



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET No. 7C-0299500

ENFORCEMENT ACTION AGAINST CLEAN TECH WASTE SOLUTIONS, LLC (OPERATOR NO. 159378) FOR VIOLATIONS OF STATEWIDE RULE 8(d)(1) ON THE BIG LAKE WASH EXPRESS FACILITY, REAGAN COUNTY, TEXAS

APPEARANCES

FOR THE RAILROAD COMMISSION OF TEXAS:

Melissa Glaze, Staff Attorney, Enforcement Section
David F. Randle, Engineering Specialist V, Oil and Gas Division

FOR CLEAN TECH WASTE SOLUTIONS, LLC:

Jeremy Dickens, Manager

PROCEDURAL HISTORY:

Notice of Hearing:	October 11, 2015
Hearing on the merits:	October 27, 2016
Record closed:	October 27, 2016
Proposal for Decision issued:	December 13, 2016
Heard by:	Ryan M. Lammert, Administrative Law Judge

SUMMARY

In Docket No. 7C-0299500, the Railroad Commission of Texas (“Staff”) alleges that Clean Tech Waste Solutions, LLC (Operator No. 159378), (“CTWS”), is in violation of Statewide Rule 8(d)(1)¹ at CTWS’s Big Lake Wash Express Facility (“Facility”), located in Reagan County, Texas.

CTWS appeared at hearing, but failed to present evidence sufficient to demonstrate that it is not in violation of Commission Rules, as alleged by Staff. The record evidence supports all violations as alleged by Staff. Staff seeks an administrative penalty of \$5,054 and requests that the Facility be brought into compliance with all Commission Statewide Rules.

APPLICABLE AUTHORITY

SWR 8(d)(1), titled *Pollution control*.

Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection, or §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), or disposal methods required to be permitted pursuant to §3.9 of this title (relating to Disposal Wells) (Rule 9) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) (Rule 46), *no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes.* The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.²

EVIDENCE PRESENTED

STAFF’S CASE

Staff offered into evidence two exhibits and the testimony of Mr. David Randle—a Railroad Commission of Texas Engineering Specialist. Staff presented as its first exhibit eight District Office inspection reports (accompanied by photographic evidence) of the Facility—each prepared on various dates by the Commission’s Oil and Gas Division, District 7C.³ Each District Office inspection report summarily describes conditions found at the Facility on the date that the inspection took place, to wit:⁴

¹ 16 TEX. ADMIN. CODE § 8(d)(1).

² *Id.* (emphasis added).

³ Staff Exh. 1.

⁴ *Id.*

- 1) Inspection Report dated February 25, 2015, shows that, “Standing water around facility is fresh water, no leaks or spills observed on location, no open pits”;
- 2) Inspection Report dated November 13, 2015, shows that, “Area has multiple areas with contaminated soil visible . . . Areas are from oil and diesel based mud”;
- 3) Inspection Report dated November 18, 2015, shows that, “Significant subsurface pollution around tanks . . . Significant surface pollution around frac tanks”;
- 4) Inspection Report dated January 5, 2016, shows that, “All upright tanks remain and no clean-up done . . . Area had ample rainfall last week . . . Frac tanks for other companies will have to be cleaned out and moved to remediate surface soil”;
- 5) Inspection Report dated January 12, 2016, shows that, “Surface areas with possible contamination on west side of frac tanks . . . Four frac tanks have surface pollution around them . . . Surface pollution around four of the 500 barrel tanks”;
- 6) Inspection Report dated June 7, 2016, shows that, “One settling tank has been emptied . . . no other clean-up has been done”;
- 7) Inspection Report dated July 27, 2016, shows that, “A Texas Energy frac tank located on the south end of the facility ran over during the last rainfall . . . Oil saturated on west side of tank and under back of tank . . . There is fresh water located at the north fence”; and
- 8) Inspection Report dated August 26, 2016, shows that, “Multiple areas with surface contamination . . . Contaminated soil visible around frac tanks on west side of facility . . . Areas at man-ways of 300 barrel tanks . . . Area between frac tanks on south end . . . Possible burial spots to west of tanks on west end side of site”.

Staff states that the above-described Inspection Reports (accompanied by photographic evidence) demonstrate violations of Statewide Rule 8(d)(1) for 10 areas of surface pollution at the Facility—including areas adjacent to one round tank, two frac tanks, one holding tank, and four 500 barrel tanks.

As its second exhibit, Staff presented 1) a Facility Site Lease dated effective May 21, 2014, by and among T & R Holdt Holdings, Ltd., as Lessor, and Lone Star Washout Express, LLC, as Lessee, wherein the subject property was leased for term of five years for purposes of constructing, operating, and maintaining the Facility; and 2) an Assignment and Assumption of Lease dated effective June 18, 2015, by and between Lone Star Washout Express, LP, as Assignor, and Clean Tech Waste Solutions, LLC, as Assignee, wherein CTWS assumed

responsibly for operation of the Facility.⁵ Staff asserts that the two above-described instruments demonstrates CTWS' responsibility for operation of the Facility, and its liability for violations of Commission Statewide Rules.

Staff maintains that CTWS' Facility is in violation of Statewide Rule 8(d)(1) for the unpermitted disposal of oil and gas wastes, and requests that CTWS be assessed administrative penalties in the amount of \$5,045 and ordered to place the Facility into compliance with all Commission rules and regulations.

CTWS' CASE

CTWS appeared at hearing, but failed to provide evidence, or otherwise articulate a legal basis, to contradict proof that it is responsible for violations of Statewide Rule 8(d)(1). In fact, CTWS concedes that violations have occurred, but that it is diligently working to bring the Facility into compliance.⁶

ADMINISTRATIVE LAW JUDGE'S OPINION

CTWS offered no evidence to contradict proof that it is responsible for violations of Statewide Rule 8(d)(1). Without evidence to the contrary, the record in this case consists of undisputed evidence that CTWS committed the violations as alleged by Staff. CTWS has no history of violations of Commission rules and regulations.

The Administrative Law Judge recommends to the Commission to assess CTWS an administrative penalty in the amount of \$5,045, and recommends to the Commission to order CTWS to bring the Facility into compliance with all Commission rules and regulations.

CONCLUSION

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

FINDINGS OF FACT

1. Clean Tech Waste Solutions, LLC (Operator Number 159378) was given at least ten (10) days notice of this hearing by certified mail sent to its most recent Form P-5 address.
2. Clean Tech Waste Solutions, LLC appeared at the hearing through Jeremy Dickens, Manager.

⁵ Staff Exh. 1.

⁶ Tr. at 17:04.

3. As established by Clean Tech Waste Solutions, LLC's most recent Form P-5 *Organization Report*, Clean Tech Waste Solutions, LLC is a corporation with Clean20 Holding, LLC, as Manager; Jeremy Dickens, as Manager; and Mark D. Augustine, as Manager.
3. The violation in this docket is a violation of Commission rules related to safety and the prevention or control of pollution.
4. Clean Tech Waste Solutions, LLC disposed of oil and gas wastes at the Big Lake Wash Express Facility without a permit to dispose of such wastes.
5. District Office field inspections conducted February 25, 2015; November 13, 2015; November 18, 2015; January 5, 2016; January 12, 2016; June 7, 2016; July 27, 2016; and August 26, 2016; revealed that Clean Tech Waste Solutions, LLC's Big Lake Wash Express Facility is in violation of Statewide Rule 8(d)(1) for 10 areas of surface pollution at the subject facility—including areas adjacent to one round tank, two frac tanks, one holding tank, and four 500 barrel tanks
6. Clean Tech Waste Solutions, LLC's violation of 16 TEX. ADMIN. CODE § 3.8(d)(1) is serious and a hazard to the public health and safety, in that unpermitted discharges of oil and gas wastes can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution.
7. Clean Tech Waste Solutions, LLC has no prior history of violations of Commission rules.
8. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto Clean20 Holding, LLC, as Manager; Jeremy Dickens, as Manager; and Mark D. Augustine, as Manager, were persons or entities who held a position of ownership or control in Clean Tech Waste Solutions, LLC.
10. Clean Tech Waste Solutions, LLC acted in bad faith because it failed to correct a Commission rule violation on the subject lease 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 disposing of oil and gas wastes at the Big Lake Wash Express Facility without a permit, Clean Tech Waste Solutions, LLC violated 16 TEX. ADMIN. CODE § 3.8(d)(1).
4. The documented violations committed by Clean Tech Waste Solutions, LLC constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
5. Clean Tech Waste Solutions, LLC 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 Clean Tech Waste Solutions, LLC be assessed an administrative penalty of \$5,045, composed of 10 violations of 16 TEX. ADMIN. CODE § 3.8(d)(1) at \$500 each; plus \$45, calculated at an additional \$0.30/square foot on an estimated 151 square feet.

The Administrative Law Judge also recommends that Clean Tech Waste Solutions, LLC be directed to within 30 days of the date this order becomes final, place the Big Lake Wash Express Facility fully into compliance with all Commission rules and regulations.

The Administrative Law Judge also recommends that Clean20 Holding, LLC, Jeremy Dickens, and Mark D. Augustine be made subject to the restrictions of TEX. NAT. RES. CODE § 91.114.

RESPECTFULLY SUBMITTED,



RYAN M. LAMMERT
Administrative Law Judge