



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET No. 06-0276505

ENFORCEMENT ACTION AGAINST ENVIROPAVE L.L.C. (OPERATOR NO. 253299) FOR STATEWIDE RULE VIOLATIONS ON THE EAST TEXAS RECLAMATION PLANT (NO. 06-2167) IN RUSK COUNTY, TEXAS, COMMISSION DISTRICT 6.

APPEARANCES

FOR THE RAILROAD COMMISSION OF TEXAS:

Kristi M. Reeve, Staff Attorney, Enforcement Section
Bill Drury, Legal Assistant, Enforcement Section
Mark England, Engineering Specialist, Field Operations
Doug Johnson, Assistant Director of Technical Permitting,
Oil and Gas Division

FOR ENVIROPAVE L.L.C.:

Robert A. Baker, President
Tom Bowman

PROCEDURAL HISTORY:

Notice of Hearing:	August 23, 2013
Amended Notice of Hearing:	September 3, 2013
Hearing on the merits:	October 24, 2013
Proposal for Decision:	October 30, 2015
Heard by:	Mike Crnich, Hearings Examiner Richard Atkins, Technical Examiner
Prepared by:	Ryan M. Lammert, Administrative Law Judge

SUMMARY

In DOCKET NO. 06-0276505, the Enforcement Section of the Office of General Counsel (Enforcement) alleges that Enviropave L.L.C. (Operator No. 253299), (Enviropave), discharged oil and gas wastes without a permit from the East Texas Reclamation Plant Lease (Well Plant No. 06-2167), (Plant), in Rusk County, Texas.

Enforcement also alleges that Enviropave used and maintained unpermitted earthen pits and steel washout pits for the storage or disposal of oil and gas wastes without first obtaining a permit on the East Texas Reclamation Plant Lease in Rusk County, Texas.

The record evidence supports all violations as alleged by Enforcement. Enforcement seeks an administrative penalty of \$64,275.00.

EVIDENCE PRESENTED

This docket pertains to Enviropave's alleged discharge of oil and gas wastes without a permit from the East Texas Reclamation Plant Lease in Rusk County, Texas, in violation of 16 TEX. ADMIN. CODE § 3.8(d)(1).

This docket also pertains to Enviropave's alleged use and maintenance of unpermitted earthen pits and steel washout pits for the storage or disposal of oil and gas wastes without first obtaining a permit on the East Texas Reclamation Plant Lease in Rusk County, Texas, in violation of 16 TEX. ADMIN. CODE § 3.8(d)(2).

ENFORCEMENT'S CASE

STATEWIDE RULE 8(d)(1)

Statewide Rule 8(d)(1) requires persons disposing of oil and gas wastes by any method to have a permit to do so, unless authorized under subsections (d)(3) or (e) of Statewide Rule 8, or under Statewide Rules 9, 46, or 98.

Commission District Office inspection reports made on November 7, 2011, and December 21, 2011, indicated oil and oil-affected soil inside the firewall of a tank battery at a centrifuge. Further inspection reports made on February 17, 2012, and March 21, 2012, showed that some oil-affected soil had been remediated, however the remediation was inadequate. A Commission District Office inspection report made on October 4, 2012, indicated further inadequate remediation of the battery area. Subsequently, an inspection report dated May 30, 2013, showed that oil and oil-saturated soil remained within the firewall of the battery at the centrifuge. Lastly, an inspection report dated September 24, 2013, indicated that oil and oil-contaminated soil remained at the affected site.

A Commission District Office inspection report dated November 7, 2011, revealed oil-affected soil and sludge inside the firewall of two tanks. Further inspection reports dated December 21, 2011; February 17, 2012; and March 21, 2012, indicated that the oil-

affected soil and sludge had not been remediated. A Commission District Office inspection report dated June 4, 2012, revealed that the oil-affected soil and sludge had been remediated.

A Commission District Office inspection report dated November 7, 2011, revealed oil and oil-affected soil around four frac tanks. Further inspection reports made on December 21, 2011, and February 17, 2012, indicated that the oil and oil-affected soil adjacent to the four frac tanks had not been remediated. A Commission District Office inspection report dated June 4, 2012, revealed that one of the frac tanks had been removed and that the area had been remediated (free oil removed). However, oil-affected soil around the remaining three frac tanks subsisted. Subsequent inspection reports made on October 4, 2012, and May 30, 2013, showed that the oil and oil-affected soil around the remaining three frac tanks had not been remediated. Lastly, an inspection report dated September 24, 2013, showed that oil-saturated soil remained at the affected site.

A Commission District Office inspection report dated November 7, 2011, indicated an oil-affected area of 75' x 75' around an old hand dug water well located in the northwest part of the facility. Further inspection reports dated December 21, 2011; February 17, 2012; March 21, 2012; June 4, 2012; October 4, 2012; and May 30, 2013, revealed that the oil-affected area had not been remediated. Lastly, an inspection report dated September 24, 2013, showed that oil-saturated soil remained at the affected site.

Enviropave did not have a permit for these discharges, nor were the discharges authorized under Statewide Rule 8(d)(3) or 8(e), or under Statewide Rules 9, 46 or 98. By discharging these fluids without a permit, Enviropave violated Statewide Rule 8(d)(1).

Enviropave's violation of Statewide Rule 8(d)(1) is serious and a hazard to the public health and safety, in that unpermitted discharges of oil and gas waste can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution.

STATEWIDE RULE 8(d)(2)

Statewide Rule 8(d)(2) requires a person who maintains or uses a pit for storage of oil and gas wastes to obtain a permit, including, but not limited to, the following types of pits: saltwater disposal pits, emergency saltwater storage pits, collecting pits, skimming pits, brine pits, brine mining pits, drilling fluid storage pits (other than mud circulation pits), drilling fluid disposal pits (other than reserve pits or slush pits), washout pits and gas plant evaporation/retention pits. Any person using or maintaining an unpermitted pit is required to dispose of all oil and gas wastes that are in the pit in an authorized manner and backfill and compact the pit in the time and manner required by the Director.

Commission District Office inspection reports dated November 7, 2011; December 21, 2011; February 17, 2012; March 21, 2012; June 4, 2012; October 4, 2012; and May 30,

2013, revealed that Enviropave was using and maintaining an unauthorized earthen pit on the south end of the facility. The inspection reports indicated that the pit was being used to collect and store runoff waste from the facility. Subsequently, an inspection report dated September 24, 2013, showed that the subject pit had been expanded and oil-saturated soil remained at the affected site. The September 24, 2013, inspection report also showed that oil-contaminated soil and fluids continued to be deposited into the affected site.

Commission District Office inspection reports dated November 7, 2011; December 21, 2011; February 17, 2012; March 21, 2012; June 4, 2012; October 4, 2012; and May 30, 2013, revealed that Enviropave was using and maintaining an unauthorized earthen pit north of the south pit. The inspection reports indicated that the pit contained oil-saturated soil. Lastly, an inspection report dated September 24, 2013, showed that the pit remained open and oil-saturated soil persisted at the affected site.

Commission District Office inspection reports made on November 7, 2011; December 21, 2011; February 17, 2012; March 21, 2012; and June 4, 2012, indicated that Enviropave was using and maintaining an unauthorized earthen pit measuring 25' x 50' at the northwest corner of the above described pit. The pit contained oil and basic sediment and water. Subsequent inspection reports dated October 4, 2012, and September 24, 2013, indicated that the pit had been filled with mixed material contaminated with oil and oil field waste.

Inspection reports dated November 7, 2011; December 21, 2011; February 17, 2012; March 21, 2012; June 4, 2012; October 4, 2012; and May 30, 2013, showed that Enviropave was using and maintaining unauthorized washout pits consisting of two steel pits. An inspection report dated September 24, 2013, showed that the two steel pits were leaking in numerous locations.

Enviropave used and maintained unpermitted earthen pits and steel washout pits for the storage or disposal of oil and gas wastes without first obtaining a permit. By using and maintaining unpermitted earthen pits and steel washout pits, Enviropave violated Statewide Rule 8(d)(2).

Enviropave's violation of Statewide Rule 8(d)(2) is serious and a hazard to the public health and safety because the continued maintenance of unpermitted pits may result in unpermitted discharges that may contaminate surface or subsurface waters, causing pollution.

ENVIROPAVE'S CASE

Despite lengthy testimony, Robert A. Baker, President, and Tom Bowman failed to provide evidence, or otherwise articulate a legal basis, to contradict proof that Enviropave is responsible for violations of Statewide Rule 8(d)(1) and Statewide Rule 8(d)(2). To the contrary, in his testimony, Mr. Baker acknowledged that the alleged violations had occurred, or were still present, at the subject plant. For the balance of their time, Mr. Baker and Mr. Bowman attempted to describe Enviropave's remediation

plan (which is not at issue in this Docket) and other efforts to bring the subject facility into compliance.

Regardless, Mr. Baker and Mr. Bowman testified that Enforcement's requested penalty is improper because of ongoing efforts to achieve compliance.

ADMINISTRATIVE LAW JUDGE'S OPINION

ENVIROPAVE IS CULPABLE

The record in this case contains uncontradicted evidence that Enviropave committed the violations as alleged. Enviropave offered no evidence to contradict proof that it is responsible for violations of Statewide Rule 8(d)(1) and Statewide Rule 8(d)(2).

Enviropave has no prior history of violations of Commission rules.

CONCLUSION

The Administrative Law Judge agrees with Enforcement that Enviropave has violated Statewide Rule 8(d)(1) and Statewide Rule 8(d)(2) and makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Enviropave L.L.C. holds Operator Number 253299.
2. Enviropave was given at least ten (10) days notice of this hearing by certified mail sent to its most recent Form P-5 address. Enviropave appeared at the hearing through Robert A. Baker, President, and Tom Bowman.
3. As established by Enviropave's most recent P-5 organization report, Enviropave is a corporation with Robert A. Baker as President and Helen Wallace as Corporate Secretary.
4. The violations in this docket are violations of Commission rules related to safety and the prevention or control of pollution.
5. Enviropave is the record operator of the East Texas Reclamation Plant (No. 06-2167) in Rusk County, Texas, Commission District 6.

STATEWIDE RULE 8(d)(1)

6. On November 7, 2011, and December 21, 2011, oil and oil-affected soil were discovered inside the firewall of a tank battery at a centrifuge located on Plant premises.

- a. On February 17, 2012, and March 21, 2012, the oil-affected soil had been remediated, however the remediation was inadequate.
 - b. On October 4, 2012, inadequate remediation of the tank battery area persisted.
 - c. On May 30, 2013, the oil and oil-saturated soil remained within the firewall of the tank battery at the centrifuge.
 - d. On September 24, 2013, the oil and oil-contaminated soil persisted at the affected site.
7. On November 7, 2011, oil-affected soil and sludge were discovered inside the firewall of two tanks located on Plant premises.
- a. On December 21, 2011; February 17, 2012; and March 21, 2012, the oil-affected soil and sludge had not been remediated.
 - b. On June 4, 2012, the oil-affected soil and sludge had been remediated.
8. On November 7, 2011, oil and oil-affected soil were discovered around four frac tanks located on Plant premises.
- a. On December 21, 2011, and February 17, 2012, the oil and oil-affected soil adjacent to the four frac tanks had not been remediated.
 - b. On June 4, 2012, one of the frac tanks had been removed and the area immediately adjacent had been remediated.
 - c. On October 4, 2012, and May 30, 2013, the oil and oil-affected soil around the remaining three frac tanks had not been remediated.
 - d. On September 24, 2013, the oil-saturated soil persisted at the affected site.
9. On November 7, 2011, an oil affected area of 75' x 75' was discovered around a hand-dug water located in the northwest part of the Plant premises.
- a. On December 21, 2011; February 17, 2012; March 21, 2012; June 4, 2012; October 4, 2012; and May 30, 2013, the oil affected area had not been remediated.
 - b. On September 24, 2013, the oil-saturated soil persisted at the affected site.
7. Enviropave did not have a permit for these discharges pursuant to Statewide Rule 8(d)(1), nor were the discharges authorized under Statewide Rule 8(d)(3) or 8(e), or under Statewide Rules 9, 46 or 98.

8. Enviropave's violation of Statewide Rule 8(d)(1) is serious and a hazard to the public health and safety, in that unpermitted discharges of oil and gas waste can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution.

STATEWIDE RULE 8(d)(2)

9. On November 7, 2011; December 21, 2011; February 17, 2012; March 21, 2012; June 4, 2012; October 4, 2012; and May 30, 2013, Enviropave was using and maintaining an unauthorized earthen pit on the south end of the Plant premises.
 - a. On September 24, 2013, the subject pit had been expanded and oil-saturated soil remained at the affected site.
 - b. On September 24, 2013, oil-contaminated soil and fluids continued to be deposited into the affected site.
10. On November 7, 2011; December 21, 2011; February 17, 2012; March 21, 2012; June 4, 2012; October 4, 2012; and May 30, 2013, Enviropave was using and maintaining an unauthorized earthen pit north of the above described south pit. On September 24, 2013, the subject pit remained open and oil-saturated soil persisted at the affected site.
11. On November 7, 2011; December 21, 2011; February 17, 2012; March 21, 2012; and June 4, 2012, Enviropave was using and maintaining an unauthorized earthen pit measuring 25' x 50' at the northwest corner of the immediately above described pit. On October 4, 2012, and September 24, 2013, the pit had been filled with mixed material contaminated with oil and oil field waste.
12. On November 7, 2011; December 21, 2011; February 17, 2012; March 21, 2012; June 4, 2012; October 4, 2012; and May 30, 2013, Enviropave was using and maintaining unauthorized washout pits, consisting of two steel pits located on Plant premises. On September 24, 2013, the two steel pits were leaking in numerous locations.
10. Enviropave used and maintained unpermitted earthen pits and steel washout pits for the storage or disposal of oil and gas wastes without first obtaining a permit, as required by Statewide Rule 8(d)(2).
11. Enviropave's violation of Statewide Rule 8(d)(2) is serious and a hazard to the public health and safety because the continued maintenance of unpermitted pits may result in unpermitted discharges that may contaminate surface or subsurface waters, causing pollution.
12. Enviropave has no prior history of violations of Commission rules.

13. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto Robert A. Baker was a person who held a position of ownership or control in Enviropave.
14. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto Helen Wallace was a person who held a position of ownership or control in Enviropave.
15. Enviropave acted in bad faith because it failed to correct Commission rule violations on the subject plant and failed adequately to explain its inaction to the Commission.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. By discharging oil and gas wastes without a permit, Enviropave violated 16 TEX. ADMIN. CODE § 3.8(d)(1).
4. Enviropave used and maintained unpermitted earthen pits and steel washout pits for the storage or disposal of oil and gas wastes without first obtaining a permit at its East Texas Reclamation Plant (No. 06-2167) in Rusk County, Texas, Commission District 6, in violation of 16 TEX. ADMIN. CODE § 3.8(d)(2).
5. The documented violations committed by Enviropave constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
6. Enviropave did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.

RECOMMENDATIONS

The Administrative Law Judge recommends that the above Findings of Fact and Conclusions of Law be adopted and that Enviropave L.L.C. be assessed an administrative penalty of \$64,275.00 (composed of two Rule 8(d)(1) violations at \$1,000.00 per violation, one Rule 8(d)(1) violation at \$500.00, one Rule 8(d)(1) violation at \$1,625.00, plus an enhancement of \$4,350.00 for time out of compliance, five 8(d)(2) violations at \$2,500.00 per violation, plus an enhancement of \$25,000.00 for reckless conduct for using unpermitted pits, plus an enhancement of \$18,300.00 for time out of compliance) for violations of Statewide Rule 8(d)(1) and Statewide Rule 8(d)(2) on the East Texas Reclamation Plant Lease (Well Plant No. 06-2167).

The Administrative Law Judge also recommends that Enviropave be directed to place the subject facility into compliance with all Commission Statewide Rules.

The Administrative Law Judge further recommends that Enviropave be directed to provide a remediation plan, which will be approved by the Commission's Site Remediation Section and/or Technical Permitting Section, as part of bringing the facility into compliance with all Commission Statewide Rules.

The Administrative Law Judge additionally recommends suspending or cancelling Enviropave's Reclamation Plant Permit until which time the facility has been brought into compliance with all Commission Statewide Rules.

The Administrative Law Judge also recommends that Robert A. Baker, President of Enviropave L.L.C.; and Helen Wallace, Corporate Secretary of Enviropave L.L.C. (Operator No. 253299), be made subject to the restrictions of TEX. NAT. RES. CODE § 91.114.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "R. Lammert" with a stylized flourish at the end.

RYAN M. LAMMERT
Administrative Law Judge