

CHRISTI CRADDICK, *CHAIRMAN*  
RYAN SITTON, *COMMISSIONER*  
WAYNE CHRISTIAN, *COMMISSIONER*



RANDALL D. COLLINS, *DIRECTOR*

## RAILROAD COMMISSION OF TEXAS HEARINGS DIVISION

**Date: February 17, 2017**

**Oil & Gas Docket No. 01-0301648**

### **NOTICE TO THE PARTIES**

The attached document is the Proposal for Decision and recommended Final Order issued by the examiner(s) in this case. Under Section 1.141 of the Commission's General Rules of Practice and Procedure, we are required to circulate the document to each party or its authorized representative. This is only a proposal and is not to be interpreted as a final decision unless an official order adopting the proposal is signed and issued by the Commission.

Under Section 1.142 of the General Rules of Practice and Procedure (16 T.A.C. §1.142), you have the right to file a written statement disagreeing with the proposal and setting out your reasons for this position. This document is referred to as "Exceptions" and must be filed with the Docket Services Section of the Office of General Counsel (Room 12-123) within 15 days of the date above. You have the right to respond in writing to any exceptions filed by another party. This document is referred to as "Replies to Exceptions" and must be filed with the Docket Services Section of the Office of General Counsel (Room 12-123) within 10 days after the deadline for filing exceptions.

In addition to written exceptions and replies, the parties may file with the Commission a one page summary of the case. The summary shall be filed with the Commission **at the time exceptions are due**. The summary is specifically limited to one page and shall contain only information of record or argument based on the record. The summary shall not be submitted in reduced print. If the summary contains any material not of record, has reduced print, or exceeds one page (8-1/2" x 11"), the examiner(s) will reject the summary and it will not be submitted to the Commissioners for their review.

The summary shall contain the name of the party, the status of the party, the name and docket number of the case, the issue(s), the key facts, the legal principles involved (including proposed conclusions of law), and the action requested. (See enclosed form.)

In view of the due dates stated above, all parties are reminded that pleadings are considered filed only upon **actual receipt by the Docket Services Section of the Office of General Counsel** (Room 12-123). Furthermore, each pleading must be served upon all Parties of Record and a statement certifying such and giving complete names and addresses must be included. Exceptions and replies may not be filed by telephonic document transfer unless otherwise directed by the examiner(s). An original plus TEN copies of exceptions, replies and summaries should be submitted to the Commission. PLEASE DO NOT STAPLE. Further, a copy of these pleadings **must be submitted to each party. IN ADDITION, IF PRACTICABLE, PARTIES ARE REQUESTED TO PROVIDE THE EXAMINERS WITH A COPY OF ANY FILINGS IN DIGITAL FORMAT. THE DIGITAL FORMAT SHOULD BE LABELED WITH THE DOCKET NUMBER, THE TITLE OF THE DOCUMENT, AND THE FORMAT OF THE DOCUMENT.**

The proposal for decision, and all exceptions and replies will be submitted to the Commissioners for their consideration at one of their regularly scheduled conferences. The agenda for the scheduled conferences will be published in the Texas Register and posted in the office of the Secretary of State. The conferences are open meetings; you may attend and listen to the presentation of the case.

**Via First Class Mail & Email**

DSD-Frio Environment Inc  
Attn: Yuanyuan "Vivian" Wang and David Yang  
2150 2nd Street Ste C  
Pleasanton TX 78064

**Via Interagency Email**

Lori Wrotenbery – RRC Austin, Oil & Gas Director  
Colin Lineberry – RRC Austin, Office of General Counsel  
Natalie Dubiel – RRC Austin, Office of General Counsel  
Michael Bosquez – RRC Austin, Engineer Specialist II  
Sheila Weigand – RRC Austin, Hearings Investigator  
Olin Macnamara – RRC Austin, Field Operations  
Jason Clark – RRC Austin, Administrative Compliance  
Leslie Savage – RRC Austin, Technical Permitting  
Santos Gonzales – RRC Austin, Field Operations  
Travis Baer – RRC District 01 & 02 Director

## CASE SUMMARY

PREPARED BY:

STATUS:

EXAMINER(S):

DOCKET NO./CASE NAME:

ISSUE(S):

KEY FACTS:

LEGAL PRINCIPLES INVOLVED:

ACTION REQUESTED:



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

OIL & GAS DOCKET NO. 01-0301648

---

APPLICATION OF DSD-FRIO ENVIRONMENTAL, INC. TO PROVIDE DSD-FRIO ENVIRONMENTAL, INC. (OPERATOR NO. 229360) AN OPPORTUNITY TO SHOW CAUSE WHY ITS P4 CERTIFICATE OF COMPLIANCE SHOULD NOT BE CANCELED AND THE PIPELINE OR OTHER CARRIER CONNECTION SEVERED ON THE FRIO COUNTY SCHOOL LAND LEASE (LEASE NO. 16058), PEARSALL (AUSTIN CHALK) FIELD, FRIO COUNTY, TEXAS

---

### PROPOSAL FOR DECISION

**HEARD BY:**

Jennifer Cook – Administrative Law Judge  
Peggy Laird – Technical Examiner

**PROCEDURAL HISTORY:**

Hearing Request Date:	September 2, 2016
Hearing Date:	November 28, 2016
Transcript Received:	January 30, 2017
Proposal for Decision Issued:	February 17, 2017

**APPEARANCES:**

**For Staff –**

Colin K. Lineberry  
Natalie Dubiel

**For DSD-Frio Environmental, Inc. –**

Yuanyuan Wang

## Table of Contents

I.	Statement of the Case .....	3
II.	Jurisdiction and Notice.....	3
III.	Applicable Legal Authority .....	4
IV.	Discussion of Evidence.....	4
	A. Summary of DSD's Evidence and Argument .....	4
	B. Summary of Staff's Evidence and Argument.....	8
V.	Examiners' Analysis .....	11
	A. Evaluation of the alleged three pit violations .....	11
	B. Evaluation of the alleged reclamation violation.....	13
	C. Corrective actions required for DSD to achieve compliance and resolve the reclamation plant violation .....	14
	D. Corrective actions required for DSD to achieve compliance and resolve the three pit violations .....	16
VI.	Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law .....	17

## **I. Statement of the Case**

DSD-Frio Environmental, Inc. ("DSD"), Operator No. 229360, seeks a determination, contrary to Railroad Commission ("Commission" or "RRC's") staff's ("Staff's") prior determination, that it is not in violation of Commission rules and its Commission Form P-4 Certificate of Compliance ("P-4") should not be canceled and pipeline or other carrier connections severed.

The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Commission deny DSD's request to prevent cancellation and severance of its P-4 and order that DSD's P-4 cannot be renewed until the subject lease is in compliance with Commission rules.

## **II. Jurisdiction and Notice<sup>1</sup>**

Sections 81.051 and 81.052 of the Texas Natural Resources Code provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission. Additionally, chapter 91, subchapter P, of the Texas Natural Resources Code provides the Commission authority to issue Certificates of Compliance and cancel such certificates for violations of Commission rules.

Regarding notice, before canceling a certificate of compliance, the Commission is required to give notice to the operator of the facts or conduct alleged to warrant the cancellation and to give the operator an opportunity to show compliance with all requirements of law for retention of the certificate.<sup>2</sup>

In a letter from Staff to DSD dated August 1, 2016, Staff notified DSD of the Commission's intent to cancel DSD's P-4 for the Frio County School Land Lease ("Lease") due to DSD's violation of Commission rules.<sup>3</sup> The letter identifies every violation and the facts for each violation as observed during a July 26, 2016 Commission inspection. The letter also gave DSD ten days to resolve the violation or request a hearing to contest the potential cancellation.

In a letter received September 2, 2016, DSD requested a hearing. On October 26, 2016, the Hearings Division issued a Notice of Hearing for this case setting it for hearing on November 28, 2016.<sup>4</sup> The Notice of Hearing was sent to Staff and DSD. Both Staff and DSD appeared at the hearing.

---

<sup>1</sup> The hearing transcript in this case is referred to as "Tr. at [pages:lines]." Staff's exhibits admitted during its direct case are referred to as "Staff Ex. [exhibit no.]." Staff's exhibits admitted during cross examination are referred to as "Staff Ex. X- [exhibit no.]." DSD's exhibits are referred to as "DSD Ex. [exhibit no.]."

<sup>2</sup> TEX. NAT. RES. CODE § 91.704.

<sup>3</sup> Staff Ex. 2.

<sup>4</sup> See Notice of Hearing (issued October 26, 2016).

### **III. Applicable Legal Authority**

The Texas Natural Resource Code requires operators of any well subject to the jurisdiction of the Commission to obtain a certificate showing compliance with applicable Commission statutes rules and orders.<sup>5</sup> Operators of pipelines or other carriers are prohibited from connecting to a well until the operator of the well obtains a certificate of compliance.<sup>6</sup> After issuance of the certificate, the Commission can cancel the certificate if an operator is in violation of commission rules. Section 91.704 of the Texas Natural Resource Code specifically provides:

Sec. 91.704. CANCELLATION OF CERTIFICATE. The commission may cancel any certificate of compliance issued under the provisions of this subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, a rule adopted or order issued under that title, section, or subchapter, as applicable, or a license, permit, or certificate issued to the owner or operator under that title, section, or subchapter, as applicable. Before canceling a certificate of compliance, the commission shall give notice to the owner or operator by personal service or by registered or certified mail of the facts or conduct alleged to warrant the cancellation and shall give the owner or operator an opportunity to show compliance with all requirements of law for retention of the certificate as required by Section 2001.054, Government Code.

There are consequences if a certificate of compliance is canceled. If a well operator's certificate is canceled, the operator cannot use the well for production, injection or disposal until a new certificate is issued for the well.<sup>7</sup> Additionally, any connected pipeline or carrier is required to disconnect and cannot reconnect until a new certificate is issued.<sup>8</sup>

### **IV. Discussion of Evidence**

DSD provided testimony of one witness and seven exhibits. Staff provided the testimony of one witness, seven exhibits in its direct case and two exhibits during cross examination.

#### **A. Summary of DSD's Evidence and Argument**

DSD asserts that the violations do not regard the wells associated with the P-4, but instead regard other operations at the Lease—namely, utilizing a pit and operating a

---

<sup>5</sup> TEX. NAT. RES. CODE § 91.701.

<sup>6</sup> TEX. NAT. RES. CODE § 91.702.

<sup>7</sup> TEX. NAT. RES. CODE § 91.706(a).

<sup>8</sup> TEX. NAT. RES. CODE § 91.705.

reclamation plant—that Staff claims requires permits.<sup>9</sup> DSD maintains that after receiving the information about the violations from Staff, DSD corrected the problems and hired a third party to prepare the paperwork.<sup>10</sup> DSD claims that the only obstacle preventing it from obtaining the permits for the pit and reclamation activities is that DSD cannot afford the required financial assurance.<sup>11</sup>

DSD's only witness was Ms. Yuanyuan Wang. Ms. Wang is a project manager and office manager for DSD. As the product manager, Ms. Wang oversees the production at the site. As office manager, she oversees accounts payable and receivable. She has worked for DSD since February of 2016. However, she has actually been involved with the location since 2014, when Veritas-Msi China Company Ltd. ("Veritas") bought the site as an asset. Ms. Wang testified that currently Veritas owns approximately 95% of DSD. Ms. Wang testified that Dr. Jianrong Wang makes the management decisions and became the President and General Manager this year. In the past, the president was Chaoming Zhang.<sup>12</sup>

The P-4 at issue covers two properly permitted disposal wells (Well Nos. 5 and 6) on the Lease. The violations triggering the P-4 cancelation is for operating an unauthorized reclamation plant and unauthorized washout pit on the Lease. DSD has applied for permits for the reclamation plant and washout pit but has not completed the process.<sup>13</sup> Ms. Wang maintains that DSD has completed all technical and paperwork requirements for the two permits and the only remaining hurdle to obtaining these permits is providing the financial assurance required, which Ms. Wang states that DSD cannot afford to do.<sup>14</sup>

Ms. Wang provided a description of DSD operations at the site. DSD services water trucks from trucking companies. The trucking company hauls the water from the operator by vacuum truck. DSD has two ways to unload each truck. One way is directly unloading the water to what she refers to as an aboveground concrete container ("Container"). The other way is to directly unload the water to DSD's tanks via pumps. The water in the Container is transferred via pumps to DSD's tanks. All injection pumps are connected to the tanks. After all treatment, the water is injected into the disposal wells. However, DSD does not do treatment any longer. Ms. Wang testified that the Container has allowed DSD to expand its capacity and provides the ability to grow its business. DSD primarily initially unloads water into the Container, as opposed to the tanks. This water is put into the tanks. DSD has two bigger tanks and six smaller tanks all of which are connected. The water is transferred from the Container to the bigger tanks. The liquids and solids separate in the bigger tanks, with the solids descending to the bottom. Then the water on top is transferred to the smaller tanks and then to the injection wells.<sup>15</sup>

---

<sup>9</sup> Tr. at 13:11 to 13:18.

<sup>10</sup> Tr. at 13:22 to 13:25.

<sup>11</sup> Tr. at 14:1 to 14:16.

<sup>12</sup> Tr. at 49:4 to 51:22; *see also* Tr. at 51:23 to 58:9.

<sup>13</sup> Tr. at 20:19 to 21:7.

<sup>14</sup> Tr. at 21:15 to 24:13.

<sup>15</sup> Tr. at 40:1 to 43:18.



Ms. Wang explained that DSD also has some machines on the Lease site that DSD uses for water treatment. DSD uses injection pumps to pump the water down to the wells. Sometimes the water has rocks and sand. According to Ms. Wang, DSD utilizes these machines to clarify the water, to get the water cleaner, before it can be injected into the well. After DSD received the letters from the Commission stating that DSD would need a permit to operate these machines, DSD disconnected the machines. Ms. Wang claims DSD is unable to move all the machines off the site. Ms. Wang asserts the machines are merely company assets and DSD should be allowed to keep the machines on the site.<sup>16</sup>

Ms. Wang described DSD's washout activities.<sup>17</sup> DSD washes the inside of trucks and puts the water in the Container. She maintains that it is not a pit because it is partially aboveground. Ms. Wang testified that DSD used gravel to level the Container with the ground where the truck ramp is located. DSD uses Bobcat equipment to remove the solids from the Container to the surface. The solids are put in a separate aboveground containment unit.<sup>18</sup> Ms. Wang testified that the height of the Container is four to six feet.<sup>19</sup>

Ms. Wang testified that the machines are used to treat the water in the Container.<sup>20</sup> Ms. Wang described DSD's water treatment process. For each machine, there is a pump to generate micro bubbles. The micro bubbles adhere to the oil sludge drops and separate the sludge from the water. The solids descend to the bottom of the Container. DSD separates the water from the solids to prevent any damage to DSD's injection pump. Regarding the use of chemicals, Ms. Wang testified that if DSD has really heavy sludge, then it uses acid. However, DSD does not use the machines now and they are disconnected.<sup>21</sup>

Ms. Wang testified that according to DSD's third-party consulting service who communicates with the Commission for DSD, KJE Environmental and Recycling ("KJE"), KJE has submitted all the necessary documents, and providing financial assurance is the only remaining requirement to obtaining the two permits—one for reclamation and one for the washout pit.<sup>22</sup> Ms. Wang provided the permit application for the reclamation facility and the permit application for the washout pit, claiming that the applications contain all the information the Commission needs to issue the permits.<sup>23</sup>

DSD provided a Commission letter dated July 20, 2015 approving a total estimated closure cost amount of \$208,405 for the reclamation plant and washout pit; the letter states that DSD must submit financial security in that amount in the form of a bond or

---

<sup>16</sup> Tr. at 27:6 to 27:17.

<sup>17</sup> Ms. Wang had five pictures of the facility taken a few days before the hearing that she offered as evidence. The pictures were on her phone and she had no hard copy. There was no objection to hard copies being admitted so the Examiners admitted the pictures as DSD's Exhibit 1 subject to DSD providing hard copies after the hearing. Hard copies were never provided so they are not part of the record in this case. See Tr. at 28:8 to 31:9.

<sup>18</sup> Tr. at 31:25 to 34:9; see also Tr. at 35:8 to 36:22; Tr. at 37:15 to 38:16.

<sup>19</sup> Tr. at 36:22 to 37:6.

<sup>20</sup> Tr. at 37:7 to 37:14.

<sup>21</sup> Tr. at 38:17 to 39:25.

<sup>22</sup> Tr. at 44:5 to 44:16.

<sup>23</sup> Tr. at 44:19 to 46:7; DSD Exs. 2, 3.

letter of credit.<sup>24</sup> DSD provided a Commission letter dated February 18, 2016 requesting additional required documentation to support DSD's permit applications.<sup>25</sup> DSD provided a Commission letter dated November 10, 2016, notifying DSD that DSD has not addressed all outstanding issues necessary to complete the permit applications and requiring DSD to cease and desist acceptance of any additional waste until further notice because DSD was operating an unauthorized reclamation plant and unauthorized washout pit.<sup>26</sup> The letter also administratively denies the permits and states:

The applications are hereby administratively denied and returned for the following: Failure to provide the data required to complete the permits; Operating a reclamation plant without a permit; Operating unauthorized pits without a permit; and Operating without financial security.

The letter further notes that (1) the applications had been pending since April 30, 2014 and June 5, 2015 and (2) Staff had sent DSD requests for additional required information on September 3, 2014, July 2, 2015, February 18, 2016 and July 19, 2016.<sup>27</sup>

During cross examination, Staff offered as evidence Staff Ex. X-1 which includes DSD's most recently filed Organization Report (Form P-5) ("P-5") and DSD's two most recent Certificates of Compliance (Form P-4s) ("Filed P-4s"). Ms. Wang acknowledged that the officers identified on the P-5, Mr. Chaoming Zhang and Mr. Yang Yang, are not DSD's current officers. Ms. Wang testified that there had been officer changes in October 2016 and the P-5 had not been updated yet. Regarding the Filed P-4s, Ms. Wang acknowledged the gatherers identified are incorrect. Ms. Wang also confirmed there are only two disposal wells on the Lease.<sup>28</sup>

Also during cross examination, Staff offered Staff Ex. X-2 which includes DSD's Skim Oil/Condensate Reports (Form P-18s) ("P-18s") for the months of April, May, June and July of 2016. Ms. Wang acknowledged DSD does not take oil from any other companies and only receives water. The P-18s all state that zero net barrels of oil was skimmed from the water received. The P-18s also state that there were barrels of hydrocarbons sold and provided to gatherers: 797.91 bbls in April 2016, 628.89 bbls in May 2016, 474.18 bbls in June 2016 and 316.61 bbls in July 2016. Ms. Wang could not explain the information about hydrocarbons in the P-18s or reconcile the amounts.<sup>29</sup>

During cross examination, Ms. Wang acknowledged that DSD has used heat and acid to treat water in the past and that some of DSD's onsite machines are capable of treating water with heat and some are capable of treating water with acid. Ms. Wang stated that sometimes the trucks that are washed out have thick sludge in them.<sup>30</sup>

---

<sup>24</sup> DSD Ex. 4.

<sup>25</sup> DSD Ex. 5.

<sup>26</sup> DSD Ex. 6.

<sup>27</sup> *Id.*

<sup>28</sup> Tr. at 51:23 to 58:9; Staff Ex. X-1.

<sup>29</sup> Tr. at 58:11 to 63:13.

<sup>30</sup> Tr. at 65:22 to 66:18.

## **B. Summary of Staff's Evidence and Argument**

Staff maintains DSD's P-4 is properly canceled due to violations on the Lease related to unauthorized reclamation activities and an unauthorized pit. Staff asserts that due to these unauthorized activities, DSD is in violation of Statewide Rules<sup>31</sup> 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1).<sup>32</sup> Staff maintains reclamation activities require a permit, referred to as a R-9, under Rule 57 and the use of a washout pit requires a permit, referred to as an H-11, per Rule 8(d)(2). Staff sought severance of the P-4 because the P-4 wells are used in conjunction with the reclamation activities and washout pit and are at the same location, on the Lease.<sup>33</sup> Staff argues that DSD does operate a reclamation plant.<sup>34</sup> Staff also asserts that DSD is using an unauthorized pit, contrary to DSD's claim that the alleged pit is merely a concrete container. Staff asserts that (1) these reclamation and pit violations were documented at an inspection, (2) DSD was notified that if the violations were not remedied its' P-4 would be canceled, (3) and the violations were not remedied and DSD did not timely request a hearing. Consequently, DSD's P-4 was properly severed.<sup>35</sup> Staff requests that DSD be required to resolve the existing violations and remediate any pollution prior to regaining its P-4.

Staff's witness was Mr. Michael Bosquez, Jr. who is an Engineering Specialist in the Commission's San Antonio District Office. He has a Bachelor of Science degree in mechanical engineering from the University of Texas at Austin. He has been working for the Railroad Commission since March of 2014. Prior to working at the Commission, he worked at Occidental Petroleum.<sup>36</sup>

As an Engineering Specialist, Mr. Bosquez works in conjunction with Commission inspectors who perform onsite inspections. Part of his responsibilities include reviewing inspection reports, and issuing correspondence regarding severance and violation notices. When a Commission field inspector inspects facilities, he creates an inspection report. Mr. Bosquez then reviews the report and violations cited and generates any Commission correspondence warranted based on Commission procedures and practice.<sup>37</sup>

For a reclamation plant, inspections are performed semiannually. When violations are documented at an inspection, then there is a follow up inspection approximately thirty days later. Mr. Bosquez, as an Engineering Specialist, occasionally conducts or participates in onsite inspections when there are persistent violations involved.<sup>38</sup>

---

<sup>31</sup> The Commission's Statewide Rules refers to 16 TEX. ADMIN. CODE ch. 3; for example, Statewide Rule 8(d)(1) refers to 16 TEX. ADMIN. CODE § 3.8(d)(1).

<sup>32</sup> See Tr. at 15:9 to 16:20.

<sup>33</sup> Tr. at 21:15 to 24:13.

<sup>34</sup> Tr. at 24:17 to 27:5.

<sup>35</sup> *Id.*; see also Tr. at 18:10 to 18:12.

<sup>36</sup> Tr. at 78:6 to 79:9.

<sup>37</sup> Tr. at 79:10 to 79:24.

<sup>38</sup> Tr. at 79:25 to 80:18.

Mr. Bosquez was involved in the inspections and correspondence resulting in this case. He is the Engineering Specialist who reviewed the inspector report and generated the correspondence to DSD. According to Staff, DSD has two disposal wells, the saltwater disposal tanks, which Mr. Bosquez characterizes as the reclamation site, and a washout pit. Mr. Bosquez testified that the reclamation site is "the collection of tanks that are there and also the equipment that's used to separate oil from the produced water that's brought in from the trucks."<sup>39</sup> Mr. Bosquez issued the Commission's notice of severance for the Lease. He testified that the notice of severance was issued because of violations documented from an inspection of DSD's site.<sup>40</sup>

Staff provided an inspection report of the Lease dated July 26, 2016 (the "July 26 Report").<sup>41</sup> Mr. Bosquez was one of the attendees at the inspection and reviewed the report. Mr. Bosquez testified that what Ms. Wang referred to as something similar to a cement aboveground container, he believes is actually is more accurately referred to as a washout pit. Per the inspection report, nine Commission rule violations were documented.<sup>42</sup>

On August 1, 2016, Mr. Bosquez issued DSD a *Notice of Intent to Cancel P-4 Certificate of Compliance and to Sever Pipeline or Other Carrier Connection* ("Notice") regarding the Lease.<sup>43</sup> The Notice was based on the July 26 Report and identified the violations. The Notice stated that the P-4 would be severed if the violations were not resolved or if DSD did not request a hearing within ten days of the Notice. Another inspection was performed and an inspection report was generated on August 16, 2016 (the "August 16 Report").<sup>44</sup> Per the August 16 Report, six of the violations in the July 26 Report were still outstanding. On August 17, 2016, Staff canceled and severed the P-4.<sup>45</sup> Two additional follow up inspections were conducted on September 8, 2016 and November 17, 2016.<sup>46</sup> Per the November 17 Inspection Report (the "November 17 Report"), the following four Commission rule violations were still outstanding: violations of Statewide Rules 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1).

Three of the four remaining alleged violations involve the alleged pit, which DSD claims is not a pit and rather is an aboveground cement container. The first remaining alleged violation is a violation of Statewide Rule 8(d)(1), which Mr. Bosquez testified is a prohibition of unpermitted disposal of oil and gas waste. According to Staff, this alleged violation was initially documented due to the following observations:

1. Alleged solid and semisolid waste stockpiled on the Lease near what is referred to as the washout pad;

---

<sup>39</sup> Tr. at 81:11 to 81:14.

<sup>40</sup> Tr. at 80:19 to 81:22.

<sup>41</sup> Staff Ex. 1.

<sup>42</sup> Tr. at 83:19 to 86:19; Staff Ex. 1.

<sup>43</sup> Staff Ex. 2.

<sup>44</sup> Staff Ex. 3.

<sup>45</sup> See Staff Ex. 7.

<sup>46</sup> Staff Ex. 4, 5.

2. Water and oil discharged onto the washout pad from a hose originating in the sump pit by the disposal pumps; and
3. Approximately 9,620 barrels ("bbls") of sediment and water with 100% oil coverage located in an unpermitted pit.<sup>47</sup>

Mr. Bosquez discussed the observations and pictures of the violations, which were contained as part of the July 26 Report. Mr. Bosquez considers the washout pad in conjunction with the washout pit both as an unauthorized pit.<sup>48</sup> Per the November 17 Report, the pit was approximately 80% filled with water that had some oil coverage. Pictures of the water and oil coverage were included.<sup>49</sup>

The second remaining alleged Lease violation initially documented in the July 26 Report is a violation of Statewide Rule 8(d)(2) for unpermitted use of a pit.<sup>50</sup> Mr. Bosquez testified that DSD does not have a pit permit and therefore cannot put water from the trucks into a pit without authorization via a permit. As to whether what Ms. Wang referred to as a concrete container was above or below ground level, the July 26 Report states that the container/pit is 14 feet deep. However, the pictures of the container/pit in the inspection reports show much less than 14 feet of the vessel is aboveground. Mr. Bosquez noted that the dimensions of the alleged pit in the July 26 Report, including a 14-foot depth, were obtained from DSD; he believes that the dimensions are from DSD's permit application submittals for the pit. Mr. Bosquez also testified that it is pollution regardless if the pit is below or above ground; it is still a violation. At the time of the July 26 inspection, there was six inches of freeboard showing.<sup>51</sup>

The third remaining allegation involving the pit is for an alleged violation of Statewide Rule 91(d)(1) for failure to remediate soil associated with the discharges and waste at the Lease.<sup>52</sup>

The fourth violation is for operation of a reclamation plant without authorization in violation of Statewide Rule 57(c)(1). Per the July 26 Report, observations demonstrate that a reclamation plant was operating and in use:

1. An attendant at the Lease during the inspection informed the inspectors that DSD separates and sells oil;
2. There were buckets near the boiler machines containing oil and water; and
3. There are machines at the reclamation site that can treat water via heat and chemicals.<sup>53</sup>

---

<sup>47</sup> Staff Ex. 1 at 2.

<sup>48</sup> Tr. at 86:20 to 99:9.

<sup>49</sup> Staff Ex. 5.

<sup>50</sup> Staff Ex. 1 at 2.

<sup>51</sup> Tr. at 99:14 to 106:3.

<sup>52</sup> Staff Ex. 5 at 2.

<sup>53</sup> Staff Ex. 1.

According to the November 17 Report, the reclamation plant is still in place but the tanks have been disconnected.<sup>54</sup> In an email to Mr. Bosquez, DSD representative David Yang stated that the machines at the Lease can separate crude oil from produced salt water, but cannot separate oil from solids.<sup>55</sup> Mr. Yang stated that it was his understanding that reclamation activities requiring a permit apply only to the separation of oil from wastes that are in solid form, not liquid form.<sup>56</sup> In further email correspondence after being told that reclamation activities can occur when oil is separated from liquids, Mr. Yang states:

We definitely want to comply if that is the case. We will immediately stop using the vessels, and remove the power connection, empty any remaining fluids in the vessels. Will it resolve the reclamation violation? And I also want to ask, can we return to the old method that skimming crude oil from top of the tanks, is this also considered as reclamation or it is fine?<sup>57</sup>

## **V. Examiners' Analysis**

The Examiners recommend denial of DSD's request that its P-4 not be canceled. The Examiners further recommend that the P-4 remain severed and that the P-4 not be renewed until DSD is in compliance, remediates the pollution and contamination on the Lease, and pays any required fees.

Section 91.704 of the Texas Natural Resource Code states the Commission can cancel a certificate of compliance (i.e. a Form P-4), if an operator is in violation of Commission rules. Staff maintains that DSD is in violation of Commission rules. DSD contests Staff's determination.

### **A. Evaluation of the alleged three pit violations**

Regarding the pit, Staff alleges DSD is in violation of Statewide Rules 8(d)(1), 8(d)(2) and 91(d)(1). Statewide Rule 8(d)(1) states:

Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection, subsection (e) of this section, 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

---

<sup>54</sup> Staff Ex. 5.

<sup>55</sup> Staff. Ex. 6.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 1.



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.<sup>58</sup>

Statewide Rule 8(d)(2) states:

Prohibited pits. No person may maintain or use any pit for storage of oil or oil products. Except as authorized by this subsection, no person may maintain or use any pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, without obtaining a permit to maintain or use the pit. A person is not required to have a permit to use a pit if a receiver has such a permit, if the person complies with the terms of such permit while using the pit, and if the person has permission of the receiver to use the pit. The pits required by this paragraph to be permitted include, but are 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. If a person maintains or uses a pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, and the use or maintenance of the pit is neither authorized by this subsection nor permitted, then the person maintaining or using the pit shall backfill and compact the pit in the time and manner required by the director. Prior to backfilling the pit, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.<sup>59</sup>

Statewide Rule 91 contains required standards for remediation of soil contaminated by crude oil.<sup>60</sup> Statewide Rule 91(d)(1), regarding the applicable final cleanup standards, states:

Final cleanup level. A final cleanup level of 1.0% by weight total petroleum hydrocarbons must be achieved as soon as technically feasible, but not later than one year after the spill incident. The operator may select any technically sound method that achieves the final result.<sup>61</sup>

As to the alleged pit violations, Staff claims that what DSD asserts is a concrete container is in actuality an unauthorized washout pit. A washout pit is defined as:

Washout pit--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,

---

<sup>58</sup> 16 TEX. ADMIN. CODE § 3.8(d)(1).

<sup>59</sup> 16 TEX. ADMIN. CODE § 3.8(d)(2).

<sup>60</sup> 16 TEX. ADMIN. CODE § 3.91(b).

<sup>61</sup> 16 TEX. ADMIN. CODE § 3.91(d)(1).

mobile tanks, or skid-mounted tanks.<sup>62</sup>

The Examiners find that the Lease is a disposal facility for the storage or disposal of oil and gas residue washed out of trucks; DSD did not dispute this. Instead, DSD disputes that it is a pit because DSD claims pits are required to be belowground and DSD's alleged pit is aboveground. DSD offered no authority showing that a pit must be belowground. Moreover, according to the pictures in the inspection reports, Ms. Wang's testimony that the top of the pit is level with the ground at the unloading dock where the trucks unload, and the statements in the inspection reports that the pit is fourteen feet deep, the Examiners find that the pit is not aboveground and that much of the pit is below ground level. The Examiners do not find compelling DSD's claim that if any part of an alleged pit is above grade level, then the alleged pit is not a pit as contemplated by Commission rules. The Examiners find DSD is in violation of subsections (d)(1) and (d)(2) of Statewide Rule 8.

Regarding the alleged violation of Statewide Rule 91, per the July 26 Report there were various discharges of solid, semi-solid and liquid oil and gas waste on the Lease, mainly on and around an unauthorized concrete washout pad near the pit. While according to the November 17 Report there has been some cleanup of the discharged waste, DSD provided no evidence that its remediation standards comply with Statewide Rule 91. The Examiners find DSD is in violation of Statewide Rule 91(d)(1).

## **B. Evaluation of the alleged reclamation violation**

The remaining outstanding violation relates to the alleged reclamation plant. Staff claims that DSD is in violation of Statewide Rule 57(c)(1) which states:

Removal of tank bottoms or other hydrocarbon wastes from any producing lease tank, pipeline storage tank, or other production facility, for reclaiming by any person, is prohibited unless such person has either obtained a permit to operate a reclamation plant, or is an authorized person. Applicants for a reclamation plant operating permit shall file the appropriate form with the commission in Austin.<sup>63</sup>

Initially, DSD disputed that its activities fall within the scope of the definition of reclamation. DSD claims that its activities are not prohibited because DSD reclaims hydrocarbons from liquids, namely produced salt water, and not solids.<sup>64</sup> DSD offers no legal authority for this claim and instead references the use of the term "solid waste" on the Commission's website. As Staff explained to DSD, the definition of oil and gas waste includes salt water.<sup>65</sup> After being informed of this, DSD, through its representative, stated DSD would stop its reclamation activities. Further, Ms. Wang testified that DSD has used heat, acid and gravity separation to separate hydrocarbons from the truck waste received.

---

<sup>62</sup> 16 TEX. ADMIN. CODE § 3.91(a)(15).

<sup>63</sup> 16 TEX. ADMIN. CODE § 3.57(c)(1).

<sup>64</sup> Staff Ex. 6 at 2.

<sup>65</sup> Staff Ex. 6 at 1; see also 16 TEX. ADMIN. CODE § 8(a)(26).



Moreover, DSD's P-18s which show that DSD was selling hydrocarbons in conjunction with Ms. Wang's testimony that DSD only accepts waste indicates DSD was engaged in reclamation activities.

Ms. Wang claims that currently the machines used for reclamation have been disconnected. Staff asserts the machines are still on the Lease and easily reconnected and used for reclamation at any time; there is also still waste at the site which can be treated for reclamation. DSD maintains that the machines are merely assets it has that remain on the Lease. The Examiners agree with Staff that DSD has not taken sufficient measures to demonstrate that it is no longer in violation. Currently, DSD is operating a waste disposal facility with reclamation machines that are easily made operational. DSD's disposal facility currently stores waste in an eighty-feet by fifty-feet by fourteen-feet pit with a capacity of 2075 cubic yards (9975 bbls); the pit is 80% full per the November 17 Report. The Examiners find that DSD is in violation of Statewide Rule 91(d)(1).

**C. Corrective actions required for DSD to achieve compliance and resolve the reclamation plant violation**

At the hearing, the parties discussed the necessary additional steps that need to be taken for DSD to achieve compliance. Both parties agree that one path to compliance is for DSD to obtain the necessary permits for the pit and reclamation activities. However, DSD maintains that it does not have the financial ability to obtain the required financial security which is approximately \$208,405.<sup>66</sup> After some initial discussion, the parties agreed to provide post-hearing written briefing on proposed necessary actions for DSD to achieve compliance.<sup>67</sup> The parties were each given an opportunity to provide proposed corrective actions necessary to achieve compliance and an opportunity to respond to the other party's proposal. Staff submitted a timely proposal. DSD did not submit a proposal and did not respond to Staff's proposal. Staff's proposal does appear designed to result in DSD's compliance.

The Examiners recommend that the final order in this case include Staff's proposed corrective actions. Specifically, to address the reclamation plant violation—the violation of Statewide Rule 57(c)(1)—the Examiners recommend that DSD be ordered to complete the following to achieve compliance:

- 1) Conduct a Naturally Occurring Radioactive Material (NORM) survey on all facility storage tanks and equipment located in the reclamation and storage area. Sampling points must include the ground surface surrounding the perimeter of the reclamation area. Submit the NORM survey results to the Technical Permitting Section that includes a site diagram identifying sample locations, a table of results with location identifiers, and the calibration sheets for the instrument used to conduct the survey.

---

<sup>66</sup> See DSD Ex. 4.

<sup>67</sup> Tr. at 162:4 to 188:17.

- 2) Remove all waste materials from the processing and storage tanks as well as from any other equipment, and dispose of it at an authorized disposal facility.
- 3) Clean all tanks and equipment and remove it from the area in an authorized manner.
- 4) After all tanks and equipment have been disconnected and re-moved, take four representative composite soil samples to a depth of one foot around and underneath the former reclamation area. Soil samples must be analyzed for the parameters listed in Table 1 and must not exceed the specified limitations. Any soil sample that exceeds the parameter limitations specified in Table 1 is considered waste and must be disposed of at an authorized disposal facility.

Table 1: Soil Testing Parameters & Limitations

PARAMETER	LIMITATION
pH <i>EPA Method 9045C or equivalent</i>	6 to 10 standard units
Electrical Conductivity (EC) <i>Louisiana Dept. of Natural Resources Lab Procedures for Analysis of Exploration and Production Waste or equivalent</i>	≤ 4.0 mmhos/cm
Total Petroleum Hydrocarbon (TPH) <i>EPA Method 5035A / TX1005</i>	≤ 10,000 mg/kg
Total Benzene, Toluene, Ethylbenzene, Xylenes (BTEX) <i>EPA Method 5035A / 8021 / 8260B</i>	≤ 30 mg/kg
Metal (Total) <i>EPA Method 6010 / 6020 / 7471A</i>	
Arsenic	≤ 10 mg/kg
Barium	≤ 10,000 mg/kg
Cadmium	≤ 10 mg/kg
Chromium	≤ 100 mg/kg
Lead	≤ 200 mg/kg
Mercury	≤ 10 mg/kg
Selenium	≤ 10 mg/kg
Silver	≤ 200 mg/kg

- 5) Remove and dispose of any additional, visually contaminated soils surrounding the reclamation and storage areas.
- 6) Obtain prior written approval from the San Antonio District Office Staff and Technical Permitting Staff regarding the sample locations, sampling methodology, and the entity to perform the analysis for the soil samples required by step 4 above.

- 7) Notify San Antonio District Office Staff and Technical Permitting Staff upon completion of steps 1, 2 and 4 above.
- 8) Complete all actions required above within 90 days from the date the final order in this case is effective.

**D. Corrective actions required for DSD to achieve compliance and resolve the three pit violations**

To address the pit violations—the violations of Statewide Rules 8(d)(1), 8(d)(2) and 91(d)(1)—the Examiners recommend that DSD be ordered to complete the following to achieve compliance:

- 1) Conduct a NORM survey on the concrete pit and adjacent pads as well as any storage tanks associated with the pit or disposal wells. Sampling points must include the ground surface surrounding the perimeter of the pit area. Submit the NORM survey results to Technical Permitting that includes a site diagram identifying sample locations, a table of results with location identifiers, and the calibration sheets for the instrument used to conduct the survey.
- 2) Remove all waste materials from the concrete pit, pads and associated storage tanks, and disposed at an authorized disposal facility. After all waste materials have been properly disposed, the pit must be cleaned, demolished and the concrete rubble and wash water must be disposed of in an authorized manner.
- 3) Clean all tanks and equipment and remove them from the area in an authorized manner.
- 4) After removal of the pit, take four representative soil samples to a depth of one foot around and underneath the pit area. Soil samples must be analyzed for the parameters listed in Table 1 above and must not exceed the specified limitations. Any soil sample that exceeds the parameter limitations specified in Table 1 is considered waste and must be disposed of at an authorized disposal facility.
- 5) Remove and dispose of any additional, visually contaminated soils surrounding the pit area.
- 6) Backfill and compact the pit area, and the final surface grading of the pit must be accomplished in such a manner that rainfall will not collect at the former pit location.
- 7) Obtain prior written approval from the San Antonio District Office Staff and Technical Permitting Staff regarding the sample locations, sampling methodology, and the entity to perform the analysis for the soil samples required by step 4 above.
- 8) Notify San Antonio District Office Staff and Technical Permitting Staff upon completion of steps 1, 2 and 4 above.

- 9) Complete all actions required above within 90 days from the date the final order in this case is effective.

## **VI. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law**

Based on the record in this case and evidence presented, the Examiners recommend that the Commission deny DSD's request that its P-4 not be severed; order that DSD's P-4 cannot be renewed until DSD pays any required fees and is in compliance with Statewide Rules 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1); order DSD to complete the proposed corrective actions above; and adopt the following findings of fact and conclusions of law.

### **Findings of Fact**

1. DSD-Frio Environmental, Inc. ("DSD"), Commission Operator No. 229360, is the current operator of two disposal wells, Well Nos. 5 and 6, on the Frio County School Land Lease, Lease No. 16058, (the "Lease") in Frio County Texas.
2. On July 26, 2016, Commission staff ("Staff") conducted an inspection of the Lease and documented nine violations including violations for the follow activities:
  - a. Operating a washout pit without the required permit; and
  - b. Operating a reclamation plant without the required permit.
3. on August 1, 2016, Staff issued a *Notice of Intent to Cancel P-4 Certificate of Compliance and to Sever Pipeline or Other Carrier Connection* ("Notice") regarding the Lease. In the Notice, Staff notified DSD that the Commission intended to cancel DSD's Certificate of Compliance (Form P-4) ("P-4") for the Lease due to the violations documented at the July 26, 2016 inspection. The Notice of Intent listed each violation and, for each violation, included the facts demonstrating the violation. In the Notice of Intent, the violations noted were of Statewide Rules 8(d)(1), 8(d)(2), 9(1), 21(j), 57(c)(1) and 91(d)(1). This letter also provided DSD ten days to return to compliance with these Commission rules or request a hearing.
  1. Staff's issuance of the Notice is in accordance with TEX. NAT. RES. CODE § 91.704 and TEX. GOV'T CODE § 2001.054.
  4. On August 16, 2016, Staff conducted another inspection of the Lease and documented violations of Statewide Rules 8(d)(1), 8(d)(2), 21(j), 57(c)(1) and 91(d)(1) were still ongoing.
  5. On August 17, 2016, DSD's P-4 was canceled.

6. In a letter received by the Commission on September 2, 2016, DSD requested a hearing regarding the P-4 cancellation.
7. On October 26, 2016, a Notice of Hearing, setting the hearing for November 28, 2016, was issued and served on DSD and Staff.
8. Both Staff and DSD attended the hearing and presented evidence.
9. On September 8, 2016, Staff conducted an inspection of the Lease and documented that the violations of Statewide Rules 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1) were still ongoing.
10. On November 17, 2016, Staff conducted an inspection of the Lease and documented that the violations of Statewide Rules 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1) were still ongoing.
11. When in operation, DSD services water trucks that carry produced water from oil and gas wells. The trucks are unloaded at the Lease, primarily into a concrete pit, the water is treated and disposed of in the disposal wells on the Lease.
12. Commission inspection reports made on July 26, 2016, August 16, 2016, September 8, 2016 and November 17, 2016 demonstrate that DSD is in violation of Statewide Rule 8(d)(1) for unauthorized discharge and disposal of oil and gas waste.
  - a. On July 26, 2016:
    - i. Solid and semisolid waste was stockpiled on the Lease near the washout pad, and DSD did not have a permit for the washout pad;
    - ii. Water and oil was discharged onto the washout pad from a hose originating in the sump pit by the disposal pumps; and
    - iii. DSD was utilizing a concrete pit, with dimensions of eighty-feet by fifty-feet by fourteen-feet, which contained the oil and gas waste from the trucks, there was 0.5 foot of freeboard for an estimated 9,620 barrels ("bbls") of sediment and water with 100% oil coverage located in the pit.
  - b. As of November 17, 2016, the pit was still being used.
13. Commission inspection reports made on July 26, 2016, August 16, 2016, September 8, 2016 and November 17, 2016 demonstrate that DSD is in violation of Statewide Rule 8(d)(2) for maintaining and using a pit without a permit.
  - a. On July 26, 2016:

- i. DSD was utilizing a concrete pit, with dimensions of eighty-feet by fifty-feet by fourteen-feet, which contained the oil and gas waste from the trucks it services, and
    - ii. There was 0.5 foot of freeboard for an estimated 9,620 bbls of sediment and water with 100% oil coverage located in the pit.
  - b. As of November 17, 2016, the pit was still being used.
- 14. Commission inspection reports made on July 26, 2016, August 16, 2016, September 8, 2016 and November 17, 2016 demonstrate that DSD is in violation of Statewide Rule 91(d)(1) for failing to properly remediate contaminated soil.
  - a. On July 26, 2016:
    - i. Solid and semisolid waste was stockpiled on the Lease near the washout pad, and DSD did not have a permit for the washout pad;
    - ii. Water and oil was discharged onto the washout pad from a hose originating in the sump pit by the disposal pumps; and
    - iii. DSD was utilizing a concrete pit, with dimensions of eighty-feet by fifty-feet by fourteen-feet, which contained the oil and gas waste from the trucks. There was 0.5 foot of freeboard for an estimated 9,620 bbls of sediment and water with 100% oil coverage located in the pit.
  - b. As of November 17, 2016, the pit was still being used.
- 15. DSD acknowledges the liquid in the concrete pit is unloaded produced water from the oil trucks it serves, and the concrete pit still contains the oil and gas waste from the trucks.
- 16. DSD provided no information or evidence that it has cleaned up the discharges in accordance with the cleanup standards required in Statewide Rule 91(d)(1).
- 17. Commission inspection reports made on July 26, 2016, August 16, 2016, September 8, 2016 and November 17, 2016 demonstrate that DSD is in violation of Statewide Rule 57(c)(1) for maintaining and operating a reclamation plant without a permit.
  - a. As of July 26, 2016:
    - i. There were machines at the Lease capable of reclamation via treatment with heat and/or chemicals, such as acid;

- ii. There were containers of waste onsite near the machines; and
    - iii. DSD employees admitted to separating hydrocarbons from waste received and selling the hydrocarbons for money.
  - b. As of November 17, 2016, the machines were still on the Lease with waste near the machines, and at the time of the inspection the tanks were disconnected.
18. DSD acknowledges it treated produced salt water to separate the hydrocarbons from the waste it received using gravity, heat and chemicals such as acid. DSD acknowledges the tanks near the reclamation equipment contain oil and gas waste.
19. DSD's Skim Oil/Condensate Reports (Form P-18) that DSD filed with the Commission report that DSD sold hydrocarbons.
20. DSD admits it does not receive hydrocarbons and only receives the oil and gas waste, namely produced water, from the trucks it cleans.

### **Conclusions of Law**

- 2. DSD has been provided proper notice and an opportunity for hearing. See, e.g., TEX. GOV'T CODE § 2001.051-.052 and 16 TEX. ADMIN. CODE § 1.45.
- 3. The Commission has jurisdiction in this case. See, e.g., TEX. NAT. RES. CODE §§ 81.051 and 91.701-707.
- 4. On July 26, 2016, DSD was in violation of Statewide Rules 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1). 16 TEX. ADMIN. CODE §§ 3.8(d)(1), 3.8(d)(2) 3.57(c)(1) and 3.91(d)(1).
- 5. In accordance with TEX. NAT. RES. CODE § 91.704 and TEX. GOV'T CODE § 2001.054, on August 1, 2016, Staff issued a *Notice of Intent to Cancel P-4 Certificate of Compliance and to Sever Pipeline or Other Carrier Connection* ("Notice") regarding the Lease. In the Notice and before canceling DSD's P-4 for the Lease, Staff gave notice to DSD of the facts and conduct alleged to warrant the cancellation and gave DSD and opportunity to request a hearing to show compliance with all requirements of law for retention of the P-4. In the Notice, Staff gave DSD a deadline to either achieve compliance or request a hearing within ten days of the date of the letter.
- 6. As of August 16, 2016, DSD was still in violation of Statewide Rules 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1) and had not requested a hearing.
- 7. On August 17, 2016, DSD's P-4 was canceled in accordance with TEX. NAT. RES. CODE § 91.704.



8. Staff's cancellation and severance of DSD's P-4 was proper and in accordance with Commission statutes and rules. See TEX. NAT. RES. CODE §§ 91.704-705.
9. DSD remains in violation of Statewide Rules 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1).
10. DSD's P-4 should not be renewed until it pays any required fees and is in compliance with Statewide Rules 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1), including completing the following corrective actions designed to achieve compliance:
  - a. To address the reclamation plant violation—the violation of Statewide Rule 57(c)(1)—DSD should be required to complete the following to achieve compliance:
    - 1) Conduct a Naturally Occurring Radioactive Material (NORM) survey on all facility storage tanks and equipment located in the reclamation and storage area. Sampling points must include the ground surface surrounding the perimeter of the reclamation area. Submit the NORM survey results to the Technical Permitting Section that includes a site diagram identifying sample locations, a table of results with location identifiers, and the calibration sheets for the instrument used to conduct the survey.
    - 2) Remove all waste materials from the processing and storage tanks as well as from any other equipment, and dispose of it at an authorized disposal facility.
    - 3) Clean all tanks and equipment and remove it from the area in an authorized manner.
    - 4) After all tanks and equipment have been disconnected and removed, take four representative composite soil samples to a depth of one foot around and underneath the former reclamation area. Soil samples must be analyzed for the parameters listed in Table 1 and must not exceed the specified limitations. Any soil sample that exceeds the parameter limitations specified in Table 1 is considered waste and must be disposed of at an authorized disposal facility.



Table 1: Soil Testing Parameters & Limitations

PARAMETER	LIMITATION
pH <i>EPA Method 9045C or equivalent</i>	6 to 10 standard units
Electrical Conductivity (EC) <i>Louisiana Dept. of Natural Resources Lab Procedures for Analysis of Exploration and Production Waste or equivalent</i>	≤ 4.0 mmhos/cm
Total Petroleum Hydrocarbon (TPH) <i>EPA Method 5035A / TX1005</i>	≤ 10,000 mg/kg
Total Benzene, Toluene, Ethylbenzene, Xylenes (BTEX) <i>EPA Method 5035A / 8021 / 8260B</i>	≤ 30 mg/kg
Metal (Total) <i>EPA Method 6010 / 6020 / 7471A</i>	
Arsenic	≤ 10 mg/kg
Barium	≤ 10,000 mg/kg
Cadmium	≤ 10 mg/kg
Chromium	≤ 100 mg/kg
Lead	≤ 200 mg/kg
Mercury	≤ 10 mg/kg
Selenium	≤ 10 mg/kg
Silver	≤ 200 mg/kg

- 5) Remove and dispose of any additional, visually contaminated soils surrounding the reclamation and storage areas.
  - 6) Obtain prior written approval from the San Antonio District Office Staff and Technical Permitting Staff regarding the sample locations, sampling methodology, and the entity to perform the analysis for the soil samples required by step 4 above.
  - 7) Notify San Antonio District Office Staff and Technical Permitting Staff upon completion of steps 1, 2 and 4 above.
  - 8) Complete all actions required above within 90 days from the date the final order in this case is effective.
- b. To address pit violations—the violations of Statewide Rules 8(d)(1), 8(d)(2) and 91(d)(1)—DSD should be required to complete the following to achieve compliance:
- 1) Conduct a NORM survey on the concrete pit and adjacent pads as well as any storage tanks associated with the pit or disposal wells.

Sampling points must include the ground surface surrounding the perimeter of the pit area. Submit the NORM survey results to Technical Permitting that includes a site diagram identifying sample locations, a table of results with location identifiers, and the calibration sheets for the instrument used to conduct the survey.

- 2) Remove all waste materials from the concrete pit, pads and associated storage tanks, and disposed at an authorized disposal facility. After all waste materials have been properly disposed, the pit must be cleaned, demolished and the concrete rubble and wash water must be disposed of in an authorized manner.
- 3) Clean all tanks and equipment and remove them from the area in an authorized manner.
- 4) After removal of the pit, take four representative soil samples to a depth of one foot around and underneath the pit area. Soil samples must be analyzed for the parameters listed in Table 1 above and must not exceed the specified limitations. Any soil sample that exceeds the parameter limitations specified in Table 1 is considered waste and must be disposed of at an authorized disposal facility.
- 5) Remove and dispose of any additional, visually contaminated soils surrounding the pit area.
- 6) Backfill and compact the pit area, and the final surface grading of the pit must be accomplished in such a manner that rainfall will not collect at the former pit location.

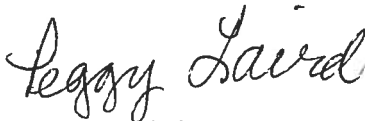
### Recommendations

The Examiners recommend the Commission enter an order:

1. Finding the cancelation and severance of DSD's P-4 was proper; and
2. Ordering that DSD's P-4 not be renewed until DSD pays any required fees and is in compliance with 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1), including ordering DSD to complete the corrective actions in the proposed conclusions of law above.

Respectfully,

  
Jennifer Cook  
Administrative Law Judge

  
Peggy Laird  
Technical Examiner

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**OIL & GAS DOCKET NO. 01-0301648**

---

**APPLICATION OF DSD-FRIO ENVIRONMENTAL, INC. TO PROVIDE DSD-FRIO ENVIRONMENTAL, INC. (OPERATOR NO. 229360) AN OPPORTUNITY TO SHOW CAUSE WHY ITS P4 CERTIFICATE OF COMPLIANCE SHOULD NOT BE CANCELLED AND THE PIPELINE OR OTHER CARRIER CONNECTION SEVERED ON THE FRIO COUNTY SCHOOL LAND LEASE (RRC LEASE NO. 16058), PEARSALL (AUSTIN CHALK) FIELD, FRIO COUNTY, TEXAS**

---

**FINAL ORDER**

The Commission finds that, after statutory notice, the captioned proceeding was heard by the Administrative Law Judge and Technical Examiner (collectively referred to "Examiners") on November 28, 2016. The Examiners have circulated a Proposal for Decision containing findings of fact and conclusions of law. Having been duly submitted to the Railroad Commission of Texas at a conference held in its offices in Austin, Texas, those findings of fact and conclusions of law are hereby adopted and made a part hereof by reference.

**IT IS ORDERED** that the application by DSD-Frio Environmental, Inc. ("DSD"), Operator No. 229360, for a determination—contrary to Railroad Commission ("Commission" or "RRC's") staff's ("Staff's") prior determination—that it is not in violation of Commission rules and its Commission Form P-4 Certificate of Compliance ("P-4") for the Frio County School Land Lease (the "Lease") should be cancelled and pipeline or other carrier connections severed is hereby **DENIED**.

**IT IS FURTHER ORDERED** that:

1. The cancelation and severance of DSDs' P-4 for the Lease was properly cancelled and severed on August 17, 2016.
2. Before DSD's P-4 can be renewed, DSD is required to pay for any reconnection fees.
3. Before DSD's P-4 can be renewed, DSD is required to bring the Lease into compliance with Statewide Rules 8(d)(1), 8(d)(2), 57(c)(1) and 91(d)(1), including completing the following corrective actions designed to achieve compliance:
  - a. To address the reclamation plant violation—the violation of Statewide Rule 57(c)(1)— DSD should be required to complete the following to achieve compliance:
    - 1) Conduct a Naturally Occurring Radioactive Material (NORM) survey on all facility storage tanks and equipment located in the reclamation and storage area. Sampling points must include the ground surface surrounding the perimeter of the reclamation area. Submit the NORM survey results to the Technical Permitting Section that includes a site diagram identifying sample locations, a table of results with location identifiers, and the calibration sheets for the instrument used to conduct the survey.

- 2) Remove all waste materials from the processing and storage tanks as well as from any other equipment, and dispose of it at an authorized disposal facility.
- 3) Clean all tanks and equipment and remove it from the area in an authorized manner.
- 4) After all tanks and equipment have been disconnected and re-moved, take four representative composite soil samples to a depth of one foot around and underneath the former reclamation area. Soil samples must be analyzed for the parameters listed in Table 1 and must not exceed the specified limitations. Any soil sample that exceeds the parameter limitations specified in Table 1 is considered waste and must be disposed of at an authorized disposal facility.

Table 1: Soil Testing Parameters & Limitations

PARAMETER	LIMITATION
pH <i>EPA Method 9045C or equivalent</i>	6 to 10 standard units
Electrical Conductivity (EC) <i>Louisiana Dept. of Natural Resources Lab Procedures for Analysis of Exploration and Production Waste or equivalent</i>	≤ 4.0 mmhos/cm
Total Petroleum Hydrocarbon (TPH) <i>EPA Method 5035A / TX1005</i>	≤ 10,000 mg/kg
Total Benzene, Toluene, Ethylbenzene, Xylenes (BTEX) <i>EPA Method 5035A / 8021 / 8260B</i>	≤ 30 mg/kg
Metal (Total) <i>EPA Method 6010 / 6020 / 7471A</i>	
Arsenic	≤ 10 mg/kg
Barium	≤ 10,000 mg/kg
Cadmium	≤ 10 mg/kg
Chromium	≤ 100 mg/kg
Lead	≤ 200 mg/kg
Mercury	≤ 10 mg/kg
Selenium	≤ 10 mg/kg
Silver	≤ 200 mg/kg

- 5) Remove and dispose of any additional, visually contaminated soils surrounding the reclamation and storage areas.
- 6) Obtain prior written approval from the San Antonio District Office Staff and Technical Permitting Staff regarding the sample locations, sampling methodology, and the entity to perform the analysis for the soil samples required by step 4 above.
- 7) Notify San Antonio District Office Staff and Technical Permitting Staff upon completion of steps 1, 2 and 4 above.

- 8) Complete all actions required above within 90 days from the date the final order in this case is effective.
- b. To address pit violations—the violations of Statewide Rules 8(d)(1), 8(d)(2) and 91(d)(1)—DSD should be required to complete the following to achieve compliance:
- 1) Conduct a NORM survey on the concrete pit and adjacent pads as well as any storage tanks associated with the pit or disposal wells. Sampling points must include the ground surface surrounding the perimeter of the pit area. Submit the NORM survey results to Technical Permitting that includes a site diagram identifying sample locations, a table of results with location identifiers, and the calibration sheets for the instrument used to conduct the survey.
  - 2) Remove all waste materials from the concrete pit, pads and associated storage tanks, and disposed at an authorized disposal facility. After all waste materials have been properly disposed, the pit must be cleaned, demolished and the concrete rubble and wash water must be disposed of in an authorized manner.
  - 3) Clean all tanks and equipment and remove them from the area in an authorized manner.
  - 4) After removal of the pit, take four representative soil samples to a depth of one foot around and underneath the pit area. Soil samples must be analyzed for the parameters listed in Table 1 above and must not exceed the specified limitations. Any soil sample that exceeds the parameter limitations specified in Table 1 is considered waste and must be disposed of at an authorized disposal facility.
  - 5) Remove and dispose of any additional, visually contaminated soils surrounding the pit area.
  - 6) Backfill and compact the pit area, and the final surface grading of the pit must be accomplished in such a manner that rainfall will not collect at the former pit location.

**IT IS FURTHER ORDERED** by the Commission that this order shall not be final and effective until 25 days after the Commission's order is signed, unless the time for filing a motion for rehearing has been extended under TEX. GOV'T CODE § 2001.142, by agreement under TEX. GOV'T CODE § 2001.147, or by written Commission Order issued pursuant to TEX. GOV'T CODE § 2001.146(e). 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 parties are notified of this order in accordance with TEX. GOV'T CODE § 2001.144.

Each exception to the Proposal for Decision not expressly granted herein is overruled. 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 \_\_\_\_ day of \_\_\_\_\_, 2017, in Austin, Texas.

**RAILROAD COMMISSION OF TEXAS**

\_\_\_\_\_  
**CHAIRMAN CHRISTI CRADDICK**

\_\_\_\_\_  
**COMMISSIONER RYAN SITTON**

\_\_\_\_\_  
**COMMISSIONER WAYNE CHRISTIAN**

**ATTEST:**

\_\_\_\_\_  
**SECRETARY**