



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

### PROPOSAL FOR DECISION

**OIL AND GAS DOCKET No. 03-0298004**

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**ENFORCEMENT ACTION AGAINST BRYAN WOODBINE GATHERING, INC.  
(OPERATOR NO. 104257) FOR VIOLATIONS OF A STATEWIDE RULE ON THE  
BRAZOS COUNTY FACILITY-RECLAMATION PLANT, PLANT NO. R9 #03-1116,  
BRAZOS COUNTY, TEXAS**

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### APPEARANCES

#### **FOR THE RAILROAD COMMISSION OF TEXAS:**

David Bell, Staff Attorney, Enforcement Section  
David Randle, Engineering Specialist 5, Field Operations Staff

#### **FOR BRYAN WOODBINE GATHERING, INC.**

Mark Helmueller, Attorney at Law  
David Martineau, President of Respondent

#### **PROCEDURAL HISTORY:**

Notice of Hearing:	December 19, 2017
Hearing on the merits:	February 22, 2018
Proposal for Decision issued:	March 1, 2018

Heard by:	Clayton J. Hoover, <i>Administrative Law Judge</i>
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### SUMMARY

In Docket No. 03-0298004, the Railroad Commission of Texas ("Enforcement") alleges that Bryan Woodbine Gathering, Inc. (Operator No. 104257), ("Woodbine"), is in violation of Statewide Rules on the Brazos County Facility-Reclamation Plant, Brazos County, Texas, as a result of failure to bring the facility in compliance with Statewide Rule 8 and the terms of its R9 permit by removing and disposing of sludge in the bottom of two inactive and abandoned 10,000 bbl tanks.

Staff Attorney, David Bell, presented the testimony of David Randle and various inspection reports and other documentary evidence to show Statewide Rule violations identified by staff beginning in 2013.<sup>1</sup> All violations have been brought into compliance except for sludge remaining in the bottom of two 10,000 bbl tanks remaining on the property. Because the facility is no longer active, the tanks are inactive and abandoned and the sludge constitutes waste. Enforcement contends that the failure of Woodbine to remove and dispose of this sludge constitutes a violation of Statewide Rule 8 and the R9 Permit as set out below.

Woodbine's counsel, Mark Helmueller, presented documentary evidence and the testimony of David Martineau, President of Woodbine, regarding the past violations, their remediation and the sludge remaining in the two tanks, but failed to present evidence sufficient to demonstrate by a preponderance of the evidence that Woodbine is not in violation of Commission Rules and the Texas Natural Resources Code, as alleged by Enforcement. Mr. Martineau testified and identified documents to show that Woodbine surrendered its leasehold rights to the facility in 2012.<sup>2</sup> However, there was no evidence that Woodbine is not the current holder of the R-9 Permit covering the facility.

The preponderance of the record evidence supports all violations as alleged by Enforcement. Enforcement seeks an administrative penalty of \$ 6,748 and for Bryan Woodbine Gathering, Inc. to be ordered to place the facility into compliance with all Commission Rules and Regulations.

### APPLICABLE AUTHORITY

SWR 8(d)(1), titled *Prohibited Disposal Methods* states:

**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**

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<sup>1</sup> Enforcement Exhibit 3

<sup>2</sup> Respondent Exhibit 1

**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.**

In addition, the R9 permit issued to Bryan Woodbine specifically states:

**ALL WASTES GENERATED BY RECLAIMING OPERATIONS SHALL BE DISPOSED OF IN ACCORDANCE WITH STATEWIDE RULES 8, 9 AND 46 (RELATING TO WATER PROTECTION, DISPOSAL WELLS, AND FLUID INJECTION).<sup>3</sup>**

### EVIDENCE PRESENTED

#### ENFORCEMENT'S CASE

Enforcement offered into evidence seven exhibits and the testimony of David Randle, Engineering Specialist 5 of the Railroad Commission of Texas' Field Operations Section. Enforcement presented exhibits showing Woodbine's P-5 status and a Commission Form R9 permit (No. 03-1116) dated February 9, 1999, by which Woodbine is designated as operator and assumes the responsibilities of the facility in question. Mr. Randle carefully reviewed details of the March 21, 2013 to January 18, 2017 inspection reports of the facility.<sup>4</sup> Enforcement Exhibit 4 is the calculation of penalties prepared by Mr. Randle based on his analysis of the inspections reports.<sup>5</sup> Exhibit 5 is a letter from the Commission to Woodbine dated November 4, 2013, summarizing the violations at that time.<sup>6</sup>

Enforcement contends that the Railroad Commission filings, the above-described Inspection Reports and the testimony of Mr. Randle demonstrate violations of Statewide Rule 8(d)(1) and the terms of the R9 permit and that the two tanks on the facility with sludge in the bottom have not been brought into compliance.

Enforcement requests that Woodbine be assessed administrative penalties in the amount of \$6,478 and ordered to place the subject facility into compliance with all Commission Rules and Regulations.

#### WOODBINE'S CASE

Woodbine's witness David Martineau testified about his company's acquisition of the facility and the subsequent release of the Pipeline Lease covering the facility. With respect to the sludge remaining in the tanks, Mr. Martineau testified that it is his opinion that the sludge does not constitute waste and does not present a violation of SWR 8.

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<sup>3</sup> Enforcement Exhibit 2

<sup>4</sup> Enforcement Exh. 1-3

<sup>5</sup> Enforcement Exhibit. 4

<sup>6</sup> Enforcement Exhibit 5

### OPINION

Enforcement alleges that Bryan Woodbine Gathering, Inc. (Operator No. 104257), (“Woodbine”), has been, and remains, in violation of Statewide Rules on the Bazos County Facility-Reclamation Plant, Brazos County, Texas, as a result of various matters identified in inspections, including its failure to bring the facility in compliance with Statewide Rule 8 by removing and disposing of sludge in the bottom of two inactive and abandoned 10,000 bbl tanks.<sup>7</sup>

The preponderance of evidence in this case shows that Woodbine committed the violations as alleged by Enforcement. While various violations have been remediated and brought into compliance, the sludge remains on the facility as waste which requires removal and disposition under Statewide Rules. The fact that the Pipeline Lease on the facility has ended is not relevant to Woodbine’s remaining responsibilities and liabilities under Statewide Rules.

Woodbine has no history of violations of Commission Rules and Regulations.

The Administrative Law Judge recommends that the Commission assess Woodbine an administrative penalty in the amount of \$6,478.00, and order Woodbine to bring the facility into compliance with all Commission Rules and Regulations. Enforcement used the Penalty Guidelines of Rule 107 to arrive at the recommended penalty contained herein of \$6,478.00.

### CONCLUSION/RECOMMENDATION

The Administrative Law Judge agrees with Enforcement that, based on the preponderance of the evidence, Woodbine has violated Statewide Rule 8(d)(1) and has not brought all of such violations into compliance and makes the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. Bryan Woodbine Gathering, Inc. appeared at the hearing through counsel and through its President, David Martineau.
2. As established by Bryan Woodbine Gathering, Inc.’s most recent Form P-5 *Organization Report*, Bryan Woodbine Gathering, Inc. is a Corporation.
3. Bryan Woodbine Gathering, Inc. designated itself as the operator of the Brazos County Facility-Reclamation Plant, Brazos County, Texas, by virtue of a Commission Form R-9 permit dated February 9, 1999.

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<sup>7</sup> See First Amended Original Complaint

4. The violation in this docket is a violation of Commission rules related to safety and the prevention or control of pollution.
5. Bryan Woodbine Gathering, Inc. violated Statewide Rule 8(d)(1) and the terms of its R9 Permit as a result of various spills and other conditions identified the District Office field inspections conducted on from March 21, 2013, to January 18, 2017.
6. The presence of sludge in the two 10,000 bbl inactive and abandoned tanks on the facility constitutes a violation of Statewide Rules and the terms of the R9 Permit because the sludge constitutes waste. Such violations have not been brought into compliance.
7. Other than the violations described above, Bryan Woodbine Gathering, Inc. has no prior history of violations of Commission rules.
8. Bryan Woodbine Gathering, Inc. acted in bad faith because it failed to correct the violations on the subject facility and failed adequately to explain its inaction.
9. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto, David Martineau and Kelli Poole were persons who held positions of ownership or control in Bryan Woodbine Gathering, Inc.

#### **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. Bryan Woodbine Gathering, Inc. violated Statewide Rule 8(d)(1) and the terms of its R9 Permit as a result of various spills and other conditions identified by the District Office field inspections conducted from March 21, 2013, to January 18, 2017.
4. The documented violations committed by Bryan Woodbine Gathering, Inc. constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code § 81.0531.
5. Bryan Woodbine Gathering, Inc. did not demonstrate good faith within the meaning of Texas Natural Resources Code § 81.0531.

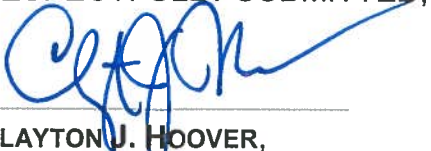
#### **RECOMMENDATIONS**

The Administrative Law Judge recommends that the above Findings of Fact and Conclusions of Law be adopted and that Bryan Woodbine Gathering, Inc. be assessed an administrative penalty of \$6,478.00, as discussed above.

The Administrative Law also recommends that Bryan Woodbine Gathering, Inc. be directed to place the Brazos County Facility-Reclamation Plant, Brazos County, Texas fully into compliance with all Commission Rules and Regulations and requests for further investigation and remedial action within 30 days of the date this order becomes final

The Administrative Law Judge also recommends that Bryan Woodbine Gathering, Inc., David Martineau and Kelli Poole be made subject to the restrictions of TEX. NAT. RES. CODE § 91.114.

RESPECTFULLY SUBMITTED,



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**CLAYTON J. HOOVER,**  
***Administrative Law Judge***