BARRY T. SMITHERMAN, CHAIRMAN
DAVID PORTER, COMMISSIONER
CHRISTI CRADDICK, COMMISSIONER

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 02-0286283

THE APPLICATION OF OILFIELD CLEANTECH WATER RECYCLING, LLC, PURSUANT TO STATEWIDE RULE 8 FOR A PERMIT TO OPERATE A COMMERCIAL OIL & GAS WASTE SEPARATION FACILITY, YO RANCH COMMERCIAL OIL & GAS RECYCLING ROAD BASE FACILITY (APPLICATION CONTROL NOS. 066, 012046, 012047, & 012048), WILSON COUNTY, TEXAS.

HEARD BY: Paul Dubois – Technical Examiner
Marshall Enquist – Hearings Examiner

PROCEDURAL HISTORY

Application Filed:	August 23, 2013
Protest Received:	September 23, 2013
Request for Hearing:	November 20, 2013
Notice of Hearing:	February 26, 2014
Date of Hearing:	April 23 & 24, 2014
Transcript Received:	May 7, 2014
Proposal For Decision Issued:	July 23, 2014

APPEARANCES:

APPLICANT:	**REPRESENTING:**
Christopher Hotchkiss Kevin Ware Weldon Cude Christopher Scully	Oilfield Cleantech Water Recycling, LLC.
PROTESTANTS:	
Anatole Barnstone Stephen Fenoglio Duane Winegardner Anthony Korzekwa Patricia Korzekwa	Anthony and Patricia Korzekwa

EXAMINERS' REPORT AND PROPOSAL FOR DECISION

STATEMENT OF THE CASE

This is the application of Oilfield Cleantech Water Recycling, LLC (Oilfield Cleantech) for a commercial oil and gas waste separation and recycling facility. The facility will accept and treat non-hazardous oil and gas waste, producing a recycled product suitable for use as a road base construction material. There will be no on-site waste disposal. The facility is located in rural Wilson County and is not located within any corporate city limits. Notice of the application was published in the *Wilson County News*, a newspaper having general circulation in Wilson County, Texas, on October 23 and October 30, 2013. The owner of the surface tract on which the facility is to be located and the owners of all adjacent tracts within a one-half mile radius of the facility were noticed of the application per 16 Tex. Admin. Code §4.254(b).

The application was initially protested by surrounding land owners Jim Nabors, Russell and Cassi Korzekwa, Salvador and Rosie Martinez, Anthony and Patricia Korzekwa and William Hays; all of the Protestants own property outside of the one-half mile area of notice required by §4.254(b).

Matters of Standing

On April 17, 2014, Applicant Oilfield Cleantech filed a Motion to Dismiss the Protestants from the captioned hearing due to lack of standing. Oilfield Cleantech noted that none of the Protestants are surface owners "...of tracts adjoining the tract on which the proposed facility will be located" and that none of the Protestants have demonstrated they are affected persons. Withdrawals of protest were received from Jim Nabors, Russell and Cassie Korzekwa, Salvador and Rosie Martinez and William Hayes.

Protestants Anthony Korzekwa and Patricia Korzekwa filed a Reply on April 23, 2014, the morning of the hearing, stating that they were affected parties pursuant to Statewide Rule 8(a)(22) and did have standing to appear as affected persons. As a result of the timing of the filing of the Reply, the examiners converted the beginning of the hearing into a Pre-hearing Conference on the subject of standing.

Counsel for the Korzekwa's based their affected party status on three points. First, the Korzekwa property will be affected by traffic and dust. Second, the Korzekwa property may be affected by groundwater contamination as a result of spills at the new facility. Third, the Korzekwa property may be affected if the closure costs of the facility have not been adequately calculated, possibly resulting in only the partial dismantling of the facility upon closure, negatively affecting the value of the nearby Korzekwa property. Primarily on the basis of the Protestants' second point, the groundwater

issue, the examiners decided to proceed with the hearing, consider the evidence and rule on the Motion to Dismiss in the PFD.

After two days of hearing, and presentation of both sides' cases, the examiners find that the Korzekwas are not affected parties, other than as members of the general public, within the meaning of Statewide Rule 8(a)(22). They lack standing to protest the present application. The examiners recommend that the Motion to Dismiss be granted, the application of Oilfield Cleantech be approved, and a permit for the recycling facility be granted.

DISCUSSION OF THE EVIDENCE

Applicant's Evidence

Oilfield Cleantech proposes to build and operate a commercial oil and gas waste recycling facility ("the facility") on a 100 acre property ("the property") owned by the Paul Lee Casares Land Trust and leased to Oilfield Cleantech. The facility will recycle oilfield waste materials into a usable road base construction material that meets Texas Department of Transportation standards. The physical address of the facility is 2233 County Road (CR) 247, Falls City, Texas, 78113. The site is located about 13 miles southwest of Falls City. The lease is for the full 100 acre property, but the subject facilities will be located on the northwest part of the tract.

1. Site Conditions

The property is rectangular in shape, with the short northwest side having a length of 1,628 feet, all of it frontage on CR 247, and the sides of the property extending about 2,869 feet to the southeast. The property was previously used as a caliche quarry, and quarrying may continue on part of the tract not occupied by the waste facilities.

The proposed facility, the subject of this matter, will be located on the northwest part of the property. The northwest part of the property will also contain the YO Ranch SWD, a commercial disposal well facility ("the SWD facility") also operated by Oilfield Cleantech[1]. The SWD facility is north of the Recycling facility, closer to CR 247. The

---

[1] The YO Ranch SWD is a permitted commercial disposal well facility (permit no. 14216, dated October 15, 2013). The disposal well was permitted separately from the proposed waste recycling facility. A drilling permit (no. 771996, API no. 493-32752) for the well was issued on October 29, 2013. The SWD is not active, and the status of the SWD facility construction is not known. A washout pit associated with the SWD has also been permitted (Permit No. P00012051).

general layout of the property and the two waste facilities are shown on Attachment A[2], and the site plan is Attachment B[3].

The natural surface elevation of the facility area ranges from about 394 feet to 370 feet[4]. The ground surface slopes down towards the northwest. The natural drainage enters the bar ditch along CR 247 and flows west. The stormwater flows to an intermittent tributary of Cat Creek and eventually into Los Cortes Creek, more than a mile northwest of the facility. The facility is not located within a flood plain and there are no wetlands on the property[5].

Oilfield Cleantech conducted a geotechnical investigation of the property to "classify and characterize subsurface conditions and to prepare an engineering report presenting foundation design and construction recommendations for the proposed facilities."[6] As part of this study, eleven (11) soil borings were drilled to depths of 30 to 35 feet in and around the areas of the proposed recycling and SWD facilities. The soil boring logs reveal clay present in most of the shallow subsurface regime, although some sand intervals were also encountered. After being left open for a period of time static groundwater depths ranging from 21.5 to 28 feet below ground surface (bgs) were observed in three (3) of the soil borings. The original recycling facility application included the placement of two monitoring wells adjacent to the recycling facility. After reviewing the application, Commission technical staff required the placement of four monitoring wells. The location of the monitoring wells are shown on Attachment B.

The Applicant stated the depth to freshwater in the area to be 2,700 feet bgs, as is recognized by the Evergreen Underground Water Conservation District (EUWCD). This depth corresponds to the top of the Queen City Sand. There is one water well on the property, located about 550 feet east of the proposed recycling facility. This water well was drilled to a depth of 3,918 feet and produces freshwater from the Carizzo Formation. Oilfield Cleantech has obtained a permit from the Evergreen underground Water Conservation District to produce 157 million gallons of water per year for five years from the well.[7] The well location was surveyed by GPS by the Evergreen

---

2 Applicant's Exhibit No. 2, Sheet 9.1

3 Applicant's Exhibit No. 19, Section G, Sheet 9.6

4 Applicant's Exhibit No. 2, Sheet 9.7

5 Applicant's Exhibit No. 2, Page 8, and Attachment B, Spill Prevention, Control, and Countermeasure Plan, Page 7.

6 Applicant's Exhibit No. 19, Section D

7 Applicant's Exhibit No. 19, Section F

Underground Water Conservation District (EUWCD). The GPS coordinates provided by EUWCD appeared to be in error, and placed the well about nine miles north of its true location[8].

According to the U.S. Department of Agriculture, Natural Resources Conservation Service, the 25-year/24-hour maximum rainfall event is estimated to be 8 inches for Wilson County.

2. Facility Layout & Operation

The recycling facility contains three individually-permitted pits (two are referred to as pads) that are used for the collecting, mixing and drying of the waste and recycled product. The pits will be similarly constructed of 12-inch reinforced monolithic concrete pads with minimum 1-foot sidewalls and 2-feet of freeboard. The bottom of each pit will be below ground level. A 40-mil HDPE liner will be installed below the bottom concrete plate of each unit, separated by 2-inches of leveling sand. The artificial liner will be underlain by 18-inches (minimum) of natural clay recompacted to specific density and permeability requirements. The pits will not be equipped with leak detection systems. Oilfield Cleantech has submitted Forms H-11 for each of these three units:

Collecting Pit (Form H-11 application no. 12046): Oilfield waste arriving on the site will be placed directly into the collecting pit. The pit dimensions are 130 feet by 60 feet by 7 feet with a working capacity of 100 feet by 60 feet by 5 feet. The working capacity is 2,597 bbl (540 cubic yards). Waste haulers will back up to the collecting pit on a covered concrete pad and discharge the waste material directly into the pit. The waste is then mechanically aerated and advanced bio systems micro media (diatomaceous earth mixture) and the petroleum inocula (bacteria and fungus compound) are added. Liquids are separated and pumped to the surge tank for disposal by injection in the adjacent SWD facility. Solids in the collecting pit are pushed towards an inclined screw and carried into the mixing pad.

Mixing Pad (Form H-11 application no. 12047): The mixing pad receives treated waste material from the collecting pad. The mixing pad working dimensions are 100 feet by 100 feet by 1 foot for a working capacity of 223 bbl (46 cubic yards). The road base additives (Portland cement, flyash, lime, etc.) are manually applied in the mixing pad area by pugmill. Liquids from the mixing pad are drained to the collecting pit and surge tank for disposal by injection in the adjacent SWD facility. Recycled product from the mixing pad is moved by conveyor to the drying pad; the mixing pad and drying pads are separated by a six-foot wide roll-over curb.

Drying Pad (Form H-11 application no. 12048): The drying pad has a working

---

[8] Transcript Vol. 2, page 12 line 16 through page 13 line 8.

capacity of 100 feet by 100 feet by 3 feet, for a working capacity of 1,758 bbl (366 cubic yards). Recycled product will be stored on the drying pad in two 1,000 cubic yard stockpile rows that are 10-12 feet in height with 1:1 side slopes. The recycled product will be tested for compliance before being shipped offsite for use as road base. Material that does not meet the compliance standards will be returned to the collecting pit for re-processing.

In addition to the individually permitted units, the facility includes ancillary features related to waste management and pollution prevention, including:

- Truck loading and unloading pads will be 8-inch reinforced concrete; the truck unloading pad will be covered to prevent storm water influence on waste offloading activities.

- Contact water management: storm water falling on the collecting pit or the mixing pit is routed to a surge tank before being sent to the adjacent SWD facility for disposal.

- Non-contact water management: storm water falling on the drying pit and other facility surfaces (outside the contact-water regime of the collecting pit and mixing pad), will be drained by pipe and surface grading to a storm water pond, which will have a controlled outlet and sampling point. The storm water pond was sized for a 100-year storm event.

3. Closure Cost Estimate

Oilfield Cleantech estimates that the cost to fully close the proposed recycling facility to be $86,583. The Commission's technical permitting staff approved the closure cost estimate. The closure cost estimate included estimates for waste disposal; material loading, handling and transportation; tank dismantling; concrete structure demolition; site backfill and leveling; and site restoration. The estimate also included a ten percent contingency[9]. The closure cost estimate submitted with the original application specified assumptions used in the calculation, including (1) entire facility closure, (2) all pads, pits and tanks are full of waste, (3) Oilfield Cleantech equipment and facilities are available to assist in the closure, and (4) all wastes will be properly disposed off site at approved facilities[10].

---

[9] Applicant's Exhibit No. 20.

[10] Applicant's Exhibit No. 2, Section 25.

4. Surrounding Land Use

The proposed facility is located in rural southwestern Wilson County. The adjoining surface tracts are undeveloped or agriculturally developed pasture. The Protestants, Tony and Patricia Korzekwa, live on CR 247 about 1.25 miles northeast of the proposed facility. The general area is experiencing the very rapid development of oil and gas resources and related industrial infrastructure. Many oil and gas wells, and dry holes, have been drilled in the area. The current development is driven by horizontal wells in the Eagle Ford Shale; two horizontal Eagle Ford wells have been drilled below the subject property, and more in the immediately adjacent tracts. More than two dozen permitted or drilled horizontal wells are located within a two-mile radius of the facility, including under the Protestant's property[11]. The Applicant estimates that within a 50 mile radius there are 700 producing and 240 permitted wells.

There are many well pads and other oil and gas facilities in the area. Counsel for Oilfield Cleantech stated, "There is facility after facility in this neck of the woods, as you well know. Large facilities. Down 247 there's an EOG facility[12]. I don't know the street, but it's to the west of us. There's a massive petroleum storage unit and transfer facility within half a mile of Mr. Korzekwa."[13] [14]

Korzekwas' Evidence

As was mentioned (and will be discussed in detail later), the examiners find that the Korzekwas are not affected parties, other than as members of the general public, within the meaning of Statewide Rule 8(a)(22), and thus do not have standing to protest the application. This finding was based in part on testimony and evidence provided in the hearing, and therefore the material elements of the Korzekwas' case is presented below. The Korzekwa's case contained two primary thrusts: First, testimony and evidence was presented in an attempt to establish their standing as affected parties, and second the Korzekwas provided a critique of Oilfield Cleantech's application and attempted to demonstrate its deficiencies, focusing on subsurface groundwater characterization, and closure costs.

---

[11] Applicant's Exhibit Nos. 4 and 6.

[12] Not specifically identified at the hearing; an EOG gas plant is west of the proposed facility on CR 247.

[13] Not specifically identified at the hearing, but believed by the examiners to be Enterprise Products Partners L.P.'s Lyssy Station on FM 1344.

[14] Transcript, Vol. I, page 32, lines 2-7.

1. Case for Standing

Tony and Patricia Korzeckwa own and live on a 100-acre tract of land northeast of the corner of CR 246 and CR 247 east of the proposed facility. The Korzeckwa's home is about 1.25 miles from the proposed facility and 200 feet off of CR 247. The nearest part of their property is about three-quarters of a mile from the proposed facility. The Korzeckwas farm hay on about 30 acres of the property, and they also raise cattle on it. They raise produce for their own consumption. The Korzeckwas do not have a water well on their property; they do own the water rights. The Korzeckwas leased their mineral rights to EOG Resources and are receiving royalties for produced oil and gas.

Mr. Korzeckwa is an equipment operator for Wilson County. He stated that the county recently conducted a traffic study on CR 247 and found that in a two-day period 844 vehicles traveled on the road. He further stated that the survey was not conducted when nearby wells were being fracture stimulated, during which times the local traffic increases greatly. Mr. Korzeckwa described the deteriorating and dusty conditions of CR 247 and other roads in the area. He stated that EOG Resources repaved part of the road before building the gas plant on CR 247 west of the proposed facility, but the condition of the road has since deteriorated. He stated that the increase in truck traffic over the last few years has also increased the amount of dust on his property. Dust stirred up by traffic accumulates on the grass along the road and his cows prefer not to eat it, and that dust gathers on his vegetable garden. He is concerned that traffic increases associated with the proposed facility would further negatively impact his property and enjoyment of it.

The Korzeckwas are also concerned that the closure costs are not adequate to effectively close the facility. If the facility is not properly closed, they contend, then an abandoned facility may negatively impact their property values. The Korzeckwas have owned their property for 40 years and having a partially or improperly closed facility may adversely affect the value of their property.

2. Subsurface Groundwater Characterization

Counsel for the Protestants and their expert geologic and hydrogeologic witness, Mr. Duane Winegardner, P.E., P.G., provided testimony and evidence to identify what they believe are the application's shortcomings relating to subsurface groundwater characterization. Mr. Winegardner stated he does not believe the proposed facility design offers sufficient protection of groundwater[15], especially with regard to sensitive areas as defined by Statewide Rule 91. This statement was clarified when he affirmed that the facilities themselves would be okay but not enough testing had been done to

---

[15] Transcript Vol. 2, page 99, lines 10-23.

characterize the site[16]. He also stated the facility was reasonably well designed[17], and "very well designed."[18] Mr. Winegardner also stated that the spill prevention, control and countermeasure plan and the storm water pollution prevention plan were "well prepared."[19]

The Protestants challenged a statement in the application that the depth to shallowest groundwater was 2,700 feet; the Protestants contend the groundwater is much shallower and exists in a very shallow regime (less than 40 feet) and in intermediate regimes from 200 to 600 feet or so. In fact, the Protestants contend that the groundwater encountered in the Applicants geotechnical soil borings confirm the presence of shallow groundwater. The Protestants also provided evidence in testimony and exhibits that 14 groundwater wells within a two-mile radius of the proposed facility produce water from intermediate depths of 207 to 650 feet, some with static water levels at about 100 feet. Chloride concentrations in these wells ranged from 26 mg/L to 1,540 mg/L.

With regard to the Applicant's site characterization efforts, the Protestants believe adequate characterization should have consisted of determining the onsite water quality characteristics and flow direction of shallow groundwater before a permit is granted. Further, the Protestants believe the Applicant should have assessed whether the shallowest groundwater regimes are hydraulically connected to deeper groundwater intervals.

On their own initiative, the Protestants undertook a study to gain more information about the shallow groundwater in the area. This study was limited in scope because of timing constraints. The Protestant drilled a shallow soil boring and test well on the Bodden property west of the proposed facility[20] on April 14 & 15, 2014. The Protestants claim this was as close to the subject facility as they were able to obtain access to drill. The location of the well is between the proposed facility and the EOG Resources gas plant to the west. The test well was drilled with mud rotary tools to a depth of 40 feet[21]. On April 17, 2014, there was no static water level observed in the

---

16 Transcript Vol. 2, page 101, lines 5-12.

17 Transcript Vol. 2, page 213, lines 14-16.

18 Transcript Vol. 2, page 214, line 1.

19 Transcript Vol. 2, page 215, lines 15-24.

20 The examiners estimate that the test well is about 1,800 feet southwest of the proposed facility location.

21 Protestant Exhibit No. P-11

well. On April 21, 2014, water was present at an unspecified depth, and a fluid sample was collected for analysis before the well was developed (that is, before the fluids cleared and could reasonably be expected to represent in situ formation ground water). Analysis of the fluid sample indicated a chloride concentration of 842 mg/L and a specific conductance of 5,120 µmohs/cm.[22] Mr. Winegardner stated that this chloride value is "probably representative of what's really there."[23] Mr. Winegardner also stated that he did not observe the drilling and sampling activities, and he has not visited the proposed facility site[24].

The Protestants also stated a permit should not be issued for the proposed facility because they believe the requirements of 16 Tex. Admin. Code (TAC) §4.256, Minimum Permit Provisions for Siting, have not been met. Specifically, the Protestants believe the Applicant has not demonstrated that the proposed facility is not located in a "sensitive area" as defined by 16 TAC §3.91[25]. Further, §4.256(c)(2) states that the Commission will consider the "depth to and quality of the shallowest groundwater" when assessing potential risk from a stationary commercial recycling facility.

Closure costs

The Protestants scrutinized the Applicant's closure cost estimate and also prepared an estimate of their own. The parties' estimates differed significantly in some ways, but were also in general agreement on certain issues. Both parties are in general agreement about the volume of waste material that will require offsite disposal. The Protestants believe, however, that the Applicant has significantly underestimated the cost to transport and dispose of this waste volume at an approved off-site facility. Whereas the Applicant estimated $5 per cubic yard, the Protestants estimate $54 per cubic yard. The Protestants also questioned a number of the Applicants assumptions used to develop the closure cost estimate, including the location and distance from the site for a suitable disposal facility, as well as assumptions described in the Commission's online Surface Waste Management Manual.

---

22 Protestant Exhibit No. P-12

23 Transcript Vol. 2, page 175, lines 11-14.

24 Transcript Vol. 2, page 204, line 24, through page 205, line 7.

25 16 TAC § 3.91(a)(2) sensitive areas "are defined by the presence of factors, whether one or more, that make an area vulnerable to pollution from crude oil spills. Factors that are characteristic of sensitive areas include the presence of shallow groundwater or pathways for communication with deeper groundwater; proximity to surface water, including lakes, rivers, streams, dry or flowing creeks, irrigation canals, stock tanks, and wetlands; proximity to natural wildlife refuges or parks; or proximity to commercial or residential areas."

The Protestants also stated the Applicant's closure cost estimate did not include several other necessary cost elements, including: (1) a required survey for naturally-occurring radioactive material (NORM) and (2) costs to close the monitoring wells after the post-closure monitoring period. The Protestants believe an accurate range of compliant closing costs to be between about $225,000 to $253,000. The most significant differences are in the categories of waste disposal costs (Protestants' estimate is about $50,000 more than Applicant's), site backfill and leveling costs (Protestants' estimate is about $27,000 more) and waste transport costs (Protestants' estimate is about $20,000 more).

EXAMINERS' OPINION

Examiners' Ruling on the Applicant's Motion to Dismiss

On April 17, 2014, Applicant Oilfield Cleantech filed a Motion to Dismiss several protestants from the captioned hearing due to lack of standing. Oilfield Cleantech noted that none of the protestants are surface owners "...of tracts adjoining the tract on which the proposed facility will be located" and that none of the protestants have demonstrated they are affected persons. An affected person is defined in Statewide Rule 8(a)(22) as a

> "Person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public."

"Standing consists of some interest peculiar to the person individually and not as a member of the general public." *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984). *Mitchell v. Dixon*, 168 S.W.2d 654 (Tex. 1943), *Yett v. Cook*, 281 S.W.2d 837 (Tex. 1926). The court in *Hunt v. Bass* found that "Plaintiffs have shown a particular personal interest which separates them from the general public." Id. 324. In the present application, the Korzekwas did not show a particular personal interest that separates them from the general public.

It is true that the proposed facility on C.R. 247 will cause additional traffic and, consequently, additional road dust on the Korzekwa property. However, the Korzekwa property is already subject to traffic and dust problems due to the EOG facility and other oil and gas activity to the west, as is any other property owner in the area, as shown by Mr. Korzekwa's own testimony.

Mr. Korzekwa works as an equipment operator for Wilson County Precinct 3 and is aware of a recent traffic count conducted by the precinct. Over two days, the total count was 844 vehicles, or an average of 422 per day. This count was taken during a

relative lull in oilfield activity. Regarding the two-day traffic count, Mr. Korzekwa testified "And I will say, at the time, there was no oil well fracking going on or drilling in that general vicinity. Whenever they're doing a well site or something's going on on that general road, it increases dramatically." Transcript, Volume II, page 50, lines 24-25 and page 51, lines 1-4.

Counsel for Korzekwa later elicited an estimate of truck traffic for the proposed Oilfield Cleantech facility in the range of 30 to 50 trucks per day, which would be 60 to 100 one-way trips a day on C.R. 247. Depending on the origin of the trucks, not all would pass by the Korzekwa home.

The Korzekwa's are not affected other than as members of the general public. Traffic issues are not within the jurisdiction of the Railroad Commission and are more properly raised, in this case, before the County Commissioner of Precinct 3 in Wilson County.

The Korzekwas did not raise any issues regarding groundwater contamination in the area that have not already been considered by the Commission. Oilfield Cleantech had provided for the placement of two groundwater monitoring wells on their facility in their original application, but agreed to provide two more on the recommendation of Commission staff. The Korzekwas are 1.25 miles away from the Oilfield Cleantech facility and their water supply is from a public water system. They do not have a well on their property. Shallow groundwater was found in three of 11 boreholes drilled on the Oilfield Cleantech facility property at 20 to 35 feet. Some water was also sampled from the Protestants' test well, but this well is located west of the proposed facility, the opposite side as the Protestants' property. In the general vicinity, groundwater is found and produced from wells ranging from 200 to 350 feet deep. For a steady supply of good quality water, local water well drilling contractors generally drill to the Queen City Sand, which is found at around 2700 feet, or preferably to the Carrizo Sands, which are deeper.

The four monitoring wells that will be installed at the Oilfield Cleantech facility provide adequate protection of the local groundwater. The Korzekwas did not provide any evidence that the proposed facility will affect the quality of their groundwater, if at all, any more than any other member of the general public.

The Korzekwa's concerns about the adequacy of the closure bond for the facility are related to their concern that if the bond is not sufficient, the facility may continue to stand after closure, thereby reducing property values in the area. That concern may equally be applied to all of the other oilfield facilities in the area. In this regard, the Korzekwa's are affected only as members of the general public.

Examiners' Opinion on the Merits of the Application

The Railroad Commission may issue a permit under 16 TAC Chapter 4, Environmental Protection, Subchapter B, Commercial Recycling, if it determines that:

(1) The storage, handling, treatment, and/or recycling of oil and gas wastes and other substances and materials will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, a threat to public health and safety; and

(2) The recyclable product can meet engineering and environmental standards the Commission establishes in the permit or in this subchapter for its intended use.

The examiners conclude that the Applicant has met its burden of proof under 16 TAC Chapter 4; the examiners recommend that the application be approved and the permit granted.

Operations of the mixing pit may allow for any residual hydrocarbons in the waste to be separated as a liquid and sent to the adjacent SWD facility. The SWD facility contains separator apparatus that may recover any liquid hydrocarbons. Thus the examiners conclude the facility will not result in the waste of oil, gas, or geothermal resources.

There is no dispute that the design of the proposed facility is sufficient to meet the requirements of the Rule. The Protestants' expert stated as much on several occasions.[26] Waste will not come into direct contact with the ground surface; the facilities will include concrete and synthetic liners. The Protestants do argue that sufficient site-specific characterization has not been conducted, specifically with regard to the quality and quantity of groundwater and the whether the proposed facility is located in a "sensitive area" as defined by 16 TAC §3.91.

The examiners conclude that the facility design includes technical and structural elements to contain the waste material and to segregate contact and non-contact storm water. The Applicant's geotechnical engineering study of the proposed site included elements necessary for the structural foundation design of the facilities, identifying the near-subsurface geologic strata, and for assessing the occurrence of shallow groundwater. Ground water seepage was encountered in three of the soil borings drilled on the property. The soil boring logs identified mostly clay materials underlying the site, with some discontinuous sand intervals. The occurrence of ground water seepage did not appear to correlate with any observable stratigraphy.

---

[26] Transcript Vol. 2, page 213, lines 14-16; page 214, line 1.

The Commission's technical staff is requiring–and the examiners concur–that four ground water monitoring wells be installed at the facility. The locations proposed by the Applicant are suitable to (1) assess the hydraulic gradient of the shallow ground water zone, and (2) provide sampling points for groundwater to assess waste constituent containment by and/or potential release from the facility structures.

There are a number of intermediate-depth groundwater wells in the area, producing from depths of about 200 to 650 feet. Most of these wells provide water for domestic or agricultural use. The deeper groundwater regime, the Queen City and Carrizo aquifers, are capable of producing large quantities of fresh water from strata below about 2,700 feet; the on-site water well taps into this zone. The Queen City and Carrizo aquifers are regulated by the Evergreen Underground Water Conservation District. The potential for connectivity between the shallow, intermediate, and deep ground water zones has not been assessed. However, the examiners conclude that the facility design and proposed permit requirements sufficiently protect ground water resources because (1) the Applicant has conducted a site-specific investigation that identified shallow groundwater on the site, and (2) this shallow zone will be monitored by four ground water monitoring wells.

The Protestant provided no information to suggest that the ground water under his own property may be affected by facility activities. Indeed, the Protestants do not have a water well on their property. The Protestants' property is more than three-quarters of a mile from the proposed facility. Shallow ground water encountered in three of 11 soil borings on the site suggest a very limited areal extent of continuous groundwater saturation in this zone, and thus limited quantities of water in this zone.

The Protestants' own test well presented no information to raise any concern whatsoever about the proposed facility, and the examiners find this well and resultant investigation to be of little to no relevance to the proposed facility. First, the Protestants' test well was located about 1,800 feet west of the proposed facility, and the Protestants home is considerably farther to the east. Second, the Protestants completed only one well; consistent with their own testimony, one well is not sufficient to assess groundwater flow direction or connectivity with deeper zones. Third, the test well was located between the proposed facility and a nearby gas plant; the origins of any potential contaminant observed in the well would be in question without additional data points. Fourth, a ground water sample from Protestants' test well contained 842 mg/L chloride, which the Protestant's expert stated was likely representative of actual ground water conditions[27].

The Protestants also stated their opinion that the Applicant or the Commission had not determined whether or not the proposed facility is located in a 'sensitive area'

---

[27] Transcript Vol. 2, page 175, lines 11-14.

as defined by 16 TAC §3.91. The Protestants did not provide any evidence to suggest that the proposed location is situated in an area defined by rule as a 'sensitive area.' Further, the application contained documentation that the facility is not located in a 100-year floodplain and no wetlands are present on the property[28]. Technical Permitting, with knowledge of the geotechnical investigation identifying a discontinuous shallow ground water zone, did not identify the location as a 'sensitive area.' The examiners find no evidence to indicate the facility location should be designated as a 'sensitive area' as that term is defined or intended to be applied in 16 TAC §3.91 or Chapter 4.

The recommended permit conditions include provisions to ensure the recyclable product can meet engineering and environmental standards applicable to a safe and usable recycled road base material. The proposed permit includes a provision that a trial run be conducted to demonstrate the facility's ability to successfully process 1,000 cubic yards of waste before any additional waste may be received or processed; Commission staff will be notified in advance of the trial run and will confirm the trial run requirements are met before the facility may continue to accept and process waste. Processed material that does not meet the finished product standards may be returned to the collecting pit for reprocessing or hauled off-site for disposal.

The examiners conclude that the financial security requirement of $86,583, as approved by Commission staff, is sufficient and appropriate. The examiners do not find the Protestants' arguments to the contrary to be compelling.

The Protestant's expressed concern about not having sufficient timing to prepare for the hearing. The examiners find this concern to be without merit. The Application was filed on August 23, 2013 and the first protest was received on or before September 23, 2013. On November 14, 2013 the Commission received notification that the Protestants were represented by counsel. The hearing was held more than five months later, on April 23-24, 2014. The examiners conclude the Protestants had sufficient time to demonstrate their standing as affected persons–other than as members of the general public–and they failed to do so.

FINDINGS OF FACT

1. On August 23, 2013, Oilfield Cleantech Water Recycling, LLC (Oilfield Cleantech) applied for a commercial oil and gas waste separation and recycling facility.

2. Notice of the application was published in the *Wilson County News*, a

---

[28] Applicant's Exhibit No. 2, Page 8, and Attachment B, Spill Prevention, Control, and Countermeasure Plan, Page 7.

newspaper having general circulation in Wilson County, Texas, on October 23 and October 30, 2013.

3. The owner of the surface tract on which the facility is to be located and the owners of all adjacent tracts within a one-half mile radius of the facility were noticed of the application per 16 Tex. Admin. Code §4.254(b).

4. The application was initially protested by surrounding land owners Jim Nabors, Russell and Cassi Korzekwa, Salvador and Rosie Martinez, Anthony and Patricia Korzekwa and William Hays.

   a. All of the Protestants own property outside of the one-half mile area of notice required by §4.254(b).

   b. Protestants Jim Nabors, Russell and Cassi Korzekwa, Salvador and Rosie Martinez, and William Hays withdrew their protests prior to the hearing.

5. Anthony and Partricia Korzeckwa are not "affected persons" under 16 Tex. Admin. Code § 3.8.

   a. With regard to the subject facility, the Protestants are not affected other than as members of the general public, by issues associated with traffic and dust, ground water, or facility closure.

   b. There is extensive oil and gas related development activity in the area; 422 vehicles travel on CR 247 daily, and dust is already a problem.

   c. There are no water wells on the Korzeckwa property.

6. The facility will accept and treat non-hazardous oil and gas waste, producing a recycled product suitable for use as a road base construction material. There will be no on-site waste disposal.

7. Shallow groundwater was observed in three (3) of 11 soil borings drilled to depths of 30 to 35 feet on the site.

   a. Groundwater in the shallowest zone is of limited quantity.

   b. Four groundwater monitoring wells are sufficient to monitor water quality and assess groundwater flow direction.

8. The recycling facility contains three individually-permitted pits used for the collecting, mixing and drying of the waste and recycled product.

   a. The pits will be similarly constructed of 12-inch reinforced monolithic concrete pads with minimum 1-foot sidewalls and 2-feet of freeboard.

   b. The bottom of each pit will be below ground level.

   c. A 40-mil HDPE liner will be installed below the bottom concrete plate of each unit.

9. A trial run will be conducted to confirm that the facility can operate as designed.

10. Oilfield Cleantech estimates that the cost to fully close the proposed recycling facility to be $86,583. The Commission's technical permitting staff approved the closure cost estimate. The estimate meets the requirements of Statewide Rule 78.

11. The Applicant has met its burden of proof under 16 TAC Chapter 4.

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 storage, handling, treatment, and/or recycling of oil and gas wastes and other substances and materials will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to public health and safety.

4. The recyclable product can meet engineering and environmental standards the established in the permit for its intended use.

EXAMINERS' RECOMMENDATION

The examiners recommend that the Motion to Dismiss the Korzekwas as unaffected arties be granted, and the application of Oilfield Cleantech Water Recycling, LLC, for a permit to operate a Commercial Oil and Gas Waste Separation Facility, YO Ranch Commercial Oil & Gas Reycling Road Base Facility, Wilson County, Texas, be approved.

Respectfully Submitted,

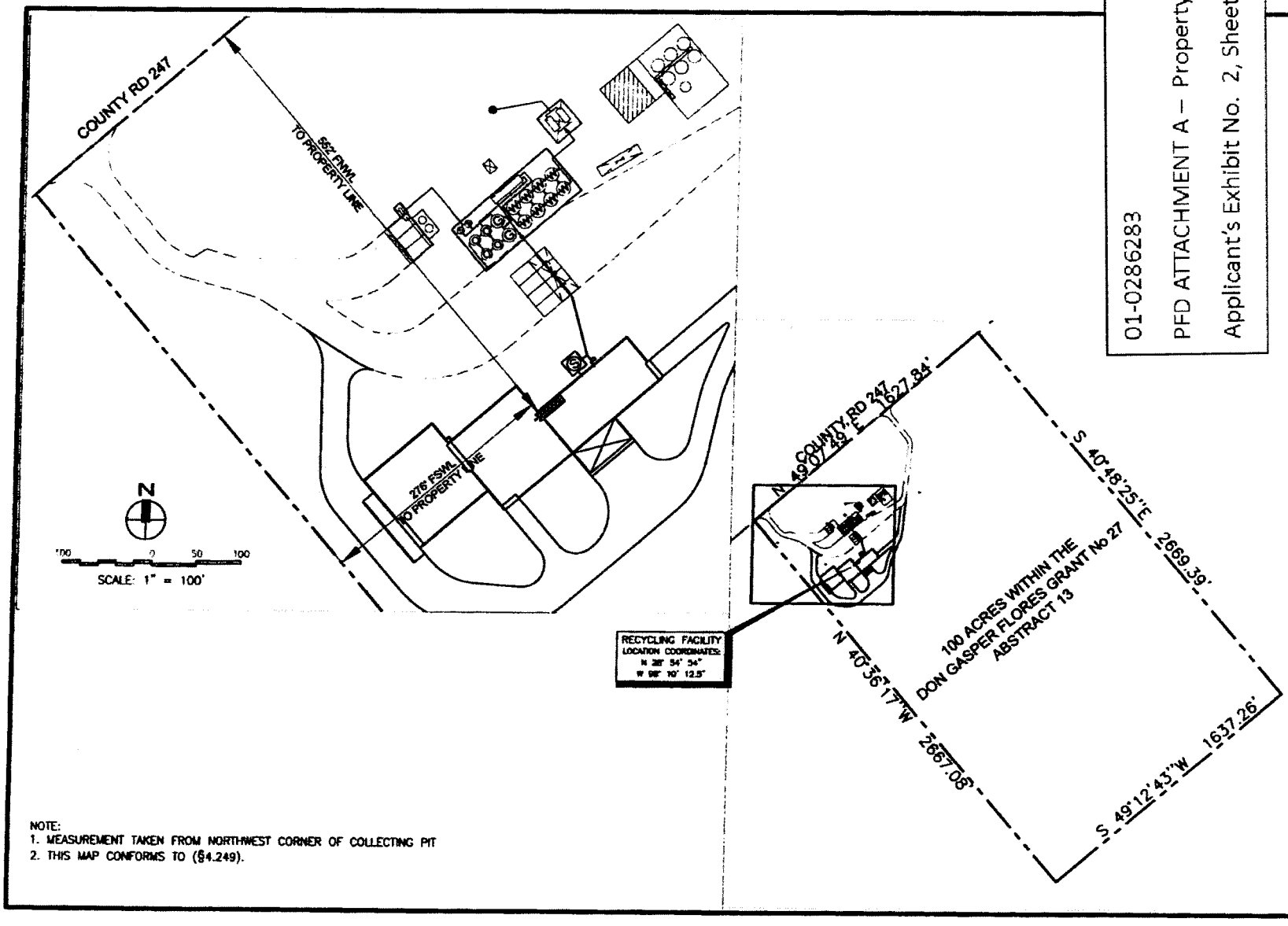
Paul Dubois
Technical Examiner

Marshall Enquist
Hearing Examiner

01-0286283

PFD ATTACHMENT A – Property Layout

Applicant's Exhibit No. 2, Sheet 9.1



NOTE:
1. MEASUREMENT TAKEN FROM NORTHWEST CORNER OF COLLECTING PIT
2. THIS MAP CONFORMS TO (§4.249).

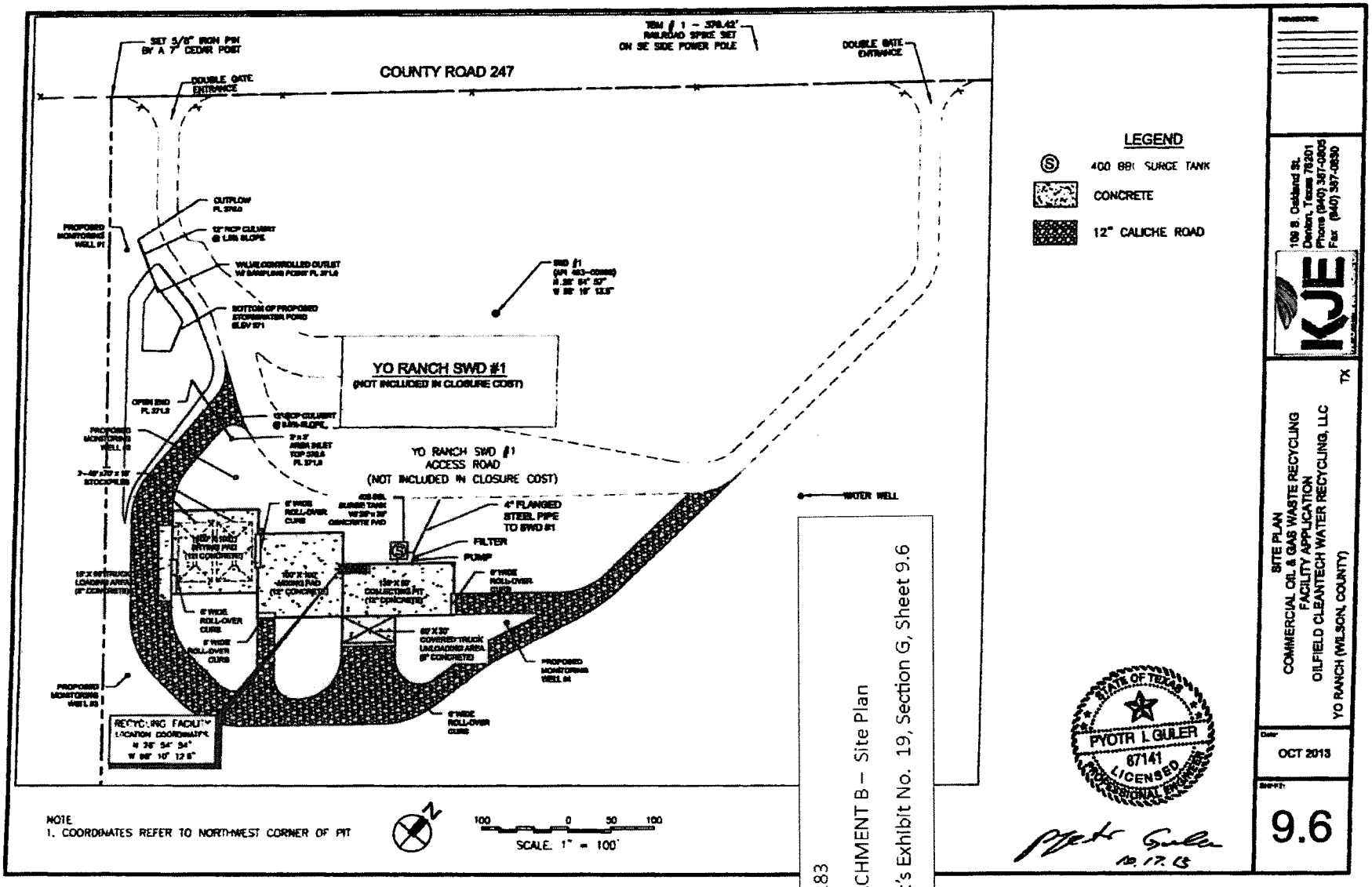
REVISIONS:

KJE
109 S. Oakland St.
Denton, Texas 76201
Phone (940) 387-0805
Fax (940) 387-0830

FACILITY PLAT MAP
COMMERCIAL OIL & GAS WASTE RECYCLING
FACILITY APPLICATION
OILFIELD CLEANTECH WATER RECYCLING, LLC
YO RANCH (WILSON, COUNTY) TX

Date: AUGUST 2013

SHEET: 9.1



01-0286283
PFD ATTACHMENT B – Site Plan
Applicant's Exhibit No. 19, Section G, Sheet 9.6