



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

OIL AND GAS DOCKET NO. 03-0266270

COMMISSION CALLED HEARING ON THE COMPLAINT OF DENBURY ONSHORE, LLC REGARDING THE NO-HARM LETTER ISSUED ADMINISTRATIVELY TO TEXCOM GULF DISPOSAL LLC BY THE COMMISSION'S ENVIRONMENTAL SERVICES SECTION ON SEPTEMBER 16, 2005 REGARDING CLASS I NONHAZARDOUS WASTE DISPOSAL WELL NOS. 1, 2, 3 AND 4 AT THE TEXCOM GULF DISPOSAL FACILITY IN MONTGOMERY COUNTY, TEXAS

Heard by: Donna K. Chandler, Technical Examiner
James M. Doherty, Hearings Examiner

Appearances:

Representing:

Brian Sullivan
Greg Friend
Matthew Baab
Patricia Moore
Melissa Denard
Mary Mendoza
James Fairchild
Jon Herber
Mark Swadener
Robert Sutherland

Denbury Onshore LLC

William Osborn
Ana Maria Marsland-Griffith
Rick Johnston

TexCom Gulf Disposal LLC

Angus Lupton

Senator Robert Nichols

Mike Ward

Citizens/Residents Opposing Well

Procedural history:

Notice of Hearing: June 25, 2010
Hearing held: August 16-17, 2010
Transcript date: August 23, 2010
Record Closed: September 14, 2010
PFD issued: November 19, 2010

EXAMINERS' REPORT AND PROPOSAL FOR DECISION**STATEMENT OF THE CASE**

In 1993, a permit for injection of Class I non-hazardous waste was issued to Crossroads Environmental Corporation by a predecessor agency to the Texas Commission on Environmental Quality ("TCEQ"). The facility was to be located in Montgomery County, within the boundaries of the Conroe Field Unit ("CFU"), which was established in 1978. At the time of the 1993 application, Exxon was the operator of the Conroe Field Unit. As part of the application to TCEQ, Crossroads obtained a letter from the Railroad Commission which stated that "...disposal of non-hazardous industrial waste into the Lower Cockfield Formation, in the subsurface perforated interval from 6,110 feet to 6,540 feet, will not endanger any known oil and gas reservoirs." Letters of this type are known as "no harm" letters.

In 2002, a permit for injection of Class I non-hazardous waste was issued to Huntsman Petrochemical Corporation by a predecessor agency to the TCEQ. Huntsman had applied for the permit to inject waste into two wells to be located at the same Montgomery County facility as the Crossroads wells were proposed. No injection had commenced under the 1993 permit. In conjunction with this application, the Railroad Commission issued a "no harm" letter to Huntsman in 2001. Exxon was still the operator of the CFU at that time.

In 2005, TexCom Gulf Disposal, LLC ("TexCom") filed an application with the TCEQ for authority to inject Class I non-hazardous waste into four wells at the same facility in Montgomery County. A new application was required by TCEQ because injection had not been commenced by Huntsman. TexCom requested a "no harm" letter from the Railroad Commission in 2005 in conjunction with its application to the TCEQ. The "no harm" letter was issued on September 16, 2005. Exxon was still the operator of the CFU at the time of TexCom's application and that application is still pending before the TCEQ.¹

Denbury Onshore LLC ("Denbury") purchased the Conroe Field Unit from Wapiti Operating, LLC (the successor operator to Exxon of the CFU) in December 2009, with the intention of conducting a carbon dioxide ("CO₂") flood. Denbury believes that the Railroad Commission's "no harm" letter of September 16, 2005 should be rescinded because the formation into which disposal authority is requested overlaps the unitized formation of the CFU. Denbury believes that injection of waste by TexCom will interfere with its proposed CO₂ injection, resulting in the loss of 125 million BO which is expected to be recovered as a result of proposed CO₂ injection.

¹ On November 8, 2010, a Proposal for Decision in TCEQ Docket No. 2007-0202-WDW was issued by the State Office of Administrative Hearings recommending denial of TexCom's application.

Senator Robert Nichols was represented at the hearing. A letter was submitted from Senator Nichols and Representative Brandon Creighton. Both are legislators representing Montgomery County. They support Denbury's efforts to produce additional oil from the Conroe Field Unit by means of Denbury's proposed carbon dioxide injection project, and do not believe that operation of the TexCom wells are in the public interest.

Mr. Mike Ward appeared at the hearing representing a group comprised of over 3,000 citizens of Montgomery County who are opposed to TexCom's application.

DISCUSSION OF THE EVIDENCE

Denbury's Evidence

The Conroe Field was discovered in 1931 and has produced 734 million BO and 1,069 BCF of gas. In 1978, the CFU, comprising 18,829 acres, was formed for purposes of secondary recovery. Exxon Corporation was the operator of the CFU at the time of unitization. The unitized interval is from 4,680 feet to 5,420 feet, as shown on the log of the D. A. Madeley No. 45. This interval is directly beneath the Jackson Shale and includes six separate Upper Cockfield and Main Conroe sands. The Upper Cockfield and Main Conroe sands are separated by about 130 feet of shale. Current production from the CFU is about 2,500 BOPD and 200,000 BWPD. Under current operations, Denbury estimates that remaining recoverable reserves from the CFU are 20 million BO.

Denbury purchased the Conroe Field from Wapiti in 2009 for over \$400 million, with the intention of conducting a CO₂ flood in the field. Denbury has been conducting CO₂ floods in similar fields for the past 10 years and has its own CO₂ source in Mississippi. A pipeline has already been built to transport the CO₂ to various operations in Louisiana, Alabama, Mississippi and southeast Texas. In its projects, Denbury currently injects almost 2 BCF per day of CO₂, including purchased and recycled CO₂.

Injection of CO₂ into suitable reservoirs results in decreased viscosity of the residual oil, allowing it to move to producing wells. In the Oyster Bayou field, Denbury is currently injecting over 40 MMCFD of CO₂. Denbury plans to initiate CO₂ injection in the Hastings Field by the end of 2010. Initiation of injection into the Conroe Field would be the next project, which would require building an 80 mile pipeline spur. Since 1999, Denbury's production as a result of CO₂ injection has increased from 1,300 BOPD to almost 30,000 BOPD for 16 projects. In the Conroe Field, Denbury expects to recover approximately 17% of original oil-in-place for the field as a result of CO₂ flooding. This equates to at least 125 million BO.

TexCom's proposed injection "zone" includes Upper, Middle and Lower Cockfield sands. This zone overlaps the unitized interval for the CFU by several hundred feet. The injection "interval" (perforated zone) proposed to be used by TexCom for disposal is in the Lower Cockfield only. Denbury believes that any injection of waste into the Lower Cockfield

in the TexCom wells will be communicated to the producing sands within the CFU unitized interval. (See Attachment A, Denbury Exhibit No. 8).

The TexCom WDW No. 410 well is the only one of the four proposed disposal wells which has already been drilled and logged. The well was drilled in late 1999 by Crossroads to a total depth of 6,578 feet. The well is perforated from 6,046 feet to 6,390 feet in the lower Cockfield. A packer is set at 5,108 feet, or 938 feet above the current top perforation. In its application to TCEQ, TexCom requested an injection "zone" of 5,134 feet to 6,390 feet, with a requested injection "interval" of 6,045 feet to 6,390 feet.

The Conroe Field has very complex faulting as a result of deep seated salt movement, which is common in southeast Texas. TexCom's proposed disposal wells are near the northern boundary of the Conroe Field Unit, on the upthrown side of a major fault identified as the 4400 foot fault.² (See Attachment B, Denbury Exhibit No. 6).

Since 1936, it has been documented that the extensive faulting in the Conroe Field allows migration of fluids throughout the Cockfield sands. Over the years, gas from the deeper main Conroe sands leaked up into the Upper Cockfield sands, despite the presence of the 130 foot shale between the zones. Numerous published studies also confirm that the original contacts in the entire Cockfield series have moved up uniformly over time, demonstrating that the entire Cockfield is in communication. Water production from the CFU is believed to be the result of the natural water drive from the Lower Cockfield.

Denbury believes that TexCom must also believe that the entire Cockfield series is in communication. In its TCEQ application, TexCom's documents state the following:

"The Jackson Formation forms the Upper Confining Zone for the TexCom injection project in Montgomery County, Texas."

"The Injection Zone in the subject facility includes the Upper, Middle, and Lower Cockfield Sand Members. These three thick sand packages are separated by persistent shales but the shales appear not to be thick enough to isolate the individual sand members either stratigraphically or across faults in the AOR."

Denbury believes that TexCom's statements confirm that waste injected into the Lower Cockfield will not be confined to the Lower Cockfield.

Denbury's interpretation of 3-D seismic data obtained in 2009 confirms the presence of faults and fractures at various depths in the Cockfield sands. The existence of these numerous faults and fractures within the Cockfield further confirm Denbury's opinion that there is no confining shale within the Cockfield.

At Denbury's request, Halliburton processed and interpreted the electrical micro

² This fault is known as the 4400 foot fault because of its location approximately 4,400 feet south of TexCom's proposed wells.

imager log between 4,850 and 6,577 feet in the No. 410 well. In that interval, Halliburton identified 32 mineralized fractures, 18 open fractures, and 152 more possible fractures. These fractures are paths for the injected waste to migrate from the injection interval in the No. 410 well into the Upper Cockfield productive sands. The only confinement is the thick Jackson Shale above the unitized interval.

It is not disputed that the original oil-water contact in the Conroe Field was at a subsea depth of 4,990 feet, in the bottom portion of the Upper Cockfield. The log of the No. 410 well shows increasing resistivity above the original oil-water contact, demonstrating that residual oil exists in the Upper Cockfield in the area of the disposal wells. Denbury further believes that some of the uppermost sands in the immediate area of the No. 410 well have remaining primary oil, based on the log of the No. 410 well.

Denbury presented results of two pressure falloff tests (periods of injection followed by shut-in) conducted on the No. 410: one conducted in 1999 when Crossroads drilled the well and the second conducted by TexCom in 2009 after additional perforations were added. In the 1999 test, the radius of investigation was determined to be 1,650 feet from the wellbore. The 2009 test, which was run over a period approximately twice as long as the 1999 test, was requested by TCEQ. The 2009 test was designed to reach a radius of investigation of approximately 5,400 feet, which exceeds the distance from the well to the 4,400 foot fault. However, the 2009 test only reached out approximately 2,385 feet. A tenfold increase in permeability was encountered only 950 feet from the well, indicating a path of communication and movement of fluids within the formation. Denbury believes these tests are further evidence of the communicating faults within the Cockfield formation.

Denbury calculated the differential pressure required to move fluids from TexCom's disposal well to Denbury producing wells located near the 4,400' fault. Assuming 11,000 barrels of oil and water per day producing from the eight wells along the fault, a pressure increase of only 159 psi in the Lower Cockfield disposal interval will move fluids up to the lower portion of the Upper Cockfield producing zone.

Denbury has identified three plugged wellbores in the area of the proposed disposal well which are possible conduits for communication between the disposal interval and the productive unitized interval of the Conroe Field. These three wells have plugs set above and below the Cockfield Sands, but not between the Upper and Lower Cockfield. Any casing leak in these wellbores within the Cockfield could result in well-to-well communication between the productive interval in the Upper Cockfield and the disposal interval in the Lower Cockfield.

If TexCom is allowed to dispose of waste into the Lower Cockfield, Denbury's operating costs will increase due to a need to lift additional fluids as pressure increases in the Upper Cockfield. Additionally, because a CO₂ flood is planned for the field, if the waste injected by TexCom is transmitted to the Upper Cockfield, these wastes are likely to be incompatible with formation fluids and production equipment, again resulting in increased costs.

Denbury's 20 year development plan for the CFU includes the drilling of 314 new wells, 79 workovers of active wells, and reactivation of 104 wells. It is anticipated that in the final development stage, there will be 271 producing wells and 225 injection wells.

TexCom's Position and Evidence

By letter dated August 31, 2005, TCEQ notified TexCom that its application for the subject disposal wells was administratively complete and TCEQ notified various entities of the application, including Exxon, on September 6, 2005. On July 3, 2006, TCEQ notified TexCom that the technical review of the application had been completed and draft permits had been prepared. On the same date, TCEQ notified various entities, including Exxon, of the progress of the application and the intention to issue permits. Exxon, as operator of the CFU at the time, did not respond to either TCEQ letter. TexCom believes that Denbury's request to rescind the Commission's "no harm" letter four years after it was issued, is without legal basis. TexCom believes that Denbury is bound by the non-action of its predecessor operator.

TexCom's position is that its proposed disposal will not adversely affect the CO₂ injection project proposed by Denbury. The proposed disposal wells are located at the northern edge of the CFU boundary. Further, TexCom plans to dispose of the waste in a section of the Cockfield formation which is hundreds of feet deeper than the section of the Cockfield into which Denbury plans to conduct its CO₂ operations.

According to TexCom, the injection "interval" for the disposal wells is the interval which is allowed to be perforated for disposal of waste. The larger injection "zone" referred to in the TCEQ documents includes a buffer interval. As long as injected waste is confined to the injection "zone", the operations are in compliance with the permit. TexCom does not disagree that the top of the injection "zone" includes several sands within the correlative unitized interval for the CFU.

TexCom's analysis of the log for the No. 410 disposal well indicates 199 feet of sand between 6,045 feet and 6,394 feet (the injection "interval") which has porosity sufficient to accept waste. This is thicker than the 145 feet estimated by Denbury. The effective porosity within the interval studied is 24.6% and the average water saturation within the interval is 93.4%. Using these log derived values and Denbury's 145 feet of thickness, TexCom calculated that the plume radius of the injected fluids to be 866 feet, assuming 3 years of injection at a rate of 12,000 barrels per day. After 10 years of injection at the same rate, the calculated plume radius is 1,582 feet, and after 20 years of injection, the calculated plume radius is 2,236 feet. The 10 year volume is most pertinent because the TCEQ permits have a 10 year authority, at which time permits must be reviewed. If the 199 feet of effective thickness was used in the calculations, the plume radii would be smaller.

TexCom performed pressure-front calculations to determine the pressure increase due to waste injection which would occur at the 4,400 foot fault. The nearest producing wells are to the north of the fault, about 3,000 feet away from the proposed disposal wells.

After 10 years of injection, the reservoir pressure at the fault would be increased by a maximum of 242 psi. This is less pressure than required to raise fluid 827 feet vertically from the top perforation at 6,045 feet in the No. 410 well to the original oil-water contact found at 5,218 feet in that well. Denbury alleges that its project will target reserves only above the original oil-water contact, and therefore, TexCom's proposed disposal into the non-productive deeper Cockfield interval in the No. 410 well will not affect Denbury's operations.

TexCom submitted exhibits from a Railroad Commission hearing held in 1996 in which Exxon Company requested and was granted, authority to "blow down" the gas cap in the Conroe Field. Conclusions from that hearing included 1) no discrete oil column remained in the field, 2) remaining oil reserves were located in small isolated pods thought to be trapped by small faults and stratigraphy, and 3) field average water cut was 97.5%. The conclusions from that hearing were supported by structure maps of three different Conroe producing sands which depicted the water invaded zones and the very small, high water cut oil producing areas remaining at the time of blow down. These conclusions support TexCom's position that its proposed disposal will not harm oil production from the CFU.

The No. 2315D well drilled by Wapiti encountered pressure gradients of 0.38 - 0.39 psi/foot in the lower sands of the unitized interval. This compares to a gradient of 0.406 psi/ft encountered in the TexCom No. 410 well at 6,000 feet, which is several hundred feet below the unitized interval. The two wells are on opposite sides of the large 4,400' fault previously discussed. TexCom agrees that these pressures indicate communication across the fault, but TexCom believes the communication to be a result of juxtaposition of the sands and not vertical communication between the various sands due to the presence of faults, as argued by Denbury.

EXAMINERS' OPINION

Pursuant to §27.015(a) of the Texas Water Code, a person making an application to the TCEQ for a disposal well permit under Chapter 27 of the Code must submit with the application a letter from the Railroad Commission concluding that drilling or using the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any known oil or gas reservoir. The examiners have considered the question of whether the Commission has authority to rescind a "no harm" letter once TCEQ has initiated a hearing on the application for a disposal well permit to which the "no harm" letter pertains.

The 2005 "no harm" letter relating to the TexCom application was issued as a result of informal administrative review of materials submitted by TexCom. No adjudicative process was followed in the issuance of the "no harm" letter, and there is no longer any record of what staff considered in issuing the letter. Even more formal agency decisions are subject to modification where conditions have changed materially, new or unforeseen problems have arisen, or mistakes have been discovered. *Railroad Commission v. Aluminum Co. of Amer.*, 380 S.W.2d 599, 602 (Tex. 1964). Section 27.015 of the Texas Water Code does not expressly prohibit rescission of a "no harm" letter once issued.

Pursuant to §85.049 of the Texas Natural Resources Code, the Commission may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent, or lessen the waste, and under §85.201 of the same Code, the Commission is mandated to make and enforce orders for the prevention of the waste of oil or gas. The examiners have concluded that the Commission has authority and discretion to rescind a "no harm" letter, particularly if it is shown as a result of subsequent contested case adjudication that the injection proposed in the application to TCEQ will result in endangerment or injury to a known oil or gas reservoir by causing waste of oil or gas.³

The examiners recommend that the Railroad Commission's "no harm" letter issued to TexCom be rescinded. Substantial information obtained over the last 75 years indicates that the entire Cockfield series of sands is in communication. Therefore, it cannot be determined that the disposal of waste into the Lower Cockfield as proposed by TexCom will not endanger an oil and gas reservoir, as previously indicated by the Commission's administrative review in 2005.

There are no records indicating the type of data which was reviewed by the Commission prior to issuance of the "no harm" letter in 2005. Apparently, no notice is given by the Commission during the administrative review of such requests. However, on the TCEQ application, TexCom indicated that the minerals under the tract were owned by TexCom. This is clearly not accurate, as the proposed "injection zone" overlaps the unitized interval for the CFU. TexCom admits that this representation to TCEQ was a "mistake" and notes that Exxon was given notice of the TCEQ application and did not object. The examiners note that the TCEQ notice sent to ExxonMobil was sent to its property tax office and not to ExxonMobil's P-5 address.

The Commission's foremost statutory duty is to prevent waste. Based on information presented in this proceeding, the examiners believe that waste will occur as a result of TexCom's proposed disposal of industrial nonhazardous waste into an interval which is vertically connected to the unitized interval of the CFU, whether it be the current production from the unit or the CO₂ injection proposed by Denbury. Though reserves under current operations is substantial, the fluids proposed for disposal into TexCom's well are not compatible with CO₂, putting an additional 125 million barrels of oil at risk.

TexCom presented limited evidence at the hearing which did not refute Denbury's substantial evidence that the entire Cockfield Series is in vertical communication as a result of natural faults and fractures. The communication is confirmed by the migration of hydrocarbons within the Cockfield and by the presence of a uniform water contact throughout the field. The water production occurring from the CFU is a result of the natural water drive in the Lower Cockfield. Additionally, a modern log of the No. 410 well indicates numerous fractures within the Cockfield and recent 3-D seismic indicates significant

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While the examiners conclude that the Commission has authority to rescind the 2005 "no harm" letter relating to the TexCom application, the issue of what effect, if any, such rescission should have on the TexCom proceeding before TCEQ is believed by the examiners to be an issue beyond the Commission's purview.

faulting. Finally, a pressure fall-off test conducted in 2009 indicates a tenfold increase in permeability only 950 feet from the No. 410 well, indicating some type of pathway for migration of fluids.

TexCom's own documents indicate that the Jackson Shale is the confining zone because there are no competent shales within the Upper, Middle or Lower Cockfield which would confine fluids to the deeper "injection interval", which is the actual perforated interval to be used for disposal in the No. 410 well. The examiners are persuaded by the statements made by TexCom regarding the lack of confining interval. The statements are indicative of TexCom's belief at the time of the TCEQ application.

TexCom's study indicates that the plume created by its disposal will not extend far enough away from the disposal well to affect any producing well in the CFU. The examiners believe the study to be unreliable because it does not consider vertical movement of fluids from the disposal interval in the Lower Cockfield. Instead, it assumes radial flow in a blanket formation. This is entirely inconsistent with the known geologic features of the Cockfield.

FINDINGS OF FACT

1. Notice of this hearing was given on June 25, 2010 to all parties entitled to notice.
2. The Conroe Field was discovered in 1931 and has produced 734 million BO and 1,069 BCF of gas. The Conroe Field Unit ("CFU") was established in 1978 and comprises 18,829 acres in the Conroe Field.
 - a. The CFU was formed for purposes of secondary recovery in the Conroe Field.
 - b. The unitized interval is from 4,680 feet to 5,420 feet, as shown on the log of the D. A. Madeley No. 45. The unitized interval is directly beneath the Jackson Shale and includes six separate sands within the Upper Cockfield.
 - c. Current production from the CFU is about 2,500 BOPD and 200,000 BWPD.
 - d. Under current operations, remaining recoverable reserves from the CFU are estimated to be 20 million BO.
3. In conjunction with a 1993 application TCEQ for a permit to inject of Class I non-hazardous waste, the Railroad Commission issued a "no harm" letter stating that "...disposal of non-hazardous industrial waste into the Lower Cockfield Formation, in the subsurface perforated interval from 6,110 feet to 6,540 feet, will not endanger any known oil and gas reservoirs."

- a. The application to TCEQ was made by Crossroads Environmental Corporation.
 - b. The proposed disposal facility was to be located in Montgomery County, within the boundary of the Conroe Field Unit ("CFU").
4. The permit issued by the TCEQ based on the 1993 application expired and in 2002, a new permit for injection of Class I non-hazardous waste was issued to Huntsman Petrochemical Corporation for the same Montgomery County facility as the Crossroads facility. In conjunction with Huntsman application, the Railroad Commission had issued another "no harm" letter to Huntsman in 2001.
5. The Huntsman permit expired and in 2005, TexCom Gulf Disposal, LLC ("TexCom") filed an application with the TCEQ for authority to inject Class I non-hazardous waste into four wells at the same facility in Montgomery County. In conjunction with the TexCom application, the Railroad Commission issued another "no harm" letter on September 16, 2005.
6. Exxon Corporation (or predecessor companies) was the operator of the CFU at the time of issuance of the permits by TCEQ. Exxon did not object to any of the TCEQ applications.
7. Denbury Onshore LLC ("Denbury") purchased the Conroe Field Unit from Wapiti Operating, LLC (the successor operator to Exxon of the CFU) in December 2009, with the intention of conducting a carbon dioxide ("CO₂") flood.
8. As a result of the proposed CO₂ flood, Denbury expects to recover approximately 17% of original oil-in-place for the field as a result of CO₂ flooding. This equates to at least 125 million BO.
9. The proposed injection "zone" for TexCom's disposal operations includes Upper, Middle and Lower Cockfield sands. This zone overlaps the unitized interval for the CFU by several hundred feet.
10. The proposed injection "interval" (perforated zone) for TexCom's disposal operations is in the Lower Cockfield only.
11. There are numerous faults and fractures within the Cockfield series which will serve as conduits for migration of fluids injected into the Lower Cockfield as proposed by TexCom.
 - a. Recent 3-D seismic data confirms the presence of faults and fractures at various depths in the Cockfield sands.

- b. The electrical micro imager log between 4,850 and 6,577 feet in the No. 410 well disposal well indicates numerous fractures.
 - c. The log of the CFU Well No. 2315D, drilled in 2009 by Wapiti approximately 8,000 feet southeast of the No. 410 well indicates no significant barriers to stress, and therefore no confining barriers within the Cockfield, to prevent migration of fluids from TexCom's proposed injection.
 - d. A recent pressure falloff test performed on the No. 410 well demonstrated a tenfold increase in permeability only 950 feet from the well, indicating a path of communication and movement of fluids within the formation.
12. The Railroad Commission's "no harm" letter issued to TexCom should be rescinded because waste of hydrocarbons will be caused by migration of injected fluids from the TexCom wells into the productive Upper Cockfield sands in the CFU.
- a. The entire Cockfield series of sands is in communication, as confirmed by the migration of hydrocarbons within the Cockfield over time, and by the presence of a uniform water contact throughout the field.
 - b. The only confining barrier to migration of fluids injected into the Lower Cockfield is the Jackson Shale, which is found above the Upper Cockfield.
 - c. The waste proposed for disposal are incompatible with CO₂ and Denbury's proposed CO₂ project will not be successful if the waste migrates into the productive Upper Cockfield sands.

CONCLUSIONS OF LAW

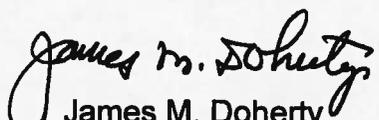
- 1. Proper notice of this hearing was timely served on all affected persons.
- 2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.
- 3. Pursuant to §27.015 of the Texas Water Code, a person making an application to the Texas Commission on Environmental Quality for a disposal well permit under Chapter 27 of the Code must submit with the application a letter from the Railroad Commission concluding that drilling or using the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any known oil or gas reservoir.

4. Pursuant to §85.049 of the Texas Natural Resources Code, the Railroad Commission has continuing jurisdiction to determine whether waste of hydrocarbons is taking place or is reasonably imminent and to determine whether an order should be adopted or any other action taken to correct, prevent, or lessen the waste.
5. Pursuant to §85.201 of the Texas Natural Resources Code, the Railroad Commission has continuing jurisdiction, and the duty, to make and enforce orders for the prevention of waste of oil or gas.
6. The September 16, 2005, "no harm" letter relating to the TexCom Gulf Disposal, LLC application to the Texas Commission on Environmental Quality for a permit for injection of Class I non-hazardous waste was issued administratively by Railroad Commission staff without any adjudicative process.
7. The September 16, 2005, Railroad Commission "no harm" letter relating to the TexCom Gulf Disposal, LLC application to the Texas Commission on Environmental Quality for a permit for injection of Class I non-hazardous waste must be rescinded because the injection as proposed by TexCom Gulf Disposal, LLC will endanger and injure a known oil and gas reservoir by causing the waste of oil or gas.

EXAMINERS' RECOMMENDATION

Based on the above findings of fact and conclusions of law, the examiners recommend that the September 16, 2005 "no harm" letter issued by the Railroad Commission to TexCom Gulf Disposal, LLC, be rescinded.

Respectfully submitted,


James M. Doherty
Hearings Examiner


Donna K. Chandler
Technical Examiner