



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 08-0258789

ENFORCEMENT ACTION AGAINST PECOS LANDFARM, LLC (OPERATOR NO. 649227) FOR VIOLATIONS OF STATEWIDE RULES ON THE PECOS COUNTY COMMERCIAL FACILITY, LT-0282 LEASE, PECOS COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the Examiner on February 19, 2015, and that the Respondent, Pecos Landfarm, LLC ("Pecos Landfarm"), failed to appear or respond to the notice. Pursuant to § 1.49 of the Commission's General Rules of Practice and Procedure [Tex. R. R. Comm'n, 16 Tex. Admin. Code § 1.49] and after being duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Pecos Landfarm, LLC is a limited liability company.
2. Pecos Landfarm, LLC members are Dewpoint Environmental Inc. and Pershing Landfarm LLC.
3. Dewpoint Environmental Inc. and Pershing Landfarm LLC each own 50% of Pecos Landfarm, LLC. Dewpoint Environmental Inc. and Pershing Landfarm LLC were each served with the Amended Notice of Hearing on January 14, 2015.
4. The listed officers of Dewpoint Environmental Inc. during the period 2008 through 2012 were Ted Mason, Theodore W. Mason, Stanley Small, Stanley S. Small, Kirby Honeycutt, Tom Stanley, Thomas K. Stanley and David Kegan. Each of these officers were served with the Amended Notice of Hearing on January 14, 2015.
5. The listed officers of Pershing Landfarm LLC were J&SM Landfarm LLC, Stockton Water Landfarm LLC, and Tract 23 LLC. Each of these officers were served with the Amended Notice of Hearing on January 14, 2015.
6. Pecos Landfarm, LLC (649227), ("Respondent"), was given Amended Notice of Hearing by certified mail, addressed to the most recent Form P-5 (Organization Report) address.

7. The certified envelope containing the First Amended Original Complaint and the Amended Notice of Hearing, was signed for on January 20, 2015, by "D Todd", for the Respondent. The electronic receipt has been on file with the Commission for 15 days.
8. During a Railroad Commission ("Commission") inspection conducted on January 23, 2008, a Commission Field Inspector documented and reported violations of Commission rules. Specifically, the Commission inspector documented :
 - a. a Pecos Landfarm LLC employee received oil and gas wastes at the proposed facility;
 - b. observed the unauthorized discharge onto the ground of several loads of drilling mud and pit water; and
 - c. a sample taken from a truck that had dumped fluids onto the ground tested approximately 36,000 ppm chlorides.
9. Permit No. LT-0282 for the Pecos County Commercial Facility was issued on February 5, 2008.
10. The violations documented and observed during the January 23, 2008 Commission inspection occurred prior to obtaining Permit No. LT-0282 for the Pecos County Commercial Facility.
11. Respondent had no permit for the disposal of oil and gas wastes prior to February 5, 2008.
12. A letter dated January 31, 2008 to Mr. John Tintera, Assistant Director, Technical Permitting, Railroad Commission of Texas, signed by Bart A. Huffman, P.E., as Consulting Engineer for Pecos Landfarm, LLC recites that 28,235 barrels of waste had been brought to the facility.
13. Permit No. LT-0282 requires in Section IV, Land Treatment Area, Subsection B, Operations, paragraph 4, that after tilling the EC (Electrical Conductivity) levels shall not exceed 4 mmhos/cm. This same value would be required for material left on site after closure of the facility in accordance with Section V of Permit No. LT-0282.
14. The first Semi-Annual Report for the Pecos Landfarm, LLC, Landfarm Facility, Permit No. LT-0282, submitted to the Railroad Commission's Technical Permitting Section of the Oil & Gas Division on October 17, 2008 by Respondent's Consultant Golder Associates, contains analytical data and tables derived from that data that establish that the EC levels required by the permit had been greatly exceeded at the site and that in the consultant's opinion, "In order to remediate Cell A to closure limits under Permit No. LT-8282 [sic] conventional land treatment methods are not deemed an appropriate solution." A lined disposal pit was proposed to contain material excavated from the site.
15. Naismith Engineering Inc., Respondent's consultant, submitted a remediation plan in October 2009. By letter dated February 11, 2010, Jill Hybner, Manager, Environmental Permits and Support, Technical Permitting, informed Pecos Landfarm, LLC, that the passive remediation submitted in October 2009 did not appear viable.

16. By letter dated April 26, 2010 to Jill Hybner, Manager Environmental Permits and Support, Technical Permitting, Railroad Commission of Texas, signed by Theodore W. Mason, President, Dewpoint Environmental, Managing Member, Ms. Hybner was notified that Pecos Landfarm, LLC, had decided to give up the project site.
17. Pecos Landfarm, LLC's financial assurance in the sum of \$195,552.00 was collected from its surety, American Contractors Indemnity Co., on February 9, 2012.
18. The facility has not been closed in accordance with Permit LT-0282 as reflected by Inspection Reports dated May 31, 2013, February 3, 2014 and June 5, 2014.
19. Permit LT-0282 expired by its terms on February 5, 2013.
20. The estimated cost to close the facility is \$4,122,531.23.
21. The violations of Commission rules and conditions of Permit No. LT-0282 committed by Respondent are related to safety and the prevention or control of pollution.
22. Respondent has not demonstrated good faith since it failed to timely place the subject Facility in compliance after being notified of violations by Commission staff and failed to appear at the hearing to explain its inaction.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Railroad Commission to Respondent and to all other appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Statewide Rule 8(d)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8(d)(1)] captioned "Pollution Control," requires persons disposing of oil and gas waste by any method to have a permit to do so unless authorized under subsection (d)(3) or (e) of Statewide Rule 8, or under Statewide Rule 9, 46 or 98. Oil and gas wastes are defined in Statewide Rule 8(a)(26) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8(a)(26)] to include materials to be disposed of or reclaimed, which have been generated in connection with activities associated with the exploration, development, and production of oil or gas. These materials include but are not limited to "saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semi-liquid, or solid waste material." "To dispose" is defined in Statewide Rule 8(a)(24) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8(a)(24)] to include "conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming, or allowing to seep, or to cause or allow any such acts of disposal."

4. Respondent violated Commission Statewide Rules 8(d)(1) by receiving oil and gas waste without a permit and depositing the waste on the ground at the facility.
5. Respondent is responsible for maintaining the subject facility in compliance with Permit No. LT-0282, which required Respondent to maintain EC level at 4 mmhos/cm, which Respondent failed to do and failed to address the permit violations which were documented by the First Semi-Annual Report filed October 17, 2008.
6. The documented violations committed by the Respondent constitute acts deemed serious, a hazard to the public health, and demonstrate a lack of good faith pursuant to Tex. Nat. Res. Code §81.0531.
7. Under the provisions of Section 81.0531(a) and (b), Natural Resources Code, if a person violates provisions of Title III which pertain to the prevention or control of pollution or the provisions of a rule, order, license, permit or certificate which pertain to safety or the prevention or control of pollution and are issued under Title III the person may be assessed an administrative penalty by the Commission of up to \$10,000.00 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.
8. The violation of Statewide Rule 8(d)(1) merits a penalty of \$15,000.00 given that at least 5 days of unpermitted operation and disposal occurred.
9. The circumstances of the continuing permit violation with regard to the EC level and the effects of that violation merit a penalty of \$125,000.00.

It is accordingly **ORDERED** that:

Within 90 days from the day immediately following the date this order becomes final:

1. Pecos Landfarm, LLC shall place the Facility into compliance with all Statewide Rules (including, Statewide Rule 8(d)(1)); and
2. Pecos Landfarm, LLC shall remit to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00)**.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Done this 9th day of June, 2015.

RAILROAD COMMISSION OF TEXAS

(Order approved and signatures affixed by Hearings
Divisions' Master Default Order dated June 9, 2015)