



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 08-0304808

ENFORCEMENT ACTION AGAINST MARTIN COUNTY ENVIRONMENTAL LLC (583479) FOR VIOLATION OF PERMIT CONDITIONS AND STATEWIDE RULES AT THE MARTIN COUNTY ENVIRONMENTAL, LLC RECLAMATION FACILITY (PERMIT NO. R9 08-1420), MARTIN COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY: Clayton Hoover – Administrative Law Judge
Lynn Latombe – Administrative Law Judge
Karl Caldwell – Technical Examiner

PROCEDURAL HISTORY:
Prehearing Conference Dates: November 8, 2017; April 2, 2018
Proper Operator Hearing: April 11, 2018
Hearing Dates: May 17-18, 23, 2018; June 12, 2018
Proposal for Decision Issued: December 20, 2018

APPEARANCES:

Commission Staff

Jessica Mendoza, Attorney
Megan Neal, Attorney
Mysti Doshier, Manager, Financial Assurance
Bo Vizcaino, District Cleanup Coordinator
Melissa Glaze, Attorney
Tiffany Humberson, Mgr, Environmental Permitting

Martin County Environmental, LLC

Wes McGuffey, Attorney at Law
Jay Stewart, Attorney at Law
James Jeffery Glaser, Licensed Professional Engineer in the State of Texas
Clay Nance, Texas attorney specializing in oil and gas law
Mark McCoury, certified as an expert in Railroad Commission permitting matters and enforcement matters
John Martian Marron, observing-Martin County Environmental, LLC owner

Table of Contents

I.	Statement of the Case	3
II.	Jurisdiction and Notice	3
III.	Discussion of Evidence	3
	A. Summary of Staff's Evidence and Argument.....	4
	B. Summary of Protestant's Evidence and Argument.....	6
IV.	Case Analysis	7
	A. Burden of Proof	9
	B. The Penalty	10
VI.	Recommendation, Proposed Findings of Fact and Conclusions of Law	10

Statement of the Case

The Railroad Commission of Texas (the "Commission") authorized and issued Permit No. R9 08-1420 (the "Permit") for the Martin County Environmental LLC—Reclamation Facility (the "Facility"). Such Permit was issued to Martin County Environmental LLC ("Respondent"). Staff alleges that the Facility has not been operated in compliance with applicable Permit conditions and Statewide Rules. The Commission is authorized to cancel the Permit and to assess administrative penalties for such violations pursuant to Texas Natural Resources Code §§ 81.0531, 91.101(4) and 91.114(h). Respondent claims that although its operations have deviated from the Permit, its washout and related operations do not violate Permit conditions or Statewide Rules and that it seeks to remain in compliance.

Jurisdiction and Notice¹

Pursuant to longstanding authority granted by the Texas Legislature, the Railroad Commission of Texas has exclusive jurisdiction over oil and gas wastes in the State of Texas. See, e.g., Tex. Nat. Res. Code § 81.0523; Tex. Water Code § 26.131. To prevent pollution, the legislature directed the Commission to issue permits for activities associated with the discharge, storage, handling, transportation, reclamation and disposal of oil and gas wastes. See, e.g. Tex. Nat. Res. Code § 91.101; Tex. Water Code § 26.131(b). The Commission has broad authority to prevent the pollution of State waters. See *Osage Envtl., Inc. v. R.R. Comm'n of Tex.*, No. 03-08-00005-CV, 2008 WL 2852295, at *6 (Tex. App.—Austin July 24, 2008, no pet.) (mem. op.). The Commission requires permits and/or permit authority to discharge, store, handle, transport, reclaim or dispose of oil and gas wastes in the State of Texas. See, e.g. Tex. Nat. Res. Code § 91.101; Tex. Water Code § 26.131(b); 16 Tex. Admin. Code §§ 3.8 & 3.57.

Discussion of Evidence

Staff presented testimony from four witnesses and introduced 66 exhibits. Staff witnesses included Bo Vizcaino, District Cleanup Coordinator for the Commission, Melissa Glaze, Staff Attorney in the Legal Enforcement Section of the Commission, Tiffany Humberson, Manager of the Technical Permitting Section and Environmental Support at the Commission, and Mysti Doshier, Manager of the P-5 Financial Assurance Unit at the Commission.

Respondent presented testimony from three witnesses and introduced 30 exhibits. Respondent's witnesses included James Jeffrey Glaser, licensed professional engineer in the state of Texas, Mark McCoury, certified as an expert in Railroad Commission

¹ The Transcript for the hearing in this case is referred to as "Tr. Vol. [volume no(s).] at [pages:lines]." Enforcement's exhibits are referred to as "Enforcement Ex. [exhibit no(s).]" Respondent's exhibits are referred to as "Respondent Ex. [exhibit no(s).]"

permitting and enforcement matters, and Clay Nance, Texas attorney specializing in oil and gas law.

A. Summary of Staff's Evidence and Argument

Staff alleges that Respondent willfully engages in illegal and unpermitted oil and gas waste disposal. Respondent obtained a permit for a reclamation facility. The facility was not used as a reclamation facility. It was instead used to conduct washout of trucks in violation of the Permit. The facility site configuration and use deviated from the Permit. The cement pad was smaller than permitted and additional storage tanks on site exceeded the capacity permitted. Open tanks were used instead of closed top tanks to allow solid waste emptied from trucks onto the concrete pad to be moved with an excavator or skid loader into tanks near the pad.

In the operation of the washout facility, oil and gas waste was stored on the cement pad and in tanks around the facility in greater amounts than the capacity for which the facility was permitted. In the conduct of these washout operations, oil and gas waste contaminated area around the pad.

Respondent did not have a scintillation meter at the Facility, and incoming loads of waste were not scanned for naturally occurring radioactive materials. The potentially dangerous material was deposited into the open top tanks. The additional storage capacity created by the use of unpermitted storage tanks was not considered in the assessment of financial security, and as such, the financial security is not adequate to secure facility closure as it is now configured and being used.

Staff requests that the Commission revoke Martin County Environmental LLC's Permit No. R9 08-1420 under Texas Natural Resources Code §§ 91.101(4) and 91.114(h) and assess administrative penalties for Respondent's Permit violations under Texas Natural Resources Code § 81.0531.

Staff Exhibits included the following, which were introduced through testimony at the hearing on the merits:

- No. 1 Permit
- No. 2 Inspection Report, 1/16/2015
- No. 3 Inspection Report, 4/13/2015
- No. 4 Inspection Report, 5/21/2015
- No. 5 Inspection Report, 8/5/2015
- No. 6 Inspection Report, 8/25/2015
- No. 7 Inspection Report, 10/2/2015
- No. 8 Inspection Report, 11/18/2015
- No. 9 Inspection Report, 2/05/2016
- No. 10 Back-check Inspection, 5/3/2016
- No. 11 Inspection Report, 9/8/2016
- No. 12 Inspection Report, 12/12/2016
- No. 13 Inspection Report, 1/5/2017

- No. 14 ICE System Notification by Morales, 2/22/2017
- No. 15 ICE System Notification by Delaney, 2/22/2017
- No. 16 Inspection Report, 2/24/2017
- No. 17 Inspection Report, 3/1/2017
- No. 18 Attached Photos, 3/1/2017
- No. 19 Inspection Report, 3/10/2017
- No. 20 Document indicating Penrose-Oldham operator
- No. 21 Permit Amendment Request
- No. 22 Inspection Report, 4/17/2017
- No. 23 Inspection Report, 6/22/2017
- No. 24 Inspection Report, 8/11/2017
- No. 25 Photos, 8/11/2017
- No. 26 Inspection Report, 8/25/2017
- No. 27 Photos, 8/25/2017
- No. 28 Currently permitted oil and gas waste haulers operating in District 8
- No. 29 Form R-2
- No. 30 Inspection Report, 9/22/2017
- No. 31 Photos, 9/22/2017
- No. 32 Inspection Report, 10/17/2017
- No. 33 Photos, 10/17/2017
- No. 34 Inspection Report, 12/8/2017
- No. 35 Photos, 12/8/2017
- No. 36 Inspection Report, 5/1/2018
- No. 37 Photos, 5/1/2018
- No. 38 TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432 (2011).
- No. 39 Offer of Settlement
- No. 40 Letter Dated 3/2/18 to Wes McGuffey from Jessica Mendoza
- No. 41 Martin County Sheriff Case Report (NOT admitted)
- No. 42 Email exchange between Jessica Mendoza and Wes McGuffey
- No. 43 Email exchange between Jessica Mendoza and Wes McGuffey
- No. 44 Email exchange between Jessica Mendoza and Wes McGuffey
- No. 45-53 PFDs and Examiners' Reports of Various Oil & Gas Cases (Administratively Noticed)
- No. 54 Statistics Report-March 2018
- No. 55 Statistics Report-April 2018
- No. 56 Statistics Report-May 2018
- No. 57 "Environmental Permit Types and Information"
- No. 58 Document showing Commercial Reclamation Plants and Commercial Separation Facilities
- No. 59 Form R-2, January
- No. 60 Form R-2, February
- No. 61 Form R-2, March
- No. 62-63 (Omitted)
- No. 64 Police Report
- No. 65 Affidavit from Trooper James Lujan from the Texas Highway Patrol
- No. 66 Copy of Approved Waste Hauler Permit

B. Summary of Respondent's Evidence and Argument

Respondent claims that it is common for facilities to differ from the site diagrams in their permits. Respondent also contends that the Permit includes all information submitted in the application process, not just the Permit itself. The smaller cement pad is not a violation. The Permit does not require the tanks to be closed top, nor does the Permit limit or require the number of tanks the facility may have onsite. Regardless of the storage capacity onsite, the Facility is consistently below the waste limit the Permit defines. Empty frac tanks awaiting washout are not a violation and the Permit, for they are not part of the facility. Staff failed to show that Respondent did not perform scans for naturally occurring radioactive material. Inspection reports show that the Facility does not have any violations.

Respondent contends that the washout activities do not violate Rule 8 and are authorized under the Permit. No pollution has occurred in the washout operations. Maintaining land at the Facility within the perimeter berm increases environmental protectiveness and should not be a violation.

Respondent argues that the penalties sought are too high, the appropriate maximum penalty should be assessed at \$14,000.00 and that Permit cancellation should not be sought.

Respondent's Exhibits included the following, which were introduced through testimony at the hearing on the merits:

- No. 1 Deposition of Bo Vizcaino
- No. 2 Copy of Statewide Rule 36
- No. 3 Inspection Report (Administrative Notice taken)
- No. 4 James Jeffrey Glaser's resume
- No. 5 Photos
- No. 6 As-built diagram of facility with attached H2S testing
- No. 7 Closure cost estimate
- No. 8 Mark McCoury's resume
- No. 9 Reclamation Plant Site Diagram
- No. 10 Inspection Reports
- No. 11 (Omitted)
- No. 12 Reclamation Plant Permit for Production Waste Solutions
- No. 13 16 T.A.C. § 1.201
- No. 14 Hearing Request Letter
- No. 15 Original Application of Martin County Environmental
- No. 16 RAD Letter
- No. 17 Clay Nance's resume
- No. 18 Statutory Provision
- No. 19 Statutory Provision from TNRC
- No. 20 Statewide Rule 107

- No. 21 Appendix F
- No. 22 Proposal for Decision from Enforcement Case from 2017
- No. 23 Summary of Enforcement Cases
- No. 24 Transmittal Letters with Proposed Orders
- No. 25 Statewide Rule 57
- No. 26 Statewide Rule 8
- No. 27 Letter dated 9/13/17, Permit Amendment Request with Attachments
- No. 28 Inspection Report
- No. 29 RRC Oil & Gas Monitoring and Enforcement Plan-2019 (Administrative Notice)
- No. 30 "Administrative Denial" dated 12/6/17 from Grant Chambless

Case Analysis

On November 3, 2015, the Railroad Commission granted Respondent Permit No. R9 08-1420 ("Permit") to operate a commercial reclamation facility ("Facility").⁷ The Permit granted use of the Facility limited to the treatment, processing, or reclamation of hydrocarbons from tank bottoms and other hydrocarbon wastes generated through activities associate with exploration, development, and production of crude oil and other wastes containing crude oil.⁸ The Permit was granted under the authority of 16 Tex. Admin Code § 3.57 and was subject to the provisions in the Permit. The Permit states, "This authorization is granted subject to review and cancellation should investigation show that such authorization is being abused."⁹

The Facility is being used as a washout facility, not a commercial reclamation facility.¹⁰ Trucks back onto a concrete pad and are washed out. Fluid from the trucks is gravity fed into two steel open top tanks, then loaded into frac tanks for disposal. Solids are put into an open-top roll-off bed or loaded by an excavator into an open top tank or scraped up the side of the pad wall with a skid loader and pushed into one of the open top tanks behind the cement pad where trucks are washed out. Testimony of Bo Vizcaino indicates that there was waste on the ground around the wall and frac tanks during inspection.¹¹ The Commission inspected the facility 22 times from January 2015 to May 2018. The inspections showed many repeat violations.

The Permit states, "Unless otherwise required by conditions of this Permit, construction, use, and maintenance of the reclamation plant must be in accordance with the information represented on the Application for Permit to Operate a Reclamation Plant

⁷ Enforcement Ex. 1.

⁸ Enforcement Ex. 1.

⁹ Enforcement Ex. 1.

¹⁰ Tr. Vol. 1 at 40:8 – 40:14.

¹¹ Enforcement Ex. 12. Enforcement Ex. 16. Tr. Vol. 1 at 46:25 – 47:11.

(Form R-9) and attachments thereto.” The Permit incorporates the Site Diagram received from Respondent May 5, 2015, in Appendix B of the Permit.

Respondent contends that the Permit contains all material submitted in the application process, and that deviation from the Permit is acceptable. These contentions fail. Testimony of Tiffany Humberson, Manager of the Technical Permitting Section and Environmental Support for the Railroad Commission shows that an acceptable deviation from Permit requirements would be to move the location of equipment and tanks to facilitate traffic flow. Changing closed top tanks to open top tanks or adding frac tank storage would not be acceptable.¹³ Ms. Humberson testified that the Permit is a complete document on its own. Any portion of the application will be incorporated into the Permit itself as a Permit appendix, such as a site facility diagram or construction drawings.¹⁴

The site diagram is incorporated as Appendix B to the Permit (“Permit Site Diagram”) with a date of May 5, 2015. Respondent provided this site diagram that was accepted and incorporated into the Permit.¹⁵ This diagram indicates closed top tanks and was prepared by Bart Huffman, Professional Engineer, with a date of April 30, 2015. An earlier diagram was submitted in the application process. This earlier diagram was prepared by Professional Engineer Bart Huffman, is dated December 9, 2014, and indicates four open top tanks.¹⁶ This revision demonstrates that Respondent intentionally changed the site diagram to include “Closed top steel AST 400-barrel capacity tanks”.¹⁷ However, repeat inspection reports indicate open top tanks were used in contradiction to the Permit. Testimony of Bo Vizcaino showed that reclamation plants in Martin County do not utilize open top tanks because of H₂S vapors emanating from such sites, which could be a hazard.¹⁸

The Narrative Description of the Process as described in the Permit explains that incoming oil and gas waste will be separated into solid and liquid fractions. Separated solids will be placed into one of four portable frac tanks and later transported to an authorized solid waste disposal site. Liquid waste would be placed into an aboveground water tank before being transported to Penrose-Oldham SWD well. Recovered crude oil would be placed into aboveground storage tanks or transferred to one of six 400-bbl Above Storage Tanks (ASTs) prior to transport for offsite commercial sale.¹⁹

The Permit required that the general layout and arrangement of the facility shall be consistent with the Site Diagram provided by the Respondent and incorporated as Permit

¹³ Tr. Vol. 4 at 100:5-100:17.

¹⁴ Tr. Vol. 4 at 91:2- 91:9.

¹⁵ Respondent Ex. 9.

¹⁶ Tr. Vol. 2 at 239:14-239:21.

¹⁷ Tr. Vol. 2 at 240:16-240:19.

¹⁸ Tr. Vol. 1 at 41:10-41:19.

¹⁹ Enforcement Ex. 1.

Appendix B.²⁰ The facility was limited to having no more than 4,300 barrels of unprocessed and processed oil and gas waste and 99.8 cubic yards of solids resulting from the reclamation process onsite at any given time.²¹

Respondent was required to maintain financial security of \$90,180.00 to secure closure of the permitted facility. Any modification to the facility that would increase the required financial security must be approved by the Commission in advance of the modification.²² Tiffany Humberson testified that the Commission does cost closure estimates based on the total capacity of the facilities, which is used to determine the financial security required of permit holders.²³ This facility had a storage capacity that was significantly more than the Permit allowed.²⁴ Inspections made between February 2017 and September 2017 indicate activity that exceeds the scope of the Permit. The increased capacity would impact the cost closure estimate and in turn the financial security required of a permit holder. "The increased capacity would increase the financial security for the volumes."²⁵ Respondent did not have sufficient financial security to cover the volume increase from the approved Permit volumes.

Burden of Proof

Staff had the burden of proof and demonstrated that Respondent violated Permit provisions and Statewide Rules by a preponderance of the evidence.

A preponderance of the evidence means that Enforcement's allegations and evidence of each violation is more likely true than not true. See, *In re Lipsky*, 460 S.W.3d 579, 589 (Tex. 2015); see also, e.g. *Texas Farm Prods. Co. v. Johnson*, 190 S.W.2d 178, 180 (Tex. Civ. App.—Waco 1945, no writ) (holding that a preponderance of the evidence means the greater weight of the credible testimony); and Black's Law Dictionary (10th ed. 2014) (defining "preponderance of the evidence" as "the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact, but by evidence that has the most convincing force;" "superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other"). The evidence shows that Respondent's violations warrant Permit cancellation.

²⁰ Enforcement Ex. 1.

²¹ Enforcement Ex. 1.

²² Enforcement Ex. 1.

²³ Tr. Vol. 4 at 93:11-93:18.

²⁴ Tr. Vol. 4 at 93:23-93:25.

²⁵ Tr. Vol. 4 at 94:8-94:10.

The Penalty

Staff recommends a penalty of \$329,322.00 for the violations established by Staff's evidence. Such penalty is based on the penalty guidelines in Statewide Rule 107.

The Commission may assess administrative penalties against Respondent up to \$10,000 per day for each violation, with each day such violation continues constituting a separate violation.²⁷ Commission Statewide Rule 107 provides guidelines to be utilized when assessing enforcement penalties.²⁸ Statewide Rule 107 provides factors that are to be considered. Specifically, Statewide Rule 107(d) states:

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

- (1) the person's history of previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health or safety of the public; and
- (4) the demonstrated good faith of the person charged.²⁹

Rule 107 provides guideline minimum penalties for typical violations.³⁰

The violations at issue occurred over an extended period. The Administrative Law Judges and Technical Examiner find the evidence supports assessment of the \$329,322.00 recommended penalty and cancellation of the Permit.

Recommendation, Proposed Findings of Fact and Conclusions of Law

Based on the record in this case and evidence presented, the Administrative Law Judges and Technical Examiner recommend that the Commission find that the above stated violations occurred; assess the penalty recommended by Staff for those violations; and adopt the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent's Form P-5 Organization Report is active, with the most recent report being filed on August 23, 2018.
2. Pursuant to Permit No. R9 08-1420 ("Permit"), issued and approved on November 3, 2015, Respondent is the operator of Martin County Environmental LLC—Reclamation Facility, Martin County, Texas.

²⁷ Tex. Nat. Res. Code § 81.0531.

²⁸ See 16 Tex. Admin. Code § 3.107(b).

²⁹ 16 Tex. Admin. Code § 3.107(d).

³⁰ 16 Tex. Admin. Code § 3.107(e)(1) and (j).

3. The Permit authorizes four 400-barrel closed-top tanks to receive incoming oil and gas wastes.
4. The Permit specifically required closed-top tanks due to concerns with the elevated levels of hydrogen sulfide in regional oil and gas wastes. Inhaling hydrogen sulfide can adversely affect human health.
5. The Permit authorizes four (4) portable frac tanks to store separated solid oil and gas wastes.
6. The Permit authorizes one (1) water tank to store separated liquid waste.
7. The Permit does not authorize the storage of frac tanks prior to washout. On March 1, 2017; April 17, 2017; September 22, 2017; October 17, 2017 and December 8, 2017, Respondent was observed storing frac tanks prior to washout at the Facility.
8. The Permit authorizes six 400-bbl heated aboveground storage tanks ("ASTs") to store recovered crude oil. On March 1, 2017; June 22, 2017; August 11, 2017; August 25, 2017; September 22, 2017 and October 17, 2017, Respondent was observed using only two or three oil tanks.
9. Respondent was observed storing crude oil in a 500-bbl frac tank on October 17, 2017.
10. The Permit designates the Facility's cement pad as a "Non-Waste Holding All Weather Cement Slab 7 inches Thick." The pad is permitted to measure eighty feet (80') by eighty feet (80'). The cement pad at the Facility measures sixty feet (60') by eighty feet (80'). Respondent was observed storing oil and gas wastes on the cement pad. Respondent's As-Built Site Diagram, reflecting current conditions at the Facility, describes the cement pad as a "Cement Ground Cover/ All Weather Cement Pad," measuring sixty feet (60') by eighty feet (80').
11. The Permit authorizes the Facility to be 160 feet by 140 feet. Respondent's As-Built Site Diagram, reflecting current conditions at the Facility, shows the Facility measuring 485 feet by 460 feet.
12. Noncompliance with Permit conditions is a threat to State surface and subsurface waters and a threat to public health and safety.
13. The Permit limits Facility operations to the treatment, processing, and reclamation of hydrocarbons from tank bottoms, and other hydrocarbon wastes, generated through activities associated with exploration, development, and production of crude oil and other wastes containing crude oil.

14. Respondent was observed storing non-hydrocarbon cement-like waste in an open-top tank at the Facility on August 25, 2017.
15. Storage of such material was not permitted.
16. The Permit does not authorize the use of an excavator to transport oil and gas wastes at the Facility.
17. On March 1, 2017, August 11, 2017, August 25, 2017, September 22, 2017, October 17, 2017, and December 8, 2017, Respondent was observed utilizing an excavator to transport oil and gas wastes stored on the cement pad into the adjacent open-top tanks. During transportation, oil and gas wastes would fall from the excavator bucket onto the ground surface at the Facility.
18. Oil and gas wastes discharged onto the ground surface may migrate to subsurface waters, polluting the environment and adversely affecting public health.
19. The Permit limits the Facility to 4,300 bbls of unprocessed and processed oil and gas waste, and 99.8 cubic yards of solid oil and gas waste at any given time.
20. On February 24, 2017, March 1, 2017, March 10, 2017, August 11, 2017, and September 22, 2017, Respondent was observed storing more than 4,300 barrels of unprocessed and/or processed oil and gas wastes at the Facility.
21. The Permit requires Respondent to conduct monthly inspections of the entire Facility, including all concrete slabs, processing equipment, berms, aboveground storage tanks, or storage vessels for deterioration, leaks and spills.
22. On February 24, 2017, March 1, 2017, and October 17, 2017, the required monthly inspections were not at the Facility and/or made available upon request.
23. The Permit requires that each load of incoming waste (other than water-based drilling fluid and associated cuttings or oil-based drilling fluid and associated cuttings) be scanned for the presence of Naturally Occurring Radioactive Materials ("NORM") using a scintillation meter.
24. On February 24, 2017, Respondent had no scintillation meter at the Facility. Respondent could not scan each non-exempt incoming load of oil and gas wastes for the presence of NORM.
25. Without specific generator or source information, Respondent cannot identify the incoming waste. Respondent does not collect the required generator information and/or information about the source of the waste on incoming loads.
26. On August 25, 2017 and September 22, 2017, Respondent did not scan each non-exempt incoming load of oil and gas wastes for NORM.

27. Human exposure to NORM creates a health risk if particles containing alpha-emitting radionuclides are inhaled or ingested.
28. The Permit requires that Respondent collect and maintain records of each load of waste received at the Facility for a period of three (3) years from the date of receipt.
29. On February 24, 2017, Respondent failed to collect generator information for trucks depositing oil and gas wastes at the Facility. On March 1, 2017, Respondent failed to collect information on the source of the oil and gas waste being deposited at the Facility. On May 1, 2018, Respondent again failed to collect information on the source of the oil and gas waste being deposited at the Facility.
30. Respondent did not obtain a permit to discharge, store, handle, transport, reclaim, or dispose of oil and gas wastes until November 3, 2015.
31. On April 23, 2015, May 21, 2015, August 5, 2015, August 25, 2015, and October 2, 2015, Respondent was observed conducting washout operations on oilfield tanks and transports at the Facility.
32. Respondent's current Permit does not authorize washout operations on oilfield tanks and transports.
33. On December 12, 2016, March 1, 2017, March 10, 2017, June 22, 2017, August 25, 2017, and October 17, 2017, Respondent was observed conducting washouts on frac tanks, vacuum trucks, and other oilfield tanks and transports at the Facility.
34. Respondent is actively conducting washouts on oilfield tanks and transports at the Facility.
35. The washouts caused overspray contaminated by oil and gas wastes to be discharged onto the ground surface at the Facility.

CONCLUSIONS OF LAW

1. The Commission has exclusive jurisdiction over the issues pled in the First Amended Original Complaint. Tex. Nat. Res. Code §§ 81.051-.052, 81.0523, 91.101, & Chapters 81, 85, & 91.
2. Respondent is the entity responsible for maintaining the Facility in compliance with Permit No. R9 08-1420. Respondent is the entity responsible for maintaining the Facility in compliance with all applicable Commission rules and regulations.
3. Permits issued by the Commission grant an operator authority in addition to (and not exclusive of) the always-applicable Commission rules and regulations.

4. Respondent violated Permit Condition II.A., the Permit Narrative Description, and the Permit Site Diagram when it utilized open-top tanks at the Facility.
5. Respondent violated Permit Conditions I.C., II.A., the Permit Narrative Description, and the Permit Site Diagram when it utilized tanks and vessels not identified in the Permit to store oil and gas wastes.
6. Respondent violated Permit Condition I.C., II.A., and the Permit Narrative Description when it utilized more than one water tank (i.e. storage areas not identified in the Permit).
7. Respondent violated Permit Conditions I.C. and II.A. when it stored frac tanks prior to washout (i.e. storage areas not identified in the Permit).
8. Respondent violated Permit Conditions II.A., the Permit Narrative Description, and the Permit Site Diagram when it maintained less than the permitted number of ASTs. Respondent's lack of heated ASTs caused Respondent to store crude oil in an unpermitted frac tank.
9. Respondent violated Permit Conditions I.C., II.A., and the Permit Site Diagram when it constructed the cement pad smaller than the permitted dimensions and used the cement pad to store oil and gas wastes. The smaller dimensions contributed to the overspray from Respondent's washout operations, impacting the ground surface around the cement pad.
10. Respondent violated Permit Condition I.F. when it accepted and stored non-hydrocarbon cement-like waste at the Facility.
11. Respondent violated Permit conditions when it used an excavator to transport oil and gas wastes from the cement pad to the adjacent open-top tanks.
12. Respondent violated Permit Condition II.B. when it stored more than 4,300 bbls of processed and unprocessed oil and gas wastes at the Facility.
13. Respondent violated Permit Condition II.N. when it failed to conduct monthly inspections as required and/or failed to keep records of such inspections at the Facility.
14. Respondent violated Permit Condition III.B.3. when it failed to scan each incoming load of non-exempt oil and gas waste for the presence of NORM.
15. Respondent violated Permit Condition III.C.2. when it failed to collect and maintain the required records for each load of waste.

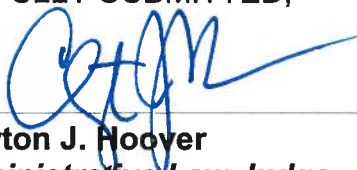
16. Respondent violated Permit conditions and Statewide Rule 8(d)(1) when it conducted washout operations on oilfield tanks and transports at the Facility.
17. Respondent violated Permit Condition I.B., Title 16 of the Texas Administrative Code § 3.78(l)(4)(A), and Texas Natural Resources Code § 91.109 when it failed to maintain commercial facility financial assurance in an amount sufficient to close the Facility in accordance with Commission rules and regulations.
18. Respondent's current violations are a hazard to the public health and safety and a threat to subsurface waters of the State. Commercial facility Permits are issued to prevent pollution of surface water and subsurface water and to protect the public health and safety. Tex. Nat. Res. Code § 91.101(4). A violation of a Permit condition is a violation of the Permit itself and an implicit threat to the environment and to public health and safety.

RECOMMENDATION

Considering the facts and violations at issue, an administrative penalty in the amount of \$329,322.00 and cancellation of Permit No. R9 08-1420 is recommended.

It is further recommended that all pending motions and requests for relief not previously granted or granted by the Final Order adopted by the Commission herein, including all preliminary matters, discovery matters and challenges to status, standing or the issue of proper operator, be denied.

RESPECTFULLY SUBMITTED,



Clayton J. Hoover
Administrative Law Judge



Lynn Latombe
Administrative Law Judge



Karl Caldwell
Technical Examiner