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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

December 21, 2012

OIL & GAS DOCKET NO. 02-0277320

COMPLAINT OF LLOYD KELLNER AND SUE CARTER THAT THEY DID NOT RECEIVE SUFFICIENT NOTICE OF NOR-TEX RESOURCES, LLC'S APPLICATION FOR A W-14 PERMIT FOR THE NOR-TEX SWD NO. 1, EAGLEVILLE (EAGLEFORD-2) FIELD, KARNES COUNTY, TEXAS, DISTRICT 2 (PERMIT NO. 13606). IF IT IS FOUND THAT PROPER NOTICE OF THE APPLICATION WAS NOT GIVEN, NOR-TEX'S PERMIT MAY BE CANCELLED.

APPEARANCES:

For Complainant Sue Carter:

Robert Hargrove, Attorney
Sue Carter

For Respondent Nor-Tex Resources, LLC:

Stephen Fenoglio, Attorney
Justin McIntosh, Nor-Tex Partner
Jerry Richardson, Nor-Tex Partner
Amber Lorick, Consultant

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Request for Hearing:	July 11, 2012
Notice of Hearing Issued:	August 2, 2012
Hearing Held:	October 3, 2012
Heard By:	Marshall Enquist, Hearings Examiner Andres J. Trevino, Technical Examiner
Transcript Received:	October 7, 2012
Record Closed:	October 23, 2012
PFD Prepared by:	Colin K. Lineberry
PFD Issued:	December 21, 2012

STATEMENT OF THE CASE

This hearing was called at the request of Lloyd Kellner ("Kellner") and Betty Sue Carter ("Carter"), who alleged that they did not receive proper notice of the application of Nor-Tex Resources, LLC ("Nor-Tex") for a commercial disposal well permit. Nor-Tex filed an application for a commercial disposal well, the Nor-Tex SWD No. 1 in Karnes County, through its agent, Banks Oil & Gas Consulting ("Banks"). The Commission received the application on February 29, 2012.

Pursuant to Statewide Rule 9(5), Banks filed a one page document stating that it had mailed copies of the application to the County Clerk, the surface owner, adjacent surface owners and any offset operators. Banks also provided proof that it had published notice of the application in *The Karnes Countywide*, a newspaper of general circulation in Karnes County, on February 22 and 29, 2012.

No protests were received and Commission Oil and Gas Division Staff issued Nor-Tex Commercial Disposal Well Permit No. 13606 on March 29, 2012. Shortly afterward, on April 9, 2012, protests were received from Charles Gersbach, Julius R. Gersbach and April Marek. By letter dated April 12, 2012, the RRC Manager for Injection notified Nor-Tex that its permit was suspended due to an apparent discrepancy between the parties provided notice by Banks and the parties who were, in fact, the landowners. Banks had sent the notice to "April Charles, Gary Charles and Julius Charles" at P.O. Box 513, Bartlett, TX 16511, whereas the actual names of the apparent property owners were "Charles Gersbach" at P.O. Box 513, Bartlett, TX 75611, "April Marek" at 527 W. Devilla St., Bartlett, TX 76511, and "Julius Gersbach" at 1542 W. Clark, Bartlett, TX 76511.

On April 12, 2012, Commission staff suspended the Nor-Tex permit based on the garbled, incorrect names (all last names and one first name were incorrect) and the incorrect zip code used by Banks to provide notice to the three complaining individuals. Subsequently, Banks showed that, despite the garbled names and zip code, Charles Gersbach had actually received the application and Staff "unsuspended" the permit on April 24, 2012. The Gersbachs did not request a hearing or otherwise pursue their complaint.

On May 30, 2012, Sue Carter and Lloyd Kellner filed a formal complaint alleging that notice of the NorTex well had not been given to Carter and Kellner and that the notice sent by Banks was insufficient in that it did not inform recipients of their right to protest. NorTex responded asserting that proper notice had been given and seeking dismissal of the complaints. This matter was then set for hearing.

On October 2, 2012, one day prior to the hearing, the examiners received a Motion to Dismiss the Protest of Lloyd Kellner, filed by his own attorney, Tom Joseph. The Motion was granted and Mr. Kellner did not appear at the hearing. The hearing was held on October 3, 2012, at which time Carter appeared represented by Attorney Robert Hargrove and Nor-Tex appeared represented by Attorney Stephen Fenoglio.

APPLICABLE COMMISSION RULE

Statewide Rule 9(5)(A) requires that "[t]he applicant shall give notice by mailing or delivering a copy of the application to affected persons who include the owner of record of the surface tract on which the well is located; each commission-designated operator of any well located within one-half mile of the proposed disposal well; the county clerk of the county in which the well is located; and the city clerk or other appropriate city official of any city where the well is located within the municipal boundaries of the city, on or before the date the application is mailed or filed with the commission." In addition, for commercial disposal wells such as the well at issue, the applicant is required to " . . . give notice to owners of record of each surface tract that adjoins the proposed disposal tract by mailing or delivering a copy of the application to each such surface owner." Statewide Rule 9(5)(B).

MATTERS OFFICIALLY NOTICED

The examiners have taken Official Notice of the Application file of Nor-Tex Resources, LLC for its Nor-Tex SWD No. 1 in Karnes County (Permit No. 13606), Complaint File No. 2012-079 (the Complaint of Lloyd Kellner and Sue Carter), and the file in the present docket, Oil & Gas Docket No. 02-0277320.

DISCUSSION OF THE EVIDENCE

This is an unusual case as there are no factual disputes. At the beginning of the hearing, the attorneys for the two sides offered a joint stipulation as to the facts. See Joint Exhibit No. 1, attached and incorporated into this PFD. Two Stipulation exhibits are attached to the joint stipulation: Exhibit "A" consisted of the Nor-Tex "Application Packet" as mailed to affected parties and Exhibit "B" consisted of the Certified Mail envelope, Certified Mail Return Receipt and Certified Mail Receipt as sent to Betty Sue Carter in Karnes City. The most important stipulated facts are summarized as follows:

Betty Sue Carter is a resident of Karnes City and was a person entitled to notice of the Nor-Tex commercial disposal well application. Nor-Tex researched adjacent owners entitled to notice by going to the Karnes County Appraisal District and located two addresses for Sue Carter: one at 15819 Cedar Mill, Chesterfield, Missouri 63017 ("Chesterfield address"), and one at P.O. Box 67, Karnes City, Texas 78118 ("Karnes City address"). Banks mailed the Application Packet to both the Chesterfield address and the Karnes City address by certified mail which required a signature to consummate delivery. The Application packet was not sent by regular mail to either address.

Betty Sue Carter has not lived at the Chesterfield address since at least 1999. She is not related to anyone who resides at that address and does not know who lives there currently. She did not receive any mail from Banks sent to the Chesterfield address. On March 3, 2012, The U.S. Postal Service sent Banks a signed receipt for the certified mail sent to the Chesterfield address. The signature on the signed receipt is illegible.

At all times from January 1, 2012 to the present, Sue Carter maintained an address of P.O. Box 67, Karnes City, Texas 78118. The U.S. Postal Service attempted to deliver the certified mail to Sue Carter's P.O. box at the Karnes City address from March 1, 2012 through March 16, 2012. On March 16, 2012, the postal service declared the certified mail "unclaimed" and returned it to Banks on March 19, 2012. Banks is unaware if anyone from Banks or NorTex notified the Railroad Commission of the return of the unclaimed mail prior to Commission approval of the disposal permit on March 29, 2012.

Sue Carter was busy with various projects and appointments March 1 through March 4, 2012 and did not pick up her mail at the Karnes City address. On March 5, 2012, she was in San Antonio for cancer surgery, where she remained in recuperation through March 16. At no point was she aware that her mailbox contained a notice that she had certified mail to be picked up.

Upon returning to Karnes City after her surgery, Sue Carter went to the Post Office and found notices left by the postal service that there had been attempts to deliver certified mail to her. She also found a notice that the certified mail had been returned to the sender.

Sue Carter's normal practice is to accept all mail delivered to her Karnes City Post Office Box. If the certified mail had been in her mailbox upon her return from San Antonio, she would have opened it and timely protested the Nor-Tex application. If Banks had sent the notice packet by regular mail, she would have opened it and timely protested the Nor-Tex application. At no point did Sue Carter ever engage in selective acceptance or refusal of certified mail relating to the Nor-Tex application.

Argument of Betty Sue Carter

Carter requests that the Commission find the permit issued to Nor-Tex void ab initio for failure of required notice. Carter emphasizes that the parties have stipulated that she was an adjacent landowner entitled to notice and that, while Nor-Tex attempted to send her notice, it is undisputed that Carter did not receive the notice. Further, Nor-Tex knew that Carter did not receive the notice because the notice was returned to Nor-Tex unclaimed. Carter also notes that the parties have stipulated that Carter never engaged in selective acceptance of mail or refused certified mail.

Carter cites a recent Railroad Commission complaint case as authority for her position that valid notice requires actual receipt even if the applicant used a proper address and the failure of notice was through no fault of the applicant. *See* Oil & Gas Docket No. 05-0265656; *Complaint of Ben Proctor, et al Against Chesapeake Operating, Inc. Alleging that They were Entitled to, But Did Not Receive, Notice of a Rule 37 Spacing Exception Application Concerning Well No. 1-H , University West Unit, Newark, East (Barnett Shale) Field, Tarrant County, Texas.* Carter also relies on a Texas Court of Appeals case dealing with Texas Rule of Civil Procedure 21a in support of her assertion that a notice sent by certified mail that is returned "unclaimed" is not enough - the notice must actually be received. *See Etheredge v. Hidden Valley Airpark Ass'n*, 169 S.W.3d 378, 382 (Tex. App. - - Fort Worth 2005, pet. denied). Finally, Carter distinguishes cases cited by Nor-Tex and asserts that, to the extent it was relevant, one of those cases, *Jones v. Flowers*, 547 U.S. 220 (2006) actually supports her position

Nor-Tex Resources, LLC

Nor-Tex asserts four primary arguments on the undisputed facts. First, Nor-Tex notes that notice of a disposal well application under Statewide Rule 9(5) [16 TEX. ADMIN. CODE §9(5)] shall be given " by mailing or delivering" the notice. According to Nor-Tex, these are alternative choices and while "delivering" may imply a requirement of actual receipt, the word "mailing" does not. According to Nor-Tex, depositing the notice in the mail with correct address and postage constitutes proper notice whether or not it is ever received.

Nor-Tex argues that the disposal well application does not involve the deprivation of any property right of Carter and that therefore there is no due process claim to be made. According to Nor-Tex, property rights are not at issue because, even if the applied-for well presents a risk of harm to water resources or harm to Carter's property, she retains a right to bring a civil action and the Commission has continuing jurisdiction and may modify or cancel the permit if waste or pollution is occurring.

Nor-Tex posits that notice was sufficient because there was no failure or omission on its part in mailing the notice in compliance with Rule 9 and any fault lies squarely with Carter. Nor-Tex further asserts that neither Nor-Tex nor the Commission had knowledge that Carter lacked actual notice of the application.

Nor-Tex argues that even if due process applies, it does not require actual notice but only requires notice " . . . reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Nor-Tex asserts that courts have long accepted that a certified letter, whether or not received, is a contitutionally-sufficient mode of notice of the pendency of an action affecting property rights. *Dusenberry v. U.S.*, 534 U.S. 161, 172-173, 122 S.Ct. 694, 151 L.Ed.2d 597 (2002).

Finally, Nor-Tex distinguishes *Etheredge v. Hidden Valley Airpark Ass'n, Inc.*, as involving an interpretation of Rule 21a of the Texas Rules of Civil Procedure rather than Commission rules and as involving the phrase "service by mail" rather than "give notice by mailing."

EXAMINERS' OPINION

Initially, the examiners note that this is an unfortunate situation and that none of the evidence indicates that either the complainant Carter or the principals in the respondent, Nor-Tex, intentionally engaged in any acts of malfeasance. The facts stipulated by the parties establish beyond any reasonable doubt that Ms. Carter has a property interest at stake and was entitled by Commission rule to notice and an opportunity to protest, but did not receive actual notice of the application and an opportunity to protest. However, due process does not always require actual notice and the issue

for the Commission is whether, on these facts, the requirements of Commission rules and due process were satisfied. If legally sufficient notice of the application was not given to Carter, the Commission lacked jurisdiction to grant the disposal permit at issue. *See Turman Oil Co. v. Roberts*, 96 S.W.2d 724, 726 (Tex Civ. App. – Austin 1936, *writ ref'd*); *Kerrvile Bus Co. v. Continental Bus System*, 208 S.W.2d 586, 589 (Tex. Civ. App. – Austin 1947, *writ ref'd n.r.e.)*

Due Process and Railroad Commission Proceedings

The constitutional due process guarantee applies to administrative proceedings in which a protected interest is implicated. *See Lewis v. Metropolitan Savings & Loan Association*, 550 S.W.2d 11, 13 (Tex. 1977); *J.B. Advertising, Inc. v. Sign Board of Appeals*, 883 S.W.2d 443, 449 (Tex. App. -- Eastland 1994, *no writ*); *Francisco v. Board of Dental Examiners*, 149 S.W.2d 619, 622 (Tex. Civ. App. -- Austin 1941, *writ ref'd*). The Texas Supreme Court has concluded that due process attaches to the property rights that arise from a mineral estate. *Railroad Commission v. Torch Operating Company*, 912 S.W.2d 790, 792 (Tex. 1995); *Railroad Commission v. Graford Oil Corp.*, 557 S.W.2d 946, 953 (Tex. 1977). As a result, the Commission may not constitutionally authorize the deprivation of that property interest without appropriate procedural safeguards. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541, 105 S.Ct. 1487, 1493, 84 L.Ed.2d 494 (1985); *Bexar County Sheriff's Civil Service Commission v. Davis*, 802 S.W.2d 659, 661,n.3 (Tex. 1990).

The Supreme Court has held that, "The essence of due process is the requirement that `a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.'" *Matthews v. Eldridge*, 424 U.S. 319, 348, 96 S.Ct. 893, 909, 47 L.Ed.2d 18 (1976) (citation omitted). The Texas Natural Resources Code specifically provides that, "No rule or order pertaining to the conservation of oil and gas or to the prevention of waste of oil and gas may be adopted by the commission except after notice and hearing as provided by law." Tex. Nat. Res. Code §85.205.

Carter's Property Interest

Initially, the examiners find no merit in the contention that due process does not apply because Carter does not have a property interest at stake. It is undisputed that Carter owns real property adjacent to the applied-for commercial disposal well and is an affected person entitled to notice and an opportunity to protest under the provisions of Rule 9. As respondent Nor-Tex acknowledges, an improperly permitted or operated facility has the potential to harm surface and subsurface water on adjacent tracts. Nor-Tex's assertion that the Commission could modify or suspend a permit or Carter could bring civil suit after damage occurs does not satisfy due process concerns.

Right to Opportunity for Prior Hearing

The U.S. Supreme Court has repeatedly held that the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. [emphasis added] *Parrattt v. Taylor*, 451 U.S. 527, 540, 101 S.Ct. 1908, 1915, 68 L.Ed.2d 420 (1981); *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976); *Goldberg v. Kelly*, 397 U.S.

254, 267, 90 S.Ct. 1011, 1020 (1970); ***see also*** *Cunningham v. Parkdale Bank*, 660 S.W.2d 810, 813 (Tex. 1983). The right to a hearing of some type prior to any significant deprivation of property has been described as the "root requirement" of the Due Process Clause. *Cleveland Board of Education v. Loudermill*, 470 U.S. at 542, 105 S.Ct. at 1493; ***see also*** *Roth*, 408 U.S. at 569-70, 92 S.Ct. at 2705 (" ... the right to some kind of prior hearing is paramount."). The right to sue after damage has occurred as a result of the issuance of a permit clearly cannot satisfy the due process requirement of an opportunity for a prior hearing.

"Give Notice by Mailing" Under Rule 9

The examiners also find unpersuasive Nor-Tex's assertion that Rule 9 authorizes an applicant to "give notice . . . by mailing or delivering" and that if an applicant chooses mailing, actual receipt by the intended recipient is not required because that requirement is not stated in the rule. The rule also does not expressly state that the mailed notice has to be sent to a valid address for the intended recipient or have sufficient postage but in its closing statement Nor-Tex appears to acknowledge that both are required for legally sufficient notice even under its narrow reading of Rule 9. The Commission has, in numerous instances, conducted hearings in which a major issue was whether mailed notice of an application was actually received. Nor-Tex and Carter each cite at least one case in their respective closing statements in which the Commission examined the issue of whether mailed notice was actually received.

The case relied on by Nor-Tex on this issue, *Sudduth v. Commonwealth County Mutual Insurance Company*, 454 S.W.2d 196 (Tex. 1970), is of little, if any, relevance as it involved an insurance contract clause that required "mailing" of a notice of cancellation. The primary issue before the court was whether, in a summary judgment context, in which evidence of mailing has been given, testimony of "non-delivery" raised a fact issue as to whether the mailing had actually occurred. The case cited by Carter, *Etheredge v. Hidden Valley Airpark Ass'n*, 169 S.W.3d 378, 382 (Tex. Ap. Fort Worth 2005, pet. denied), is not directly on point as it deals with Rule 21a of the Texas Rules of Civil Procedure and not a Railroad Commission rule. Also, the phrase at issue in *Etheredge* was "service by mail" rather than "give notice by mailing." However, the examiners perceive no substantive difference between the two phrases. The *Etheredge* case addresses a factual situation and policy concerns nearly identical to those at issue in this case. In *Etheredge*, notice of a summary judgement hearing was sent to Etheredge by certified mail but was eventually returned to the sending party marked "unclaimed." The movant claimed, much as Nor-Tex does here, that it was not necessary that the notice of the summary judgment hearing actually be received, only that it was properly deposited in the mail. The court disagreed, concluding, "Accordingly, a notice of hearing setting sent by certified mail and returned "unclaimed" does not provide the notice required by Rule 21a." *Id.* at 382. The court went on to note that constructive notice may be established if " . . . the intended recipient engaged in instance of selective acceptance or refusal of certified mail related to the case." *Id.*

In cases where the issue has arisen, the Railroad Commission has required proof of receipt. That proof can be, and usually is, provided by a presumption[1] rather than direct proof, as notices are typically sent by regular mail. In this case, however, direct evidence exists because of the stipulations of the parties and the fact that the application packet was mailed by certified mail. The parties have stipulated that application packets were placed in postage pre-paid envelopes and sent via certified mail by Nor-Tex's consultant to the Karnes City address and the Chesterfield address.

The parties have also stipulated that the Chesterfield address was not a valid address for Carter and that the application packet sent by certified mail to the Karnes City address was returned to Nor-Tex's consultant "unclaimed." Further, they have stipulated that no application packets were sent to Carter by regular mail. In substance, the parties have stipulated that Carter never actually received the application packet.

The Two Addresses

The application packet mailed to the Chesterfield address clearly has no bearing on the due process inquiry. The parties have stipulated that Carter had not lived at that address for more than a decade at the time the application packet was mailed there and she did not have any connection with the current residents at that address. The name signed on the green card returned from that address is, as stipulated by the parties, illegible. However, the first two letters are "Pa . . ." These are not the letters in any portion of Betty Sue Carter's name. An application packet mailed to an incorrect address and accepted by an unknown third party could not possibly be found to be reasonably calculated to give Carter notice of the disposal well application at issue.

The application packet mailed to the Karnes City address, however, presents a very different issue. As stipulated by the parties, the Karnes City address was the correct address for Carter. However, it is also stipulated that the application packet sent to the Karnes City address arrived shortly before Carter entered the hospital in San Antonio, that she did not know the packet was in

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[1] Proof that letters, notices or other communications were properly addressed and deposited in the mail, postage pre-paid, generally creates a presumption that the missive was received by the addressee in due course. *See Cliff v. Huggins*, 724 S.W.2d 778, 780 (Tex. 1987); *Stanley Stores, Inc. v. Chavana*, 909 S.W.2d 554, 558 (Tex. App. -- Corpus Christi 1995, writ denied); *Hot Shot Messenger Service, Inc. v. State*, 798 S.W.2d 413, 415 (Tex. App. -- San Antonio 1984, writ denied); *Terminix International, Inc. v. Lucci*, 670 S.W.2d 657, 665 (Tex. App. -- San Antonio 1984, writ re'd n.r.e.).

The presumption of receipt is rebuttable, however, and may be rebutted by a simple denial of receipt by the purported recipient. *See Cliff v. Huggins*, 724 S.W.2d at 780; *Hot Shot Messenger Service*, 798 S.W.2d at 415; *Gulf Insurance Co. v. Cherry*, 704 S.W.2d 459, 461 (Tex. App. -- Dallas 1986, writ ref'd n.r.e.); *Valley Forge Life Insurance, Co. v. Republic National Life Insurance Company*, 579 S.W.2d 271, 277 (Tex. Civ. App. -- Dallas 1979, writ ref'd n.r.e.). The presumption of receipt is not evidence and it vanishes when rebutted by probative evidence of non-receipt of the communication in question. *Cliff v. Huggins*, 724 S.W.2d at 780; *State and County Mutual Fire Insurance Co. v. Williams*, 924 S.W.2d 746, 749 (Tex. App. -- Texarkana 1996, no writ); *Pete v. Stevens*, 582 S.W.2d 892, 895 (Tex. Civ. App. - - San Antonio 1979, writ ref'd n.r.e.).

her mailbox available to be picked up and that it was returned to Nor-Tex marked "unclaimed" before Carter returned to Karnes City and checked her mailbox. The stipulations clearly establish that Carter never actually received the application packet or the information contained in the packet prior to approval of the permit for the well at issue.

Focus of Due Process Inquiry

Nor-Tex urges that the fact that Carter did not actually receive the application packet was not its fault as it sent one application packet to the correct mailing address for Carter, the Karnes City address. The inquiry, however, is not whether Nor-Tex behaved properly but whether Carter received due process. As Carter correctly noted in its closing statement, the Commission has recently addressed a case involving these very issues. *See* Oil & Gas Docket No. 05-0265656; *Complaint of Ben Proctor, et al Against Chesapeake Operating, Inc. Alleging that They were Entitled to, But Did Not Receive, Notice of a Rule 37 Spacing Exception Application Concerning Well No. 1-H , University West Unit, Newark, East (Barnett Shale) Field, Tarrant County, Texas.* In *Proctor*, complaints were filed after a Rule 37 exception permit was granted alleging that several affected adjacent property owners did not receive notice of a Chesapeake application for a Rule 37 exception. Chesapeake provided unrefuted evidence that it had followed required procedure and provided accurate mailing addresses for each of the complainants and argued strenuously that as it had complied with its obligations, notice should be found sufficient. The Commission ultimately found that the complainants had not actually received the notice of the application and, even though Chesapeake was not found to have done anything wrong, the permit issued without proper notice was declared void *ab initio.*

Standard for Due Process Inquiry

The examiners agree with Nor-Tex that the notice required by due process is notice "reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950); *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 13, 98 S.Ct. 1554, 1562, 56 L.Ed.2d 30 (1978); ***see also*** *Cunningham v. Parkdale Bank*, 660 S.W.2d 810, 813 (Tex. 1983). The difficulty comes in applying this general statement of the law to the specific fact situation at issue. Fortunately, however, a case cited by both parties, *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006), involves similar key facts concerning notice and provides a guide.

In *Jones v. Flowers*, Jones failed to pay the property tax on his home for several years. The Commissioner of State Lands sent Jones a certified letter with a packet of information stating that if he did not redeem the property it would be subject to public sale. *Id.* at 223. Nobody was home to sign for the letter and nobody retrieved the letter from the post office within the next 15 days. As a result, the packet was returned to the Commissioner marked "unclaimed." *Id.* at 224. The house was sold for a fraction of its value and Jones subsequently filed sued claiming a failure to provide adequate notice. *Id.* The case eventually made it to the U.s. Supreme Court. The court reiterated the *Mullane* standard for due process and acknowledged that due process does not always require

actual notice. The court went on to note, however, that it had never addressed whether due process entails further responsibility when the government becomes aware prior to the taking that attempted notice has failed. *Id.* at 227. The court concluded that given the returned mail marked unclaimed suggesting that Jones had not received the notice, " . . . the State should have taken additional reasonable steps to notify Jones, if practicable to do so. *Id.* at 234. The court went on to state that one reasonable step would " . . . be for the State to resend the notice by regular mail, so that a signature was not required." *Id.*

In the case at issue, as in *Jones*, notice was sent by certified mail but was returned marked "unclaimed." This return should have indicated to Nor-Tex that the notice had not been received. As in Jones, a property interest is at stake, and although Nor-Tex is not the state, it is giving this notice at the direction of the state, for the purpose of getting a state permit which could affect the property rights of affected persons, like Carter, who are entitled to notice. Although Nor-Tex claims it didn't have knowledge of the lack of notice to Carter, it either knew or should have known of the failure of notice as the only notice sent to a valid address was returned marked "unclaimed" to its consultant. Under *Jones*, once the only application packet sent to a correct address was returned marked "unclaimed," Nor-Tex or its consultant should have taken additional reasonable steps to notify Carter.

Simply mailing a copy of the application packet by regular mail to the Karnes City address would have been sufficient to resolve all issues concerning a lack of actual receipt as the parties have stipulated that if the consultant had sent the application packet to the Karnes City address " . . .via regular mail, rather than or in addition to certified mail, [Carter] would have received it, opened it, reviewed it, and taken immediate steps to timely protest the Nor-Tex application."

Decision Specific to These Facts

The disposition of this case is specific to the unusual facts involved. Carter is not an operator or other entity required to maintain a P-5 license with the Railroad Commission. If she was, she would be required to maintain a current address with the Commission at all times for notice purposes and a notice sent to that address would likely comport with due process whether or not she actually received it. *See Morris v. State*, 894 S.W.2d 22 (Tex. App. - - Austin 1994, writ dism'd w.o.j.) (Cited by Nor-Tex).

If it were established that Carter had actual knowledge of the Nor-Tex application and her right to protest prior to approval of the permit, even though she had not received the mailed application, due process concerns might well have been satisfied. If Nor-Tex had also sent the application packet by regular mail, either simultaneously with the certified mail or after the certified mail was returned, and that regular mail was not returned to Nor-Tex, the issue of actual receipt likely would have been resolved. If it were shown that Carter had intentionally "dodged" receipt of the notice, a very different case would have been presented. *See Etheredge v. Hidden Valley Airpark Ass'n*, 169 S.W.3d 378, 382 (Tex. App. -- Fort Worth 2005, pet. denied) As noted above, however, it was stipulated that Carter did not engage in any instance of selective acceptance or refusal of certified mail.

Contents of the Application Packet

Even if Carter had received the application packet, it is not at all clear that the contents of that packet, even if they arguably comply with the letter of Rule 9, satisfy the due process requirement of notice " . . . reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. at 314. A copy of the application packet is included as Exhibit A to the parties stipulation, which is attached to this PFD.

The cover letter, on "Banks Oil & Gas Consulting" letterhead, has the appearance of a solicitation of business rather than a formal notice of a state agency proceeding. It does not identify Banks as the representative or agent of Nor-Tex. More importantly the letter does not provide any of the information that would be necessary for the recipient to understand that he or she has a right to participate or what must be done to exercise that right. Specifically, the letter does not state that Carter has the right to protest the Nor-Tex application, it does not reveal that there is a deadline for protests or the date of that deadline, and it does not inform Carter how or where to file a protest. In fact, there is no Railroad Commission address or phone number listed anywhere on the letter.

Nor-Tex has previously asserted that any shortcomings in the notice are cured by the instructions on the back of the Form W-14 that was the other component of the application packet. The examiners disagree. Perhaps most fundamentally, it is difficult to understand why anyone receiving the application packet would even read the fine print instructions on the back of the supplied Form W-14. The W-14 has already been filled out by the agent of Nor-Tex and states on its face that, "APPLICANT ALSO MUST COMPLY WITH THE INSTRUCTIONS ON THE REVERSE SIDE." Nor-Tex, not Carter, is the applicant. Nowhere on the face of the form is there any indication that anyone other than "applicant" needs to view the instructions.

Even if Carter, or any other recipient, looked at the instructions, the paragraph concerning protests and hearings is, at best, convoluted. Further, the instructions do not provide some of the most basic information that Carter or any other adjacent landowner who received the application packet would need to timely file a protest. Missing is any clear statement of who is an affected person with a right to protest, it does not identify where a protest should be filed, and it does not clearly indicate how long any recipient of the application packet has to file a protest. In fact, although a formula of sorts is given from which the deadline for protests could theoretically be calculated, not all of the information necessary (i.e. the date of publication of notice) is provided in the Application Packet, so a date certain cannot be determined from the information provided.

Other Cases

The cases cited by Nor-Tex and not already discussed all pre-date *Jones v. Flowers*, are consistent with this recommendation and/or are readily distinguishable on their facts. By way of example, *McMaster v. PUC*, No. 03-11-00571-CV, 2012 Westlaw 3793257 (Tex. App. - Austin,

Aug. 31, 2012, No. Pet. H. (Mem. Op.), does involve notice to a landowner of proposed regulatory permitting that could affect adjacent landowner property rights. However, the out of context statement by the court that complainant McMaster was not required to actually receive mailed notice is misleading. Perhaps most importantly, the court had determined that McMaster was not actually an affected party and therefore was not entitled to any notice. *Id.* at *2. Further, McMaster had received actual notice of the application from his next door neighbor and had attended at least two property owners' meetings where the application at issue was discussed. *Id.* In addition, applicable PUC regulations specifically provided that lack of actual notice to an individual landowner does not, "in and of itself," support a determination that notice has not been satisfied. *Id.* at *7.

RECOMMENDATION

As it is undisputed that Carter did not actually receive the mailed notice of the application and the examiners have concluded that she has not received due process under applicable case law and Commission precedent, the examiners recommend that the Commission adopt the following proposed Findings of Fact, Conclusions of Law, and proposed order ordering that the permit issued to Nor-Tex for its Nor-Tex SWD No. 1, Eagleville (Eagleford-2) Field, Karnes County, Texas (Permit No. 13606) be declared void *ab initio*.

FINDINGS OF FACT

1. At least ten (10) days notice of the October 3, 2012 hearing in this docket was sent to all parties entitled to notice. Complainant Betty Sue Carter, Responded Nor-Tex Resources , LLC and their respective counsel appeared at the hearing.

2. This hearing was called at the request of Lloyd Kellner ("Kellner") and Betty Sue Carter ("Carter"), who alleged that they did not receive proper notice of the application of Nor-Tex Resources, LLC ("Nor-Tex") for a commercial disposal well permit.

3. Nor-Tex filed an application for a commercial disposal well, the Nor-Tex SWD No. 1 in Karnes County, through its agent, Banks Oil & Gas Consulting ("Banks"). The Commission received the application on February 29, 2012.

4. Pursuant to Statewide Rule 9(5) [16 Tex. Admin. Code 3.9(5)], Banks filed a one page document stating that it had mailed copies of the application to the County Clerk, the surface owner, adjacent surface owners and any offset operators. Banks also provided proof that it had published notice of the application in *The Karnes Countywide*, a newspaper of general circulation in Karnes County, on February 22 and 29, 2012.

5. No protests were received prior to March 29, 2012, and Commission Oil and Gas Division Staff issued Nor-Tex Commercial Disposal Well Permit No. 13606 on March 29, 2012 for its Nor-Tex SWD No. 1, Eagleville (Eagleford-2) Field., Karnes County, Texas (the"Nor-Tex Well").

6. On April 9, 2012, protests to the Nor-Tex Well were received from Charles Gersbach, Julius R. Gersbach and April Marek. By letter dated April 12, 2012, the RRC Manager for Injection notified Nor-Tex that its permit was suspended due to an apparent discrepancy between the parties provided notice by Banks and the parties who were, in fact, the landowners. Banks had sent the notice to "April Charles, Gary Charles and Julius Charles" at P.O. Box 513, Bartlett, TX 16511, whereas the actual names of the apparent property owners were "Charles Gersbach" at P.O. Box 513, Bartlett, TX 75611, "April Marek" at 527 W. Devilla St., Bartlett, TX 76511, and "Julius Gersbach" at 1542 W. Clark, Bartlett, TX 76511.

7. Banks showed , to the satisfaction of the Oil & Gas Division that, despite the garbled names and zip code, Charles Gersbach had actually received the application and Staff "unsuspended" the Nor-Tex Well permit on April 24, 2012. The Gersbachs did not request a hearing or otherwise pursue their complaint.

8. On May 30, 2012, Sue Carter and Lloyd Kellner filed a formal complaint alleging that notice of the NorTex well had not been given to Carter and Kellner and that the notice sent by Banks was insufficient in that it did not inform recipients of their right to protest. NorTex responded asserting that proper notice had been given and seeking dismissal of the complaints. The complaint was then set for hearing. The hearing was held on October 3, 2012. Prior to the hearing, Lloyd Kellner withdrew his complaint.

9. Betty Sue Carter ("Carter") is a resident of Karnes City who owns real property adjacent to the tract on which the Nor-Tex Well is located and was a person entitled to notice of the commercial disposal well application for the Nor-Tex Well.

10. Nor-Tex researched adjacent owners entitled to notice by going to the Karnes County Appraisal District and located two addresses for Sue Carter; one at 15819 Cedar Mill, Chesterfield, Missouri 63017 ("Chesterfield address"), and one at P.O. Box 67, Karnes City, Texas 78118 ("Karnes City address").

11. Banks mailed a cover letter and a copy of the front and back of the Form W-14 ("Application to dispose of Oil and Gas Waste by Injection into a formation not productive of Oil and Gas") (the "Application Packet") to both the Chesterfield address and the Karnes City address by certified mail which required a signature to consummate delivery. The Application Packet was not sent by regular mail to either address at any time.

12. Carter has not lived at the Chesterfield address since at least 1999. She is not related to anyone who resides at that address and does not know who lives there currently. She did not receive any mail from Banks sent to the Chesterfield address.

13. On March 3, 2012, The U.S. Postal Service sent a signed receipt for the certified mail

directed to the Chesterfield address to Banks. The signature on the signed receipt is illegible but begins with the letters "Pa . . . . "

14. At all times from January 1, 2012 to the present, Sue Carter maintained an address of P.O. Box 67, Karnes City, Texas 78118.

15. The U.S. Postal Service attempted to deliver the certified mail to Sue Carter's P.O. box at the Karnes City address from March 1, 2012 through March 16, 2012.

16. On March 16, 2012, the postal service declared the certified mail "unclaimed" and returned it to Banks on March 19, 2012. Banks is unaware if anyone from Banks or NorTex notified the Railroad Commission of the return of the unclaimed mail prior to Commission approval of the disposal permit on March 29, 2012.

17. On March 19, 2012, after it received the Application Packet sent to the Karnes City address back marked "unclaimed" Nor-Tex and its agent, Banks, knew or should have known that the attempted notice to Carter had failed. Although reasonable and practicable steps were available, including sending a copy of the Application Packet by regular mail, neither Banks nor Nor-Tex took any additional steps to notify Carter of the application.

18. Sue Carter was busy with various projects and appointments March 1 through March 4, 2012 and did not pick up her mail at the Karnes City address.. On March 5, 2012, she was in San Antonio for cancer surgery, where she remained in recuperation through March 16. At no point was she aware that her mailbox contained a notice that she had certified mail to be picked up.

19. Upon returning to Karnes City after her surgery, Sue Carter went to the Post Office and found notices left by the postal service that there had been attempts to deliver certified mail to her. She also found a notice that the certified mail had been returned to the sender.

20. Sue Carter's normal practice is to accept all mail delivered to her Karnes City Post Office Box. If the certified mail had been in her mailbox upon her return from San Antonio, she would have opened it and timely protested the Nor-Tex application.

21. If Banks had sent the Application Packet by regular mail, Carter would have opened it and timely protested the Nor-Tex application. At no point did Carter ever engage in any instance of selective acceptance or refusal of certified mail relating to the Nor-Tex application.

22. The cover letter in the Application Packet is on "Banks Oil & Gas Consulting" letterhead. The letter does not identify Banks as the representative or agent of Nor-Tex. The cover letter does not provide information that would be necessary for the recipient to understand that he or she has a right to participate or what must be done to exercise that right.

    A. The letter does not state that the recipient has the right to protest the Nor-Tex application.

B. The letter does not reveal that there is a deadline for protests or the date of that deadline

C. The letter does not inform Carter how or where to file a protest.

D. There is no Railroad Commission address or phone number listed anywhere on the letter.

23. The Form W-14 in the Application Packet was completed by Nor-Tex or its agent. There are instructions on the reverse side of the form. The Form W-14 states on its face that, "APPLICANT ALSO MUST COMPLY WITH THE INSTRUCTIONS ON THE REVERSE SIDE." There is no indication that the recipient of the W-14 should or must read the instructions. Nor-Tex, not Carter is the applicant.

24. The paragraph in the Form W-14 instructions regarding protests and hearings is not clearly written. Basic information that affected parties who received the application packet would need to timely file a protest is not provided. There is no clear statement of who is an affected

CONCLUSIONS OF LAW

1. Proper notice of the hearing on October 3, 2012, was timely given to all persons legally entitled to notice.

2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.

3. Carter has a "property interest" entitled to due process protection in the real property she owns adjacent to the tract on which the Nor-Tex Well is located.

4. Carter was entitled to but did not receive valid notice of Nor-Tex's application for a disposal permit for its Nor-Tex Well prior to the time the permit was issued.

5. The actions of Nor-Tex and its agents were not reasonably calculated, under all the circumstances to apprise Carter of the pending permit application and to afford her an opportunity to present her objections.

6. The disposal permit for the Nor-Tex Well, Permit No. 13606 was issued without proper notice to all potentially affected persons entitled to notice in violation of due process and Texas Natural Resources Code §85.205 .

7. The Railroad Commission lacked jurisdiction to issue Permit No. 13606 and the permit was void *ab initio*.

RECOMMENDATION

As it is undisputed that Carter did not actually receive the mailed notice of the application and the examiners conclude that she has not received due process under applicable case law and Commission precedent, the examiners recommend that permit issued to Nor-Tex for its Nor-Tex SWD No. 1, Eagleville (Eagleford-2) Field, Karnes County, Texas (Permit No. 13606) be declared void *ab initio*.

Respectfully submitted,

Marshall Enquist by CKL
Marshall Enquist
Hearings Examiner

Andres Trevino
Technical Examiner

Colin K. Lineberry
Hearings Examiner

Oil and Gas Docket No. 02-0277320; Complaint of Clinton M. Butler, attorney, representing landowners, Lloyd Kellner and Sue Carter, against Nor-Tex Resources, LLC's W-14 Permit issued March 29, 2012, stating they did not receive proper notice for the Nor-Tex SWD No. 1, Eagleville (Eagleford-2) Field, Karnes County, Texas, District 02; (Permit No. 13606)

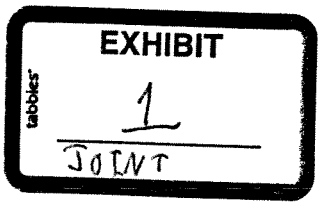
FILED
2012 OCT 10 PM 12:08
OFFICE OF GEN COUNSEL
RAILROAD COMMISSION
OF TEXAS

Stipulation of Facts
By Betty Sue Carter and
Nor-Tex Resources, LLC

The undersigned parties stipulate to the following facts:

1. Betty Sue Carter was a person entitled to notice of Nor-Tex Resources, LLC's ("Nor-Tex") Application for its Nor-Tex SWD No. 1, Eagleville (Eagleford-2) Field, Karnes County, Texas, District 02; (Permit No. 13606), pursuant to Railroad Commission Statewide Rule 3.9(5)(B). Betty Sue Carter is a full-time resident of Karnes City, Texas, a fact which was unknown to Nor-Tex until September 28, 2012.

2. In researching the adjacent surface owners entitled to notice, Nor-Tex went to the Karnes County Appraisal District and located two addresses for Betty Sue Carter: one at 15819 Cedar Mill, Chesterfield, MO 63017, and one at P.O. Box 67, Karnes City, Texas 78118.



3. Amber Lorick, on behalf of Banks Oil & Gas Consulting, a Division of The Banks Group ("Banks"), and a consultant for Nor-Tex will testify under oath that: 1) she placed the following documents attached hereto and labeled "Stipulation Exhibit A" into a postage pre-paid envelope sent via certified mail, return receipt requested, to Betty Sue Carter, P. O. Box 67, Karnes City, Texas 78118 (the "Karnes City Mail"), and to Betty Sue Carter, 15819 Cedar Mill, Chesterfield, MO 63017 (the "Chesterfield Mail"); 2) the certified mail number on the Karnes City Mail was 7010 1870 0003 6766 6165; 3) the certified mail number on the Chesterfield Mail was 7010 1870 0003 6766 6141; and 4) neither Banks nor Nor-Tex ever sent either letter, or a copy of it, via regular mail; it was only sent certified, which required a signature to consummate delivery.

4. The U.S. Postal Service attempted to deliver to Betty Sue Carter at P. O. Box 67, Karnes City, Texas 78118 via certified mail, return receipt requested, the Karnes City Mail on March 1, 2012. The Karnes City Mail remained in Betty Sue Carter's post office box from March 1, 2012 until March 16, 2012, when the postal service declared it unclaimed.

5. Betty Sue Carter will testify under oath that: 1) she was not in Karnes City during the entire time period from March 5, 2012 through March 16, 2012; 2) in early March, 2012, she was required to undergo a surgical procedure related to a cancer diagnosis; 3) she had to travel to San Antonio for the surgery, as it could not be done in Karnes City; 4) the surgery required general anesthesia, and she was not permitted to drive for some period of weeks after the surgery; 5) she recuperated from the surgery in San Antonio; 6) on Thursday, March 1, she was in Karnes City only briefly; she was focused that day on a project in Ecleto and did not pick up her mail that day; 7) on Friday, March 2, she was in San Antonio for appointments and returned to Karnes City the weekend of March 3-4; 8) she spent Saturday, March 3 preparing for a Chamber of Commerce Banquet and did not go to the post office that day either; 9) on Monday, March 5 she was in San Antonio for her surgery, where she remained through March 16; and 10) at no point from March 1, 2012 through March 19, 2012, did she know that a certified letter was in her mailbox available to be picked up.

6. When Betty Sue Carter returned to Karnes City after her surgery, she went to the post office, and she saw there were notices left by the U.S. Postal Service where the Postal Service attempted to deliver the Karnes City Mail

to Ms. Carter. There was also a notice in Ms. Carter's post office box that the Postal Service had returned the Karnes City Mail to sender.

7. On March 17, 2012, the U.S. Postal Service sent the Karnes City Mail back to the sender, Banks, ATTN: Amber Lorick. This document is attached and labeled "Stipulation Exhibit B". According to Postal Service records, the Karnes City Mail was received by Banks on March 19, 2012. Banks is unaware if, during the time period from March 19, 2012 through March 29, 2012, anyone from Banks or from Nor-Tex notified the Railroad Commission that the ~~notice letter~~ Karnes City Mail AC that was sent to Ms. Carter had been returned as unclaimed.

8. At all times from January 1, 2012 to the present, Betty Sue Carter has maintained a Karnes City mailing address of P. O. Box 67, Karnes City, Texas 78118.

9. On March 3, 2012, the U.S. Postal Service sent a signed receipt for the Chesterfield Mail to Banks. The signature on the signed receipt is illegible.

10. Betty Sue Carter will testify under oath that: 1) up until late 1998 or early 1999, she resided at 15819 Cedar Mill, Chesterfield, Missouri 63017, but since that date, she has not resided at the Chesterfield, Missouri address; and 2) she is not related to anyone who resides at that address, nor does she know who lives there currently.

11. Nor-Tex and Banks did not know until August 13, 2012 that Betty Sue Carter did not live at the Chesterfield, Missouri address.

12. Betty Sue Carter will testify under oath that: 1) she did not receive any mail addressed to her at the Chesterfield, Missouri address from Banks at any time period from February 29, 2012 to the present; and 2) she has not lived in Missouri for more than a decade.

13. Betty Sue Carter will testify under oath that: 1) her normal practice is to accept, open and review all mail, certified or otherwise, delivered to her mailing address, which is the Karnes City PO Box mentioned above; 2) if the Karnes City Mail had still been in her mailbox upon her return from San Antonio, she would have opened it, reviewed it, and taken immediate steps to timely protest the Nor-Tex application; 3) if Banks had sent the Karnes

City Mail via regular mail, rather than or in addition to certified mail, she would have received it, opened it, reviewed it, and taken immediate steps to timely protest the Nor-Tex application; and 4) at no point with respect to this proceeding did she ever engage in any instance of selective acceptance or refusal of certified mail relating to the Nor-Tex application,

Stipulated and Agreed to:

NOR-TEX RESOURCES, LLC

By: _____ Justin McIntosh

_____ Betty Sue Carter

Oil and Gas Docket No. 02-0277320; Complaint of Clinton M. Butler, attorney, representing landowners, Lloyd Kellner and Sue Carter, against Nor-Tex Resources, LLC's W-14 Permit issued March 29, 2012, stating they did not receive proper notice for the Nor-Tex SWD No. 1, Eagleville (Eagleford-2) Field, Karnes County, Texas, District 02; (Permit No. 13606)

"Stipulation Exhibit A"

BANKS
OIL & GAS CONSULTING
A DIVISION OF THE BANKS GROUP

February 29, 2012

Hello,

We are an Oil & Gas Consulting firm that prepares various applications and helps with regulatory assistance for oil and gas operators. You have received the Railroad Commission form W-14.

The Railroad Commission requires operators to send a copy of the W-14 (front & back) to the county clerk, all surface owners, adjacent surface owners and active operators within ½ mile of the proposed well.

W-14 items #10, #12, and #13 list the legal description of the proposed well. A map has also been provided which shows the well location.

Please feel free to call us with any questions or concerns so we may assist you. Thank you for your time and have a nice day.

Sincerely,

Banks Oil & Gas Consulting
1601 Rio Grande, Ste. 500
Austin, TX 78701
E-mail: customerservice@banksinfo.com
Office: 512-478-0059
Fax: 512-478-1433

RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION

Form W-14
05/2004

APPLICATION TO DISPOSE OF OIL AND GAS WASTE BY INJECTION INTO A FORMATION NOT PRODUCTIVE OF OIL AND GAS

1. Operator Name: NOR-TEX RESOURCES, L.L.C. 2. Operator P-5 No.: 612621

3. Operator Address: PO BOX 1058 JOSHUA TX 76058

4. County: KARNES 5. RRC District No.: 02

6. Field Name: EAGLEVILLE (EAGLE FORD-2) 7. Field Number: 27135750

8. Lease Name: NOR-TEX SWD #1 9. Lease/Gas ID No.: NEW

10. Well is 2.1 miles in a W direction from COY CITY (center of nearest town). 11. No. acres in lease: 12.726

12. Legal description of location including distance and direction from survey lines: J. H. COX SUR, A-69, 100' FWL & 160' FNWL

13. Latitude/Longitude, if known (Optional) Lat. 28 47' 46.425 Long. -98 05' 14.874

14. New Permit: Yes ☒ No ☐ If no, amendment of Permit No.: _____ UIC#: _____

15. Reason for amendment: Pressure ☐ Volume ☐ Interval ☐ Commercial ☐ Other (explain): _____

16. Well No. 1	17. API No. NEW		18. Date Drilled PROPOSED			19. Total Depth 7600'		20. Plug Date, if re-entry
Casing	Size	Setting Depths	Hole Size	Casing Weight	Cement Class	Cement Sacks (#)	Top of cement	Top Determined by
21. Surface	9 5/8"	5300'	12 1/4"	36#	STD	1400 SX	SURFACE	CALCULATION/VISUAL
22. Intermediate								
23. Long String	7"	7600'	8 3/4"	26#	STD	305 SX	5600'	CALCULATION
24. Liner								
25. Other								

26. Depth to base of Deepest Freshwater Zone: 5300 BUQW (5900 USDW) 27. Multiple completion? Yes ☐ No ☒

28. Multistage cement? Yes ☐ No ☒ If yes, DV Tool Depth: _____ ft. No. Sacks: _____ Top of Cement: _____

29. Bridge Plug Depth: _____ ft. 30. Injection Tubing Size: 4 1/2" In. and Depth 6150 ft. 31. Packer Depth: 6150 ft.

32. Cement Squeeze Operations (List all giving interval and number of sacks of cement and cement top and whether Proposed or Complete.):

ITEMS # 21, 23, 30 & 31 ARE PROPOSED*****

33. Injection Interval from 6200 to 7500 ft. 34. Name of Disposal Formation: Wilcox & Poth

35. Any Oil and Gas Productive Zone within two miles? Yes ☒ No ☐
If yes, Depth 700-836, 4000-4289, 11,000+ ft. and Reservoir Name: KLINGEMAN, RECLAW, EDWARDS (11, 066), EAGLE-FORD 1 & 2

36. Maximum Daily Injection Volume: 25,000 bpd 37. Estimated Average Daily Injection Volume: 25,000 bpd

38. Maximum Surface Injection Pressure: 3100 psig 39. Estimated Average Surface Injection Pressure: 3,000 psig

40. Source of Fluids (Formation, depths and types): PRODUCED WATER IN THE AREA

41. Are fluids from leases other than lease identified in Item 8? Yes ☒ No ☐ 42. Commercial Disposal Well? Yes ☒ No ☐

43. If commercial disposal, will non-hazardous oil and gas waste other than produced water be disposed of? Yes ☒ No ☐

44. Type(s) of Injection Fluid: Salt Water ☒ Brackish Water ☐ Fresh Water ☐ CO_2 ☐ N_2 ☐ Air ☐ H_2S ☐
LPG ☐ NORM ☐ Natural Gas ☐ Polymer ☐ Other (explain): RCRA EXEMPT WASTE

CERTIFICATE

I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete, to the best of my knowledge.

Signature: Amber Lorick Date: 2/27/201

Amber Lorick, on behalf of NOR-TEX SWD #1
Name of Person (type or print)

Phone (512)804-9188 Fax (512) 478-1433

FOR OFFICE USE ONLY	REGISTER NO.	AMOUNT $

APPLICANT ALSO MUST COMPLY WITH THE INSTRUCTIONS ON THE REVERSE SIDE

FORM W-14 INSTRUCTIONS

1. File the original application, including all attachments, with Environmental Services, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. File one copy of the application and all attachments with the appropriate district office.

2. Include with the original application a non-refundable fee of $100 payable to the *Railroad Commission of Texas*. Submit an additional $150 fee for each request for an exception to Statewide Rule 9(9) relating to Special Equipment.

3. Provide the current field name (Item 6) and field number (Item 7) designated in Commission records for an existing well. If the application is for a new well, provide the nearest producing field name and number.

4. Check in Item 14 the appropriate box for a new permit or an amendment of an existing permit. If an amendment, check the applicable boxes in Item 15 to indicate the reason for amendment and provide a brief explanation if "other" is checked.

5. If the application is for a new permit, attach a complete electrical log of the well or the log of a nearby well.

6. Attach a letter from the Texas Commission on Environmental Quality (TCEQ) or its predecessor or successor agency stating that the well will not endanger usable quality water strata and that the formation or stratum to be used for disposal does not contain usable quality water. To obtain the TCEQ letter, submit two copies of the Form W-14, a plat with surveys marked, and a representative electrical log to TCEQ, MC 151, P.O. Box 13087, Austin, Texas 78711-3087. NOTE: If the application is for an amendment, a new TCEQ letter is required only if the amendment is for a change in the disposal interval.

7. Attach a map showing the location of all wells of public record within one-half (1/2) mile radius of the proposed disposal well. On the map show each Commission-designated operator of each well within one-half (1/2) mile of the proposed disposal well. NOTE: For a commercial disposal well application, the map shall also show the ownership of the proposed disposal well tract and the surface tracts that adjoin the proposed disposal well tract.

8. Attach a table of all wells of public record that penetrate the disposal interval and that are within one-quarter (1/4) mile radius of the proposed disposal well. The table shall include the well identification, date drilled, depth, current status, and the plugging dates of those wells that are plugged. Identify any wells that appear to be or that you may know are unplugged or improperly plugged and penetrate the proposed injection interval. Alternatively, an applicant may request a variance under Rule 9(7)(B). NOTE: If the application is for an amendment, a table of wells within a one-quarter (1/4) mile radius is required only if the current permit was issued before April 1, 1982, or if the amendment is for a shallower disposal depth.

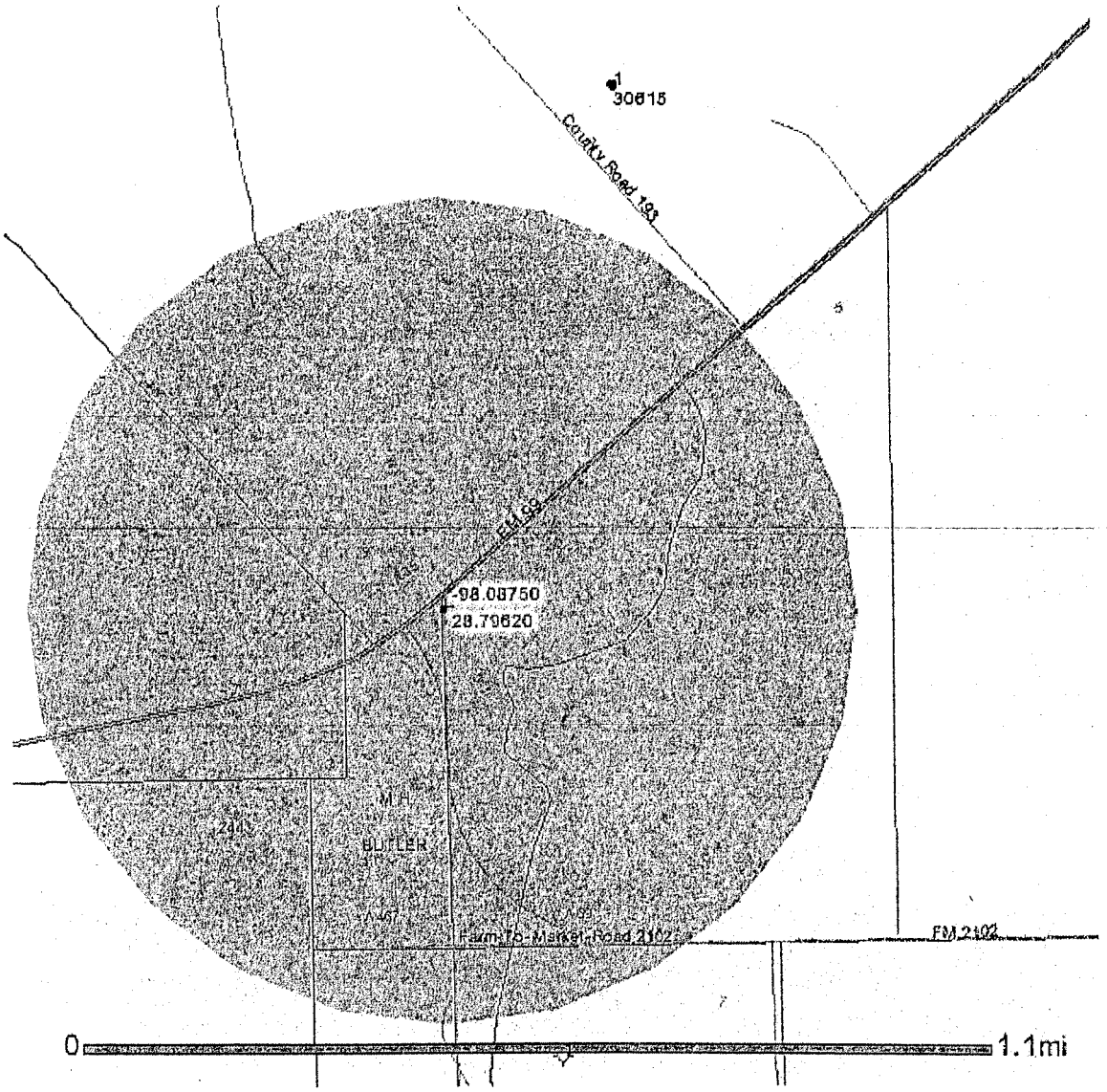
9. Attach a list of the names and mailing or physical addresses of affected persons who were notified of the application and when the notification was mailed or delivered. Include a signed statement attesting to the notification of the listed affected persons. Notice shall be provided by sending or delivering a copy of the front and back of the application to the surface owner of record of the surface tract where the well is located, each Commission-designated operator of any well located within one-half (1/2) mile of the proposed well, the county clerk, and the city clerk, or other city official, if the proposed well is located within municipal boundaries. In addition, notice of a commercial disposal well also shall be provided to surface owners of record of each surface tract that adjoins the surface tract where the proposed well will be located. NOTE: If the application is for an amendment, notification of the county clerk and the city clerk are required only if the amendment is for disposal interval or for commercial status.

10. Attach an affidavit of publication signed by the publisher that the notice of publication has been published in a newspaper of general circulation in the county where the disposal well will be located. Attach a newspaper clipping of the published notice. If the application is for a commercial disposal well, that fact must be stated in the published notice. NOTE: If the application is for an amendment, notification by publication is required only if the amendment is for disposal interval or for commercial status.

11. Attach any other technical information that you believe will facilitate the review of the application. Such information may include a cement bond log, a cementing record, or a well bore sketch.

Additional information is available in the *Underground Injection Control Manual*, which is available on the Railroad Commission's website: www.rrc.state.tx.us

No public hearing will be held on this application unless an affected person or local government protests the application, or the Commission administratively denies the application. Any protest shall be in writing and contain (1) the name, mailing address, and phone number of the person making the protest; and (2) a brief description of how the protestant would be adversely affected by the activity sought to be permitted. If the Commission or its delegate determines that a valid protest has been received, or that a public hearing is in the public interest, a hearing will be held upon written request by the applicant. The permit may be administratively issued in a minimum of 15 days after receipt of the application, published notice, or notification of affected persons, whichever is later, if no protest is received.


30615
County Road 193
FM 89
-98.08750
28.79620
BUTLER
Farm To Market Road 2102
FM 2102
0
1.1mi

Oil and Gas Docket No. 02-0277320; Complaint of Clinton M. Butler, attorney, representing landowners, Lloyd Kellner and Sue Carter, against Nor-Tex Resources, LLC's W-14 Permit issued March 29, 2012, stating they did not receive proper notice for the Nor-Tex SWD No. 1, Eagleville (Eagleford-2) Field, Karnes County, Texas, District 02; (Permit No. 13606)

"Stipulation Exhibit B"

CERTIFIED MAIL

BANKS
OIL & GAS CONSULTING
A DIVISION OF THE BANKS GROUP

PO Box 12851 | Austin, TX 78711 | www.banksinfo.com

7010 1870 0003 6766 6165

UNITED STATES POSTAGE
PITNEY BOWES
02 1P $005.59⁰
0002833805 FEB 29 2012
MAILED FROM ZIP CODE 78701

3-1-12
3-6-12
3-16-12
N.L

Betty Sue Carter
PO BOX 67
Karnes City, TX 78118

NIXIE 782 DE 1 00 03/17/12
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
BC: 78711285151 *0710-05037-29-38

78711285151 BC

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Betty Sue Carter
PO BOX 67
Karnes City, TX 78118

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* | C. Date of Delivery

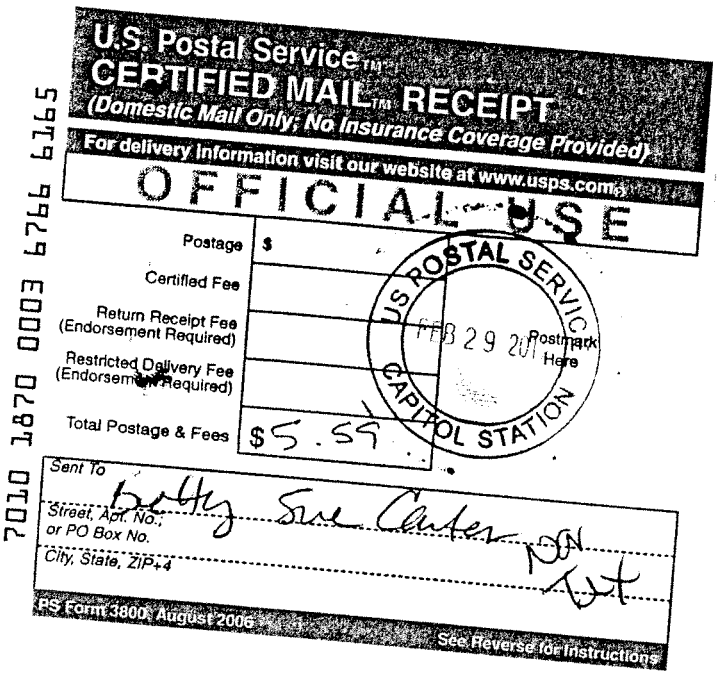
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Trans 7010 1870 0003 6766 6165

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540


U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®
OFFICIAL USE
Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $5.59
US POSTAL SERVICE
FEB 29 2011
Postmark Here
CAPITOL STATION
7010 1870 0003 6766 6165
Sent To
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