accordance with 16 Tex. Admin. Code §3.8(d)(6)(c) and authorized policy of the Oil & Gas Division." Environmental Permits & Support of the Oil & Gas Division is pleased to provide comment on the Environmental Permits & Support application process and specifically on whether or not the subject washout pit permit application submitted by Surface Equities Envir, L.L.C. may be deficient.

04-0286726

PFD ATTACHMENT B

Each permit application reviewed by Environmental Permits & Support (EPS) is evaluated on a site-specific case-by-case basis, because details of each permit application, such as permit type, engineering design, geography and geology, may vary significantly from one application to the next. Each permit application review is tailored to the details of that permit application, so that EPS can ensure environmental quality and public safety, while maintaining permit review expediency.

The subject permit application was received at the Commission on June 17, 2013, the administrative review was completed, and the application was referred to Docket Services on January 13, 2014. Both at the time the application was filed and at the time the application was referred to Docket Services, the Surface Waste Management Manual (SWMM) did not require applicants to provide notice to adjacent landowners for all commercial environmental permits. The SWMM was subsequently amended to add a section mandating adjacent landowner notice. Staff does not have the precise date of this change in the notice requirements of the SWMM readily available, but it was after January 13, 2014 and was most likely in early May, 2014. Staff does not believe it would be appropriate to apply the enhanced notice requirements regarding adjacent landowners retroactively to this application, which had already been filed by the applicant almost a year before the SWMM was amended.

Even before the general change in procedure regarding notice to adjacent surface owners documented in the SWMM, EPS had the discretion to require notice to adjacent surface owners pursuant to 16 Tex. Admin. Code §3.8(d)(6)(C). Notice to adjacent surface owners could be required under that provision if the Director of the Oil & Gas Division had determined, on the particular facts of this application, that additional notice should be required. However, that determination was not made by the Director in this case.

Accordingly, EPS did not require Surface Equities Envir, L.L.C. to provide notice to any adjacent landowners during the course of the subject permit application review. EPS sent the permit application to Docket Services to be scheduled for hearing, because the application had been protested and, in the opinion of EPS, the application was administratively complete. EPS and the Director of the Oil & Gas Division believe that the subject permit application has no defect with regard to notification or 16 Tex. Admin. Code §3.8(d)(6)(c), or any other requirement such that EPS or the Director would not consider the application administratively complete.

GC/sa

cc:

JAY STEWART
REPRESENTING SURFACE EQUITIES ENVIRONMENTAL, LLC
HANCE SCARBOROUGH LLP
400 W 15TH STREET SUITE 950
AUSTIN TX 78701

JUDGE ARNOLOD SAENZ
REPRESENTING JIM WELLS COUNTY
200 N ALMOND
ALICE TX 78332

COMMISSIONER RICHARD MILLER
REPRESENTING JIM WELLS COUNTY PRECINCT 3
107 ARMONSTRONG DRIVE
ORANGE GROVE TX 78372

JACOB P ARECHIGA
EDWARD C SMALL
REPRESENTING W EVERETT CURNETTE, II, JOHNATHAN HINZE, & STACIE TONNE
100 CONGRESS AVENUE SUITE 1100
AUSTIN TX 78701

JOSH REYNA
SENATOR JUNA "CHUY" HINOJOSA
TEXAS CAPITOL 3E.10
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MATT LAMON
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AUSTIN TX 78768

INTERNAL

RYAN LARSON, DIRECTOR
HEARINGS DIVISION

RAMON FERNANDEZ, ASSISTANT DIRECTOR
FIELD OPERATIONS

ARNOLD OTT, DIRECTOR
CORPUS CHRISTI DISTRICT OFFICE

Property Line

LOT 10
CARL FRANCIS FARM LOTS

GEO. REYNOLDS SURVEY
A-384
50 Acres

LOT 9

Pond 2:
Surface Area
0.39 Acres

Pond 1:
Surface Area
0.57 Acres

Existing Storm Water
Ponds (To Remain)

Containment Walls (Typ.)
6x6x14' (Typ.)
125' x 75' x 15'

Prop. Wash-Dip Pit
(12' x 20' x 40') (Concrete)
(Typical)

Pit Clean-Out Equip.
Wash-Dip Area

Proposed Ditch
(Typical)

Overhead Canopy
(120' x 150')

Units of Concrete
Pavement (Typ.)

(Cattle Guard)
(12' x 40')

Existing Entrance
(Concrete) (Typ.)

Existing Driveway
(Concrete) (Typ.)

Existing Driveway
(Concrete) (Typ.)

Existing Driveway
(Concrete) (Typ.)

Existing Driveway
(Concrete) (Typ.)

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Existing Driveway
(Concrete) (Typ.)

Existing Driveway
(Concrete) (Typ.)

RECEIVED
RRC OF TEXAS

NOV 14 2013

O & G
AUSTIN



11/12/2013

Surface Equities Environmental, LLC

3433 FM 624

C2.2

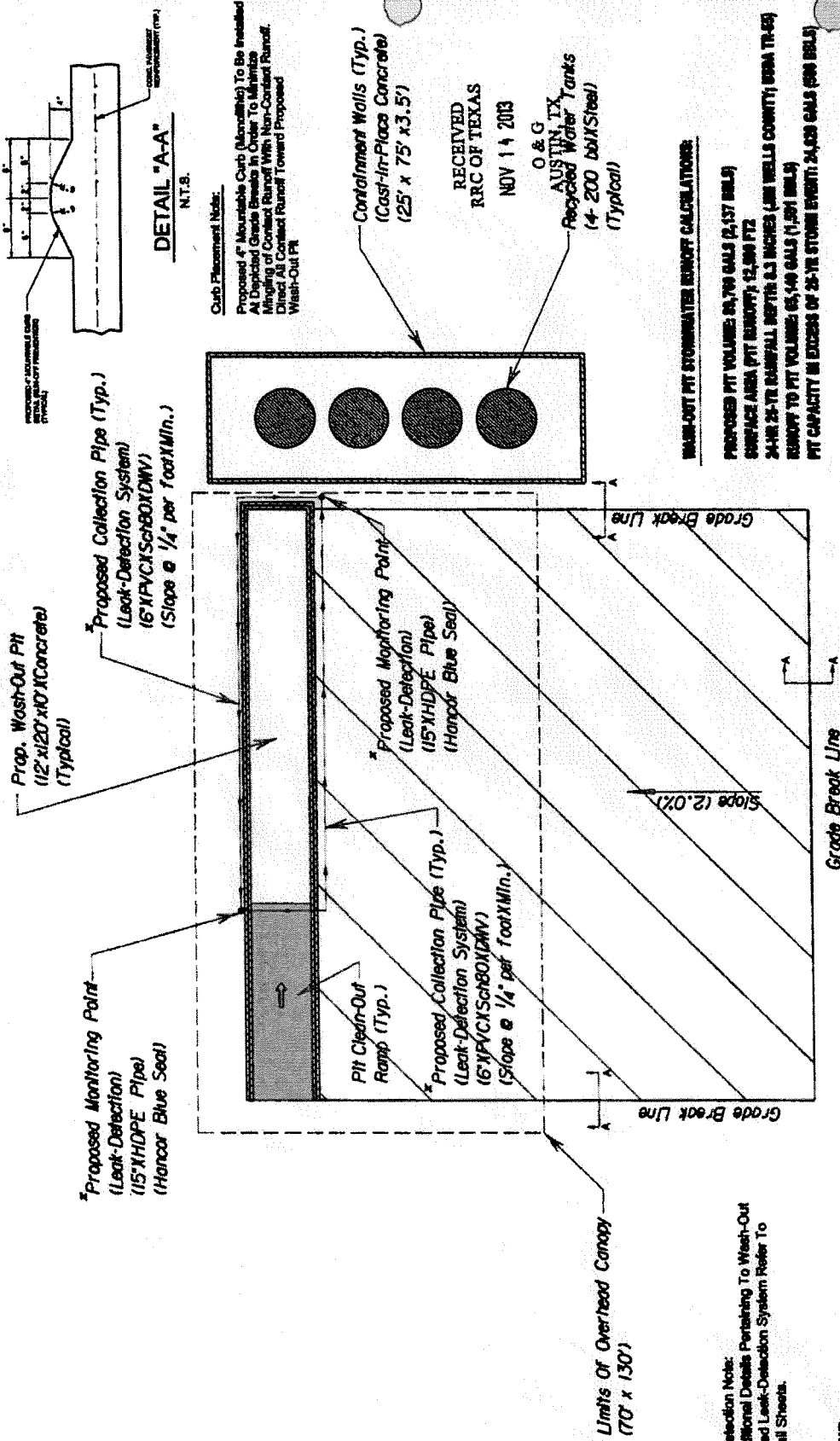
Proposed Site Layout

Scale: 1" = 400' (22x34 Sheet)
1" = 200' (11x17 Sheet)

04-0286726

FPD ATTACHMENT C – Proposed Site Layout

Applicant's Exh. 5, Tab B, Figure C2.2



04-0286726
 PFD ATTACHMENT D – Proposed Pit Plan View
 Applicant's Exh. 5, Tab B, Figure C5.0.

²Leak-Detection Note:
 For Additional Details Pertaining To Wash-Out
 Proposed Leak-Detection System Refer To
 Pit Detail Sheets.

LEGEND



Limits Of Surface Area To Be Sloped
 Toward Pit (Subject To 25-yr Frequency
 Rainfall Event)

Pit Plan View

Scale: 1" = 20' (11x17 Sheet)
 1" = 10' (22x34 Sheet)

ALW ENGINEERING
 TYPICAL FORM NO. F-0008

Surface Equities Environmental, LLC

3433 FM 624

C5.0



[Signature]
 11/12/2013

WASH-OUT PIT STORMWATER RUNOFF CALCULATIONS:

PROPOSED PIT VOLUMES: 93,769 GALS (2,137 BBLs)
 SURFACE AREA (PIT RUNOFF): 12,896 FT²
 24-HR 25-YR RAINFALL DEPTH: 8.3 INCHES (JUNI WELLS COUNTY, USDA TR-55)
 RUNOFF TO PIT VOLUMES: 65,149 GALS (1,591 BBLs)
 PIT CAPACITY IN EXCESS OF 25-YR STORM EVENT: 28,620 GALS (698 BBLs)

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 NOV 14 2013

O & G
 AUSTIN, TX
 Recycled Water Tanks
 (4- 200 bbls/Steel)
 (Typical)

Containment Walls (Typ.)
 (Cast-In-Place Concrete)
 (25' x 75' x 3.5')

Curb Placement Note:

Proposed 4" Mountable Curb (Manufactured) To Be Installed
 At Designated Curb Location In Order To Maintain
 Minimum 4" Curb Height With New-Constructed Runoff
 Channel. All Curb Height Runoff Toward Proposed
 Wash-Out Pit.

DETAIL "A-A"
 N.T.S.

