

OFFICE OF GENERAL COUNSEL

OIL AND GAS DOCKET NO. 06-0271349

COMMISSION CALLED HEARING TO CONSIDER THE COMPLAINT OF BETTY GILLORY, TERRY TOOTLE, JULIA HUFF AND PAULA BRITT THAT COMMERCIAL DISPOSAL PERMIT NO. 13227 ISSUED TO ETX FLUID SOLUTIONS, LLC., FOR THE PENDLETON LEASE, WELL NO. 1, HEMPHILL, EAST (COTTON VALLEY) FIELD, SABINE COUNTY, TEXAS [NOW HELD BY HECKMANN WATER RESOURCES (CVR) INC.] SHOULD BE REVOKED BECAUSE THE COMPLAINANTS DID NOT RECEIVE THE NOTICE OF HEARING ISSUED ON FEBRUARY 3, 2011 IN OIL AND GAS DOCKET NO. 06-0269118 AND WHETHER, IN THE EVENT PERMIT NO. 13227 IS DETERMINED TO BE INVALID FOR FAILURE OF NOTICE, A NEW COMMERCIAL DISPOSAL PERMIT SHOULD BE GRANTED FOR SAID WELL

HEARD BY: Andres J. Trevino P.E., Technical Examiner
Christopher S. Hotchkiss, Hearings Examiner

APPEARANCES:

APPLICANT:

George Neale
James Flournoy
Troy Massey
Rick Johnston

REPRESENTING:

Heckmann Water Resources (CVR) Inc.

PROTESTANTS:

Betty and Ronald Gillory
Terry Tootle
Julia Huff
Paula Britt

Themselves
Himself
Herself
Herself

PROCEDURAL HISTORY

Application Filed:	December 17, 2010
Request for Hearing:	June 20, 2011
Notice of Hearing:	June 29, 2011
Date of Hearing:	July 19, 2011
Proposal For Decision Issued:	February 15, 2012

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

On February 3, 2011, a Notice of Hearing was issued on the application of ETX Fluid Solutions, LLC for a commercial disposal permit for the Pendleton No. 1 Well in Sabine County, Texas. A hearing on the application was called on March 10, 2011. Because no protestant appeared at the hearing on March 10, 2011, the permit for commercial disposal authority was issued on March 22, 2011 by the Commission's Technical Permitting staff. Subsequent to the granting of the permit, complaints were filed with the Commission alleging that the notice of the hearing had not actually been mailed by the Commission to the appropriate persons, including the protestants listed above.

As a result of the complaints, the notice of hearing in the current docket was issued on June 29, 2011. During the interim period, the permit was transferred from ETX Fluid Solutions, LLC to Heckmann Water Resources (CVR) Inc. ("Heckmann"). As a part of the current proceeding, Heckmann appeared and did not contest the prior notice issue, but presented evidence in support of granting the application.

Heckmann requests authority pursuant to Statewide Rule 9 to operate Well No. 1 on its Pendleton Lease in Sabine County as a commercial disposal well. The application is protested by Ron and Betty Gillory, Terry Tootle, Julia Huff and Paula Britt. These protestants are residents in the immediate area of the proposed disposal well.

DISCUSSION OF THE EVIDENCE**Applicant's Evidence**

The subject well has not yet been drilled but a permit to drill was issued by the Commission on August 25, 2010. It is proposed that the well be drilled through the Blossom, Edwards and Glen Rose formations to a maximum depth of 8,000 feet. It is proposed that the well have 800 feet of 10³/₄" surface casing with cement circulated from the casing shoe to the ground surface. It is also proposed that 7" casing be set at approximately 7,500 feet through the Blossom, Edwards and Glen Rose formations, estimated to occur between 4,300 and 7,500 feet. The 7" casing will be cemented with 1,100 sacks of cement with the top of cement behind the longstring casing estimated to be at 2,500 feet. (See Wellbore Diagram attachment) The Texas Commission on Environmental Quality recommends that usable-quality ground water be protected to a depth of 750 feet.

The proposed injection will be through 4¹/₂" tubing set on a packer at approximately 4,250 feet, but no higher than 100 feet above the top of the injection interval. The proposed disposal interval includes the non-productive Blossom, Edwards and Glen Rose

formations. The proposed injection interval is between 4,300 and 7,500 feet. The depth to these formations is based on the nearest well log available, the Temple Lumber Company No. 1 Well, which is located approximately 3.5 miles to the northwest. The Temple Lumber Company No. 1 Well was a dry hole drilled in 1947. The proposed maximum injection volume for the proposed disposal well is 20,000 BWPD with an estimated average of 10,000 BWPD. The proposed maximum injection pressure is 1,900 psig. Heckmann requests salt water and other non-hazardous oil and gas wastes to be authorized in the proposed well.

There are no wellbores within a ½ mile radius of the proposed disposal well and therefore no conduits for escape of disposal fluids from the proposed disposal interval. Additionally, the log of the Temple Lumber Company No. 1 Well indicated a shale interval approximately 400 feet in thickness above the proposed disposal interval. This shale interval will prevent any vertical migration from the disposal interval.

The proposed disposal facility is located on State Highway 21, from which trucks will enter the facility. The tanks which store the fluids will be surrounded by a containment wall to prevent escape of any spillage which may occur. The tank battery and pumps will also be surrounded by a concrete containment wall which will provide a secondary method to contain any spillage or leak. There is sufficient room at the site for trucks to unload and safely drive back out to State Highway 21. A maximum of 25 trucks can be parked on the location at any time without causing any backup onto State Highway 21. Heckmann expects a maximum of 15 trucks per hour at the facility during peak operating hours.

Heckmann presented a traffic study showing that approximately 3,100 vehicles per day pass the proposed location on State Highway 21. This highway is a two lane road without shoulders. Assuming a maximum of 100 trucks per day coming to the facility, traffic will increase by a maximum of 3.2%. The tract on which the well will be located has approximately 450 feet of highway frontage. A permit has already been issued by TxDOT for the driveway into the property. The calculated stopping distance at 55 MPH is approximately 495 feet for a car which includes 202 feet for brake reaction distance. There is in excess of 495 feet of sight distance in each direction from the facility entrance.

Heckmann plans to use the proposed disposal well to dispose of produced water and fracture stimulation water generated as a result of the active and ongoing development of the deeper Haynesville formation in the area. Heckmann believes that proposed well is necessary to accommodate the active drilling as there are currently no existing commercial disposal wells in Sabine County. Heckmann's trucks must currently haul produced fluids to commercial facilities in adjacent Shelby and San Augustine Counties. The trucks have to travel an additional 60 to 100 miles round trip to the Joaquin area to unload the fluids. Use of the proposed facility will result in decreased truck traffic in Sabine, San Augustine and Shelby Counties and will also decrease costs to operators as trucking costs are a significant cost factor in the overall cost of disposal of produced fluids. Lower costs will extend the life of marginal wells thereby increasing hydrocarbon recovery.

Heckmann has an active P-5 on file with the Commission, with \$50,000 financial assurance. There are no past or pending enforcement actions against Heckmann Water Resources (CVR) Inc.

Notice of the subject application was published in *The Sabine County Reporter*, a newspaper of general circulation in Sabine County, on September 15, 2010. A copy of the application was mailed on December 22, 2010, to the Sabine County Clerk's Office, the surface owner of the disposal tract, the offsetting surface owners and operators within ½ mile of the proposed disposal well. The proposed disposal well will be located on a 5.59 acre tract owned by Silverhorn Partners, LLC.

Protestants' Evidence and Position

Protestants are concerned that the use of the proposed commercial disposal well will adversely impact the quality of life of persons who live nearby, including possible pollution of water wells. With a possibility of as many as 100 trucks going in and out of the location on a daily basis, protestants are concerned about traffic safety and the fact that many of the trucks will be hauling fluids from Louisiana. Protestants also believe that their property values will be reduced as a result of the operation of the proposed disposal well.

The initial application described the location of the proposed well as being 6 miles east of Milam, Texas, which is at the intersection of State Highways 87 and 21. Protestants contend that the description of the location is inaccurate, as the well is actually 4.3 miles east of Milam. A location 6 miles east of Milam would be in Toledo Bend Lake. The protestants assert that the inaccuracy of the location has caused confusion for some residents as to the actual location of the proposed disposal well and caused residents that would have protested not to protest.

Protestants are also concerned that operations of the well may cause a threat to contamination of Toledo Bend Lake. The location of the proposed well is less than two miles upgrade from the reservoir. Protestants fear a spill at the facility will travel through the sandy loam found in the area and enter Toledo Bend Lake.

Protestants further stated the application should be denied as Heckmann was allowed to submit multiple corrected applications in excess of the Commission's policy of allowing an applicant no more than two supplemental filings to complete an application. Otherwise, if the application is incomplete after the second filing, the Commission shall administratively deny the application. Additionally, Protestants presented a copy of a pending application for a commercial disposal well filed by Longbranch Energy, LP. The location of this well is in Sabine County approximately 12 miles north of Hemphill, Texas. The Protestants argue an additional well, such as the Heckmann Pendleton No.1 is not needed. The Longbranch Energy well has not been permitted by the Commission.

EXAMINERS' OPINION

There was no explanation as to the lack of notice of the March 10, 2011, hearing. Obviously, Protestants were not provided proper notice of that hearing. Heckmann did not challenge the complaint that notice was not received by the adjacent land owners. Heckmann requested the subject hearing take place. The subject hearing was properly noticed to provide Heckmann and the Protestants an opportunity to present evidence regarding the proposed disposal well.

The examiners recommend that Heckmann's application be approved. The Pendleton No. 1 Well will be completed in a manner which will confine disposal fluids to the proposed disposal interval in the non-productive Blossom, Edwards and Glen Rose formations. There are no wellbores within ½ mile which penetrate the proposed disposal interval.

The evidence further indicates that the operation of the subject disposal well will not adversely impact usable quality ground water. Surface casing will be set at 800 feet and cemented to surface. This is approximately 50 feet deeper than the base of usable quality water as recognized by the TCEQ. Additionally, there is a shale layer approximately 400 feet in thickness overlying the disposal interval which will prevent any disposal fluids from reaching the base of the usable quality ground water. The design of the disposal facility includes a concrete retaining wall around the tanks and pumps which will prevent any migration of fluids off the location toward Toledo Bend Reservoir.

Approval of the requested permit is in the public interest. Use of the proposed disposal well will provide a method in Sabine County for proper disposal of produced fluids associated with the ongoing development of the Haynesville Shale in the area. Having a disposal facility close to the horizontal wells will reduce disposal cost and increase hydrocarbon recovery. It is in the public interest to promote the development of the Haynesville Shale in the area. There are no commercial disposal facilities currently in Sabine County. Approval of the requested permit will result in reduced truck traffic in San Augustine and Shelby Counties where water must currently be hauled for proper disposal.

Protestants voiced concern about the validity of the application because of the discrepancy in the distance noted from the well to the town of Milam. The publication is intended to give a general distance and direction of the proposed well from the center of the nearest town to alert members of the public, who are not noticed by mail, of the proposed location of the well so that the public can determine if they might be affected by the well's location. Contact information was available on this notice to contact Commission staff regarding any aspect of the application. Commission staff could have provided, plats, drilling permits or the legal description of the land where the well will be located. All persons in attendance at the hearing were clear on the actual location of the well, having seen the construction activities in progress at the proposed facility. Protestants' concerns regarding property values are not issues which can be considered by the Commission in connection with a Rule 9 application.

Based on the record in this docket, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Notice of this hearing was given to all persons entitled to notice at least ten (10) days prior to the hearing. Notice of the application was published in *The Sabine County Reporter*, a newspaper of general circulation in Shelby County, on September 15, 2010.
2. On February 3, 2011, a Notice of Hearing was issued on the application of ETX Fluid Solutions, LLC for a commercial disposal permit for the Pendleton No. 1 Well in Sabine County. A hearing on the application was called on March 10, 2011. Because no protestant appeared at the hearing on March 10, 2011, the permit for commercial disposal authority for the proposed disposal well was issued on March 22, 2011, by the Commission's Technical Permitting staff.
3. As a result of complaints regarding notice of the March 10, 2011, hearing, the current hearing was called to address notice issues, as well as to consider a new application for the Pendleton No. 1 Well.
4. After issuance of the March 22, 2011 permit (original permit), the permit was transferred to Heckmann Water Resources (CVR), Inc. Heckman does not contest the claim that insufficient notice was provided prior to issuance of the original permit.
5. The Pendleton No. 1 Well has not been drilled. Heckmann plans to drill the well to a maximum depth of approximately 8,000 feet.
6. The maximum requested injection volume is 20,000 BWPD and the maximum requested surface injection pressure is 1,900 psig. The requested disposal interval is the non-productive Blossom, Edwards and Glen Rose formations between 4,300 and 7,500 feet.
7. The Pendleton No. 1 Well will be cased and cemented in a manner to protect usable quality water and disposal fluids will be confined to the disposal interval.
 - a. The subject well will have 800 feet of 10³/₄" surface casing cemented to surface.
 - b. The subject well will have approximately 7,500 feet of 7" casing, cemented with 1,100 sacks of cement with a top of cement at approximately 2,500 feet.
 - c. Disposal will be through tubing set on a packer no higher than 100 feet above the top of the disposal interval.

- d. The Texas Commission on Environmental Quality recommends that usable-quality water be protected to 750 feet in the area of the proposed well.
 - e. The Texas Commission on Environmental Quality issued a saltwater disposal recommendation letter advising that the proposed disposal will not endanger the fresh water strata in the area of the disposal well.
8. There are no wellbores within 1/2 mile of the proposed disposal well.
 9. There are no permitted commercial disposal wells in Sabine County.
 10. The proposed site for the Pendleton No. 1 Well is 4.3 miles east of Milam, Texas on a 5.59 acre tract.
 11. Due to increasing development of the Haynesville Shale formation with horizontal drilling in this area, there is a need for proper disposal of large quantities of produced water and fracture stimulation water. Use of the Pendleton No. 1 Well as a commercial disposal well is in the public interest to promote this development by providing a safe and economic means of disposal of the produced fluids.
 12. Use of the Pendleton No. 1 Well as a commercial disposal well will reduce truck traffic and hauling costs in Sabine, San Augustine and Shelby Counties.
 13. Use of the Pendleton No. 1 Well as a commercial disposal well will reduce the volume of injection fluids that would otherwise be injected into Shelby and San Augustine Counties. Shelby County is currently experiencing a large demand for the need to dispose of produced fluids.
 14. Heckmann has an active P-5 on file with the Commission with \$50,000 financial assurance.

CONCLUSIONS OF LAW

1. Proper notice was issued in accordance with the applicable statutory and regulatory requirements.
2. All things have occurred to give the Railroad Commission jurisdiction to consider this matter.
3. The original permit, issued March 22, 2011, was void for lack of required notice to offset landowners.
4. The use or installation of the proposed injection well is in the public interest.
5. The use or installation of the proposed injection well will not endanger or injure any oil, gas, or other mineral formation.

6. With proper safeguards, as provided by terms and conditions in the attached final order which are incorporated herein by reference, both ground and surface fresh water can be adequately protected from pollution.
7. Heckmann Water Resources (CVR) Inc. has made a satisfactory showing of financial responsibility to the extent required by Section 27.073 of the Texas Water Code.
8. Heckmann Water Resources (CVR) Inc. has met its burden of proof and satisfied the requirements of Chapter 27 of the Texas Water Code and Railroad Commission Statewide Rule 9.

EXAMINERS' RECOMMENDATION

Based on the above findings and conclusions, the examiners recommend that the application be approved as set out in the attached Final Order.

Respectfully submitted,

Andres J. Trevino, P.E.
Technical Examiner

Christopher S. Hotchkiss
Hearings Examiner