



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 09-0275570

THE APPLICATION OF EOG RESOURCES, INC. PURSUANT TO 16 TEXAS ADMINISTRATIVE CODE §3.8 FOR A PERMIT FOR A CENTRALIZED OIL AND GAS WASTE RECYCLING FACILITY AND ASSOCIATED PIT, EOG-COOKE COUNTY FACILITY, CENTRALIZED RECYCLING FACILITY CONTROL NO. 039, PIT APPLICATION CONTROL NO. 011706, COOKE COUNTY, TEXAS

HEARD BY: Brian Fancher, P.G. - Technical Examiner
Marshall F. Enquist - Legal Examiner

APPEARANCES:

REPRESENTING:

APPLICANT:

John K. Hicks
Flip Whitworth
Jeff Cannon
Jeff Spencer
Ranall Rosengarten, P.E.
Mark Winkelman
Cee Cee Candler

EOG Resources, Inc.

PROTESTANTS:

John Roane, Cooke County Judge

Dr. Claudette Fette
Tim Bullard

Cooke County Commissioners Court
and citizens of Cooke County
Self
Self

OBSERVER:

John Hays

Waste Facilities, Inc.

PROCEDURAL HISTORY

Application Filed:	May 24, 2011
Protest Received:	August 29, 2011
Request for Hearing:	September 27, 2011
Notice of Hearing:	April 19, 2012
Hearing Held:	June 06, 2012
Transcript Received:	June 18, 2012
Proposal for Decision Issued:	April 15, 2013

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

EOG Resources, Inc. ("EOG") requests authority to permit a non-commercial, centralized recycling facility ("Facility") that will convert oil and gas drill cuttings into road base material. In addition, EOG requests to permit an associated storm-water collecting pit ("Collecting Pit") within its proposed facility.

The proposed Facility location is on a 347.89-acre tract that is situated approximately 20 miles southwest of Gainesville, Texas. EOG is the surface owner of the tract on which the proposed Facility would be located ("EOG Tract").

On August 25, 2011 notice of the application was sent to the surface owners of each tract which adjoins the Facility's tract. On May 25, 2012, supplemental notice of changes to the initial application was provided to the adjacent surface owners.

The application is protested by contiguous and non-contiguous surface owners adjacent to the EOG Tract.

The examiners take Official Notice of the public records filed at the Railroad Commission of Texas by EOG Resources, Inc., including EOG's Organization Report.

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

The subject application focuses on two permit requests: (1) a stationary oil and gas waste recycling facility ("the Facility") that will convert RCRA exempt oil and gas wastes to road base material for use on EOG's lease roads and wellsite pad locations; (2) an application to construct and maintain a pit ("the Collecting Pit") that will be used to confine stormwater that falls on the proposed Facility location.

EOG testified that the oil and gas wastes it seeks to recycle result from drilling associated with its oil and gas wells in Cooke and Montague Counties, Texas. EOG testified that the drilling rigs used by EOG use a closed loop system for drilling fluids, which means that as the drill cuttings (“cuttings”) are generated through the drilling operation, the cuttings are separated from the liquid drill mud by a centrifuge and the drill mud is reintroduced into the mud system and reused while the cuttings are removed altogether (Tr., P. 24, L. 13-21).

EOG testified that the primary purpose for its proposed Facility is to recycle oil and gas wastes from its own operations to provide road-base material for its own oil and gas leases (Tr., P. 48, L. 6-10). EOG testified that it is not requesting to recycle oil and gas waste from other operators, nor is it interested in making a profit by the sale of road base material created at the proposed Facility. However, EOG testified that it would consider providing Texas Counties with the recycled material for road-base on County Roads, if any Texas Counties expressed their interest (Tr., P. 48, L. 21). EOG asserted that because the primary business purpose of the Facility is to recycle its own waste, the subject application does not require a commercial recycling permit under 16 Texas Administrative Code §4.204(3) and therefore requires a permit under 16 TAC §3.8 (Tr., P. 47, L. 21).

EOG testified it seeks to reduce the waste stream that is created by the cuttings. According to EOG, currently, the cuttings produced by its wells in Cooke and Montague Counties are transported to several landfills in the area; however, EOG believes that the cuttings are good for road base material, thus the motive for the subject application (Tr. Pg. 24, L. 22-25).

EOG submitted a copy of its revised Draft Permit for the Facility, issued by the Commission’s Environmental Permitting Section in the Oil and Gas Division on June 04, 2012. EOG agrees with the proposed permit conditions suggested by Commission staff, as set out in the revised Draft Permit, and seeks a permit based upon this document (Tr., P. 43, L. 8-16). Also, EOG submitted a copy of the Draft Permit for the Collecting Pit, issued by Staff, and stated that it agrees to the proposed permit conditions stated therein (Tr., P. 42, L. 7).

EOG’s proposed facility location is on 347.89-acres located approximately twenty miles southwest of Gainesville, Texas, and situated equidistant between Farm to Market (“FM”) Road 922 and FM 1630 (Tr., P. 32, L. 2). EOG is the surface owner of the 347.89-acre tract. Moreover, the proposed Facility will be built around a pugmill, which will be centrally located on the EOG property in an abandoned quarry (Tr. P. 33, L. 8). EOG testified that it will enter a contractual agreement with Waste Facilities, Inc (“WFI”) to operate the proposed Facility.

Jeff Cannon (“Mr. Cannon”), the representative on behalf of WFI., testified that its responsibilities at the proposed Facility include management of the recycling and ancillary operations (Tr., P. 59, L. 19). Mr. Cannon testified that the Facility’s operational process begins with a proper chain of custody being completed by the waste’s generator and transporter. As the waste reaches the Facility’s entrance, a sample of the waste will be taken and tested against any requirements set forth in the Facility’s permit. If the sample meets the permit’s testing requirements the truck load will be

directed to the cuttings pad and the waste unloaded. Mr. Cannon testified the cuttings pad is an unloading area that is designed to prevent any liquids from migrating off the concrete pad (Tr., P. 63, L. 3).

Mr. Cannon testified that all accepted waste cuttings will be offloaded and stored at the cuttings pad, so that during milling operations the cuttings are easily accessible. During milling operations, the cuttings will be transported from the cuttings pad to the pugmill where the cuttings will be mixed with rock aggregate and asphaltine absorption, a proprietary road-base additive (Tr., P. 59, L. 17; P. 60, L. 1). Once the three materials are properly blended at the pugmill, the final product ("road-base material") is generated in 800-ton stacks and individually segmented along the Facility's eastern boundary (Tr., P. 62, L. 18). Mr. Cannon testified that the proposed Facility will only perform milling operations during daylight hours; however, the Facility will accept waste at all times (Tr., P. 65, L. 11).

EOG submitted a copy of the Material Safety Data Sheet ("MSDS") for the proprietary asphaltine absorption additive¹. The quick identification nomenclature for this additive is "road building emulsion", while the trade name is identified as ATT-50 Asphalt Absorption Technology Material ("ATT-50"). Mr. Cannon testified that the MSDS for the ATT-50 indicates that it contains no hazardous components (Tr., P. 62, L. 3).

EOG testified that there are five water well locations within the Facility's half-mile area of review ("AOR"). Four of the five water wells are owned by EOG, while the remaining water well is owned by Mr. Jimmy Jenkins. EOG testified that Mr. Jenkins' water well is the shallowest well within the half-mile AOR, and is separated from the proposed Facility by approximately a half-mile. Mr. Jenkins' water well is reported as drilled to a total depth of 200 feet below ground surface, and is classified as a domestic water well. All EOG-owned water wells within the Facility's half-mile AOR average a total depth between 450 to 500 feet below ground surface, and are classified as rig supply water wells. EOG testified that the Facility's location, excluding the abandoned quarry, is covered with soils that includes clay from surface to approximately 36 feet below ground surface (Tr., P. 85, L. 10-14). EOG's evidence suggests that all water wells completed with the Facility's half-mile AOR are completed in the Trinity Aquifer².

EOG testified that the Collecting Pit will be constructed to contain stormwater runoff from the cuttings pad, pug mill, and road-base stockpiled areas for the 25 year, 24 hour rainfall event (Tr., P. 87, L. 25). That is, the maximum rainfall over a 24-hour period projected to occur within 25 years. The Collecting Pit will be located on the northwestern boundary of the Facility's proposed location; therefore, the Facility will be constructed in a manner that provides a down-gradient trend to the north and west boundary lines. EOG testified that the Collecting Pit will be lined with a 30-mil, high density polyethylene ("HDPE") liner that will be anchored in anchor trenches around its

¹ See EOG Exhibit No. 2, Tab L.

² See EOG Exhibit No. 2, Tab G.

perimeter. EOG testified that a berm, two feet in height, will be constructed to surround the top of the Collecting Pit. EOG testified that the base of the Collecting Pit will be built on top of an impervious clay layer that will provide a natural barrier at the base of the proposed Collecting Pit (Tr., P. 85, L. 12).

EOG submitted a copy of the Draft Permit, dated September 02, 2011, for the Collecting Pit that was prepared by Commission Staff. The Collecting Pit's requirements include limited use of the pit for collecting rainwater that has contacted oil and gas waste, a pit capacity of 20,447 barrels³, an HDPE liner of 30 mils in thickness, and that the pit must be emptied and the HDPE liner inspected annually for signs of deterioration and/or leaks⁴.

Once operations at the proposed Facility cease, all berms will be leveled and all containment systems will be cleared. The Facility will be covered with six inches of top soil, excluding lease roads and pads. Six months after closure of the Facility, in accordance with the proposed Draft Permit, soil samples will be taken from areas within and around the permitted site area. Upon cessation of the Collecting Pit, the pit will be dewatered and emptied within 120 days of final cessation of the pit. Final closure of the Collecting Pit will be accomplished in such a manner that rainfall will not collect at the pit location after closure.

Commission records reflect that EOG Resources, Inc. is an active entity at the Railroad Commission that has filed \$470,000 of financial assurance in the form of a bond.

Protestants' Evidence

John Roane, Cooke County Judge, testified on behalf of several citizens of Cooke County, Texas. At the start of the hearing, Judge Roane testified that he opposed the subject applications. Judge Roane testified that from a long-term perspective, he is opposed to the operations at the Facility due to concerns with consequential adverse effects. Additionally, Judge Roane testified that if a truck hauling waste to the proposed Facility had an accident and spilled fluid on a county road, he was concerned that Cooke County may have to help pay for any clean-up efforts related to the spill. At the end of the hearing, Judge Roane testified that his expressed concerns had been satisfied (Tr., P. 106, L. 3).

Dr. Claudette Fette, a non-contiguous surface owner to the Facility's proposed location, testified that she is concerned about the potential environmental impacts on both air and water resources as a result of the Facility (Tr., P. 10, L. 6). Dr. Fette indicated that she believes the use of the road-base material from the Facility, as it is proposed by EOG, threatens the watershed across the region (Tr., P. 11, L. 7). Dr. Fette also stated that she is concerned with the potential threat of safety due to the increased truck traffic associated with the proposed Facility.

³ 20,477 barrels amounts to approximately 860,034 gallons.

⁴ See EOG Exhibit No. 8

Tim Bullard is an adjacent surface owner whose property is west, southwest of the proposed facility. Mr. Bullard testified his home is approximately one-quarter of a mile from the proposed Facility. Mr. Bullard asserted that the proposed Facility is situated between two creeks that are located 1,600 feet west and 1,000 feet east of the Facility, respectively (Tr., P. 14, L. 6). Mr. Bullard testified that he is concerned with any potential danger due to rain that comes into contact with oil and gas wastes at the Facility (Tr., P. 14, L. 13). Also, Mr. Bullard is concerned with the increase in traffic on County Road 343, as a result of the operations of the proposed Facility (Tr., P. 17, L. 4). Lastly, Mr. Bullard inquired as to whether the subject applications have been approved by the Texas Department of Transportation (“DOT”), Texas Commission on Environmental Quality (“TCEQ”), and Environmental Protection Agency (“EPA”) (Tr., P. 18, L. 16).

EXAMINERS' OPINION

The examiners believe that permitting of the proposed Facility is governed by the requirements of Statewide Rule 8, as the primary purpose of the Facility is to recycle oil and gas wastes from the operator’s own operations for use as road-base material on its own oil and gas leases. Therefore, the examiners recommend that the application be approved. EOG has demonstrated that the operation of the proposed stationary treatment facility and associated pit will not harm groundwater resources, as required by Statewide Rule 8.

The examiners note that Statewide Rule 8(d)(6) includes the following requirement:

“A permit to dispose of oil and gas wastes by any method, including disposal into a pit, may only be issued if the Commission determines that the disposal will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water.”

The merits of EOG’s application were unrefuted and indicate that the proposed Facility, and its associated Collecting Pit, meet the requirements found in Statewide Rule 8 and the Commission’s *Surface Waste Management Manual*. Additionally, Commission Staff has reviewed the applications for the Facility and Collecting Pit and found them to be administratively complete.

EOG’s design of the Collecting Pit includes a 30 mil HDPE liner that is made of material that is chemically inert to the affects of the liquids held in the pit. Additionally, there is over thirty feet of impervious clay that protects subsurface water below the proposed collecting pit. Beyond that, the floor of the limestone quarry that has been selected to house the pugmill will be sloped to the northwest so that all liquids will be directed to the proposed Collecting Pit, thus preventing any runoff occurring from the Facility.

The examiners note that the concerns expressed by the protestants Dr. Fette and Mr. Bullard, with respect to air quality and traffic safety, do not fall within the jurisdiction of the Railroad Commission and therefore can not be considered by the examiners.

FINDINGS OF FACT

1. Notice of this hearing was given to all affected persons at least ten days prior to the date of hearing.
 - a. On August 25, 2011 notice of the application was sent to the surface owners of each tract which adjoins the Facility's tract.
 - b. On May 25, 2012, supplemental notice of changes to the initial application was provided to the adjacent surface owners.
2. EOG Resources, Inc. ("EOG") requests authority to permit a non-commercial, centralized recycling facility ("Facility") that will convert oil and gas drill cuttings into road base material.
3. EOG requests to permit an associated storm-water collecting pit ("Collecting Pit") within the proposed facility.
4. The primary purpose for the Facility is to recycle oil and gas wastes from EOG operations into road-base material that will be used on EOG operated oil and gas leases.
5. EOG is the surface owner of the 347.89-acre ranch that houses the Facility's location. The Facility is built around a pugmill, which will be centrally located on the EOG property in an abandoned limestone quarry.
6. The Facility will be operated by Waste Facilities, Inc ("WFI"), a contractual partner with EOG. WFI will conduct the daily operations at the Facility.
7. The types of wastes received at the Facility will be RCRA-Exempt Oil and Gas Wastes. The predominant type of RCRA-Exempt Oil and Gas Waste will be spent drill cuttings from EOG oil and gas wells.
8. The Collecting Pit will be constructed with sufficient capacity to contain stormwater runoff from the cuttings pad, pugmill, and road-base stockpiled areas in a 25 year, 24 hour rainfall event.
9. The Collecting Pit will be constructed and maintained in a manner that meets the requirements of 16 Texas Administrative Code §3.8.
10. The location of the site meets the requirements of Statewide Rule 8 and the Commission's Surface Waste Management Manual.

CONCLUSIONS OF LAW

1. Proper notice was issued as required by all applicable codes and regulatory statutes.
2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.
3. EOG Resources, Inc.'s application to operate a commercial stationary treatment facility and associated collecting pit as the EOG Cooke County Facility complies with Statewide Rule 8 and will not cause pollution of surface or ground water, or result in waste of oil, gas or geothermal resources.

EXAMINERS' RECOMMENDATION

The examiners recommend that the Commission approve EOG Resources, Inc.'s application to operate a commercial stationary treatment facility and associated collecting pit at the EOG Cooke County Facility, as set out in the attached Final Order and Permit.

Respectfully submitted,


Brian Fancher, P.G.
Technical Examiner *by EKL*


Marshall F. Enquist
Legal Examiner