



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

### PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 09-0297904

---

THE APPLICATION OF PROSPECT OPERATING, LLC, PURSUANT TO STATEWIDE RULE 9 FOR A COMMERCIAL PERMIT TO DISPOSE OF OIL AND GAS WASTE BY INJECTION INTO A POROUS FORMATION NOT PRODUCTIVE OF OIL AND GAS, ELLENBURGER SWD, WELL NO. 1, JACK COUNTY REGULAR FIELD, JACK COUNTY, TEXAS

---

HEARD BY: Paul Dubois – Technical Examiner  
Marshall Enquist – Administrative Law Judge

**APPEARANCES:**

**REPRESENTING:**

**APPLICANT:**

Don Rhodes  
Dennis Robles  
Carl Smith  
Jeff Lewis

Prospect Operating, LLC

**PROTESTANTS:**

Robert Tomison

*Pro se*

Dana Rice

*Pro se*, and 26 other individuals

### PROCEDURAL HISTORY

Application Filed:	June 11, 2015
Protest Received:	June 25, 2015
Request for Hearing:	August 17, 2015
Notice of Hearing:	November 12, 2015
Date of Hearing:	December 16, 2015
Transcript Received:	January 7, 2016
Proposal For Decision Issued:	March 31, 2016

### STATEMENT OF THE CASE

Pursuant to Statewide Rule 9 (16 Tex. Admin. Code § 3.9) Prospect Operating, LLC (Prospect"), is applying for a commercial permit to dispose of oil and gas waste by injection into a porous formation not productive of oil and gas, Ellenburger SWD, Well No. 1, Jack County Regular Field, Jack County, Texas. The well will be located on US Highway 380 West, about 2.6 miles northeast of Bryson and 11 miles southwest of Jacksboro. The proposed disposal well will inject up to 20,000 barrels of water per day (bwpd) into the Ellenburger Formation in the depth interval from 6,200 feet to 7,500 feet. The application was protested by Robert Tomison and Dana Rice who are surface owners of adjoining tracts. Ms. Rice also represents several other persons who own adjoining and nearby surface tracts.

The Administrative Law Judge and the Technical Examiner (collectively, "Examiners") find the evidence in the record demonstrates that Prospect has met its burden of proof and that the application meets the requirements of Statewide Rule 9 and Chapter 27 of the Texas Water Code. The Examiners recommend the application be granted.

### APPLICABLE LAW

The Railroad Commission may grant an application for a disposal well permit under Texas Water Code § 27.051(b) and may issue a permit if it finds:

1. The use or installation of the injection well is in the public interest;
2. The use or installation of the injection well will not endanger or injure any oil, gas, or other mineral formation;
3. With proper safeguards, both ground and surface fresh water can be adequately protected from pollution; and
4. The applicant has made a satisfactory showing of financial responsibility as required by Section 27.073.

### DISCUSSION OF EVIDENCE

#### APPLICANT'S EVIDENCE

Prospect's evidence and testimony were offered by Don Rhodes, an oil and gas consultant who prepared the application. Mr. Rhodes offered three exhibits: (1) the application package submitted to the Commission on June 11, 2015; (2) a letter from Commission staff indicating the application is protested but is otherwise administratively

complete; and (3) two maps illustrating the location of the subject tract. Mr. Rhodes spoke briefly about the application and each exhibit, but did not offer expert testimony.

### ***Notice***

On May 15, 2015, notice of the application was published in the *Jack County Herald*, a newspaper of general circulation in Jack County, Texas. On June 11, 2015, copies of the application were mailed to the surface owner, Jack County Clerk, offset operators within one-half mile radius of the proposed well, and surface owners of tracts adjoining the proposed disposal tract.

### ***Facility Design and Operation***

Prospect proposes to drill, complete and operate the Ellenburger SWD Well No. 1 as follows:

- Drilled to a total depth of 7,500 feet;
- Surface casing (8 5/8-inch) will be set at a depth of 450 feet and cemented to the surface;
- Long-string casing (5 1/2-inch) will be set to a depth of 6,200 feet and cemented to a calculated depth of 4,511 feet with 310 sacks of Class H cement;
- The open-hole injection interval will be from 6,200 feet to 7,500 feet in the Ellenburger Formation;
- Injection tubing (3 1/2-inch) will be set with a packer at a depth of 6,120 feet;
- The maximum daily injection volume will be 20,000 bwpd and the estimated average daily injection volume will be 10,000 bwpd;
- The maximum surface injection pressure will be 3,100 pounds per square inch gauge ("psig") and the average surface injection pressure will be 1,500 psig;
- Injected waste will be limited to produced salt water and non-hazardous oil and gas waste exempt from regulation under the Resource Conservation and Recovery Act.

Surface facility design details were not described at the hearing. The standard permit conditions for a commercial disposal facility include provisions for surface facility design and operation. The property is currently owned by Prospect, which operates a fresh

water supply facility for oilfield users. Access to the property is on Smith Road, about 700 feet south of US Hwy. 380. There is a water well on the site and a surface impoundment for storing freshwater produced from the well. The well is about 180 feet deep.

### ***Groundwater, Geology and Hydrocarbon Resources***

The Commission's Groundwater Advisory Unit (GAU) indicates the interval from the ground surface to a depth of 250 feet (the base of usable quality groundwater, "BUQW") must be protected. This is consistent with the on-site water well, which is 180 feet deep. The base of the underground sources of drinking water ("USDW") is 575 feet. The GAU concludes that, if otherwise compliant with Commission rules and guidance, drilling and using this disposal well and injecting oil and gas waste into the subsurface stratum will not endanger freshwater strata in the area. Prospect proposes to dispose of oil and gas waste into the Ellenburger Formation, which is expected to be encountered at a depth of about 6,200 feet at this location. The Ellenburger Formation is overlain by the impermeable Barnett Shale. The Ellenburger Formation is not productive of oil or gas in this area.

There is oil and gas production near the proposed disposal well. The nearest active producing well is the Perry Operating Inc. B. F., Rankin Lease, Well No. 7, and is located about 2,600 feet to the west. Within a two mile radius Prospect identified current or historical production from a number of hydrocarbon-bearing formations, including the following: Bryson Sand Formation at a depth of 3,100 feet; Strawn Formation from 3,000 feet to 3,600 feet; undifferentiated Mississippian- and Pennsylvanian-aged formations in the depth interval from 3,000 feet to 4,500 feet; Caddo Formation at about 4,300 feet; Marble Falls Formation at about 4,600 feet; Atoka Conglomerate Formation at about 4,650 feet; Bend Conglomerate at about 4,800 feet; and Barnett Shale Formation from about 5,360 feet to 6,000 feet<sup>1</sup>.

A review of the records of the U. S. Geologic Survey did not identify any seismic events with a magnitude greater than 1.0 within a 9.08 kilometer radius (100 square miles) of the proposed disposal well between January 1, 1973 and May 13, 2015.

### ***Area of Review***

There are ten wellbores within the one-quarter mile area of review around the proposed disposal well. None of these wells are currently producing; all have been plugged, most prior to 1962 and the last well was plugged in 1989. The deepest well was drilled to a depth of 3,130 feet. None of the wellbores within the one-quarter mile area of review penetrate the disposal interval.

---

<sup>1</sup>

Production from the Barnett Shale is limited in this area; this is not an area of active horizontal well development.

***Public Interest and Need for Additional Disposal Capacity***

To address the Texas Water Code's requirement of public interest, Mr. Rhodes stated:

*There is a tremendous need for disposal wells in this area. There's been 600 or more wells drilled in the immediate area in the last couple of years. So the disposal well is a means by which we can put the water back down in the ground where it came from.*<sup>2</sup>

In addition, Mr. Rhodes testified that the nearest homes were from 940 to 2,300 feet away from the proposed location of the disposal wellbore.

***Financial Assurance***

Prospect has an active Organization Report (Operator No. 681492, Form P-5 expires on July 1, 2016). Prospect currently reports its business activity as a salt water hauler (Permit No. 5257, expiration date of July 31, 2016). Therefore, under its current P-5 a financial assurance obligation is not required. However, should the Commission approve this application and grant a permit, Prospect would be required to file the appropriate financial assurance with the Commission prior to obtaining a drilling permit for the well.

**PROTESTANTS' EVIDENCE**

The application was protested by Robert Tomison and Dana Rice. Ms. Rice also represented about 26 other adjoining and nearby landowners.

***Ms. Rice's Evidence***

Ms. Rice represented 26 other members of the community who are opposed to the proposed disposal well. These persons, several of whom are adjoining surface owners, were identified by Ms. Rice as: Angela Lia Correll, Dee Tate, Flo Tate, James Neal, Jason Harwell, Jessica Brown, Katheryn Carnley, Keifer Jones, Lawrence Arce, Linda Pirtle, Mary Beth Roper, Mike Mitchell, Ronnie Collins, Ronnie Reddell, Rose Colwell, Sherry Reddell, Shirley Richardson, Sierra Harwell, Tamara Bachhofer, William Earl Rhone, Ricky Wade, Linda Wade, Taylor Wade and Tanner Wade. Prospect did not object to any of these persons having standing to protest this application. Ms. Rice offered three exhibits (nos. 1, 2 and 4) into the record.

Ms. Rice stated that there were many homes in the area and a disposal well should not be placed in close proximity to them. The proposed disposal well will cause increased

noise and dust. In addition, she stated that there are blind spots along US Hwy. 380 that could pose a traffic hazard by trucks accessing the facility.

Most importantly, however, Ms. Rice stated that all of the people and homes in the area depend on groundwater for their homes and farms. Ms. Rice's well is about 200 feet deep. Ms. Rice and her neighbors are concerned that the proposed disposal well may harm their groundwater, which would negatively affect their land and lives.

### ***Mr. Tomison's Evidence***

Mr. Tomison is an adjoining surface property owner. His house is located on a tract of land east of the Prospect tract, across Smith Road. Mr. Tomison stated that he worked in the water and wastewater industry for nine years. He holds a Class B surface water and Class C wastewater treatment licenses from the Texas Commission on Environmental Quality (TCEQ). Mr. Tomison is concerned that Prospect does not conduct its business in a manner that is protective of the environment. His concerns are based on his personal knowledge of the water and wastewater industries, his knowledge of TCEQ regulations and standards, and his observations of activities on the Prospect property. Mr. Tomison offered seven exhibits (nos. 1-6 and 8) into the record, most of which were photographs.

Mr. Tomison testified that on several occasions he has observed tanker trucks on the Prospect property disposing of water onto the ground surface. He provided several photos as exhibits (Tomison Exh. Nos. 1-6), which showed trucks on the property and some pooled water. The photos did not directly show trucks discharging fluids onto the ground surface, although Mr. Tomison testified that he personally witnessed this occurring.<sup>3</sup> Mr. Tomison stated that trucks would arrive on site and take on a partial load of fresh water from the water supply well or freshwater impoundment, then discharge this water onto the ground surface onto another part of the property.

On June 4, 2015, Mr. Tomison observed tanker trucks discharging fluid into a surface pit on the site. He reported his observation to TCEQ and was referred to the Railroad Commission. On June 5, 2015, persons on the site began backfilling the impoundment, placed brush on top of it and set the brush on fire. Later that day the Prospect property was inspected by Commission staff from the Wichita Falls District (09) Office. No violations of Commission rules were documented by the inspection.<sup>4</sup>

Mr. Tomison also provided photographs from June 22, 2015, showing ponded surface water on the site and in the bar ditch along Smith Road (Exh. Nos 2-4.)

---

<sup>3</sup> Tr. 43-50.

<sup>4</sup> Tomison Exh. No. 8. Initial Report of inspection following Complaint No. 09-15-10727.

Photographs taken on July 21, 2015, show trucks on the site, and Mr. Tomison testified that he observed water being discharged onto the ground surface.<sup>5</sup>

For Prospect, Mr. Rhodes made no attempt to rebut Mr. Tomison's evidence and testimony. Mr. Rhodes did state, however, that the commercial disposal well application that is the subject of this hearing has nothing to do with Mr. Tomison's observations and that it is a separate matter.<sup>6</sup>

Mr. Tomison also expressed his concern about noise and dust from the proposed disposal well activity.

### EXAMINERS' ANALYSIS

The Railroad Commission may grant an application for a disposal well permit under Texas Water Code § 27.051(b) and may issue a permit if it finds:

1. The use or installation of the injection well is in the public interest;
2. The use or installation of the injection well will not endanger or injure any oil, gas, or other mineral formation;
3. With proper safeguards, both ground and surface fresh water can be adequately protected from pollution; and
4. The applicant has made a satisfactory showing of financial responsibility as required by Section 27.073.

The Examiners conclude the evidence in the record demonstrates the application meets the requirements of nos. 1 through 3 above. With regard to requirement no. 4, in the past the Commission has granted commercial disposal well permits with the condition that the operator establish the appropriate financial assurance.<sup>7</sup> Therefore, the Examiners conclude the application meets the requirements of the Texas Water Code and Statewide Rule 9 and recommend that the permit be granted.

---

<sup>5</sup> Tr. 49: 1 - 50: 7.

<sup>6</sup> Tr. 55: 5-15.

<sup>7</sup> See Oil and Gas Docket No. 01-0280430: The Application of Tundra Energy L.L.C. for Commercial Disposal Authority Pursuant to Statewide Rule 9 for the T. E. Pilgrim SWD Lease, Well No. 2, Pilgrim (Austin Chalk) Field, Gonzales County, Texas, Final Order dated September 10, 2013. In Conclusion of Law No. 3, the Commission stated "*Tundra has met its burden of proof and its application satisfies the requirements of Chapter 27 of the Texas Water Code and the Railroad Commission's Statewide Rule 9, with the exception of the financial assurance bond that it will establish upon permit approval.*"

Mr. Tomison presented evidence indicating that Prospect, or persons using its property, may be in violation of Commission rules. Prospect is a licensed salt water hauler, and Mr. Tomison's testimony indicates rinse water from salt water hauling trucks is being discharged onto the ground surface. Prospect did not rebut this evidence, nor provide evidence that the activities were otherwise authorized by a Commission permit.<sup>8</sup> The subject of this hearing was Prospect's application for a commercial disposal well. Therefore, the Examiners did not consider Mr. Tomison's evidence in formulating their recommendation for the specific call before us.

### ***Public Interest***

Mr. Rhodes testified that this area continues to see oil and gas activity and that the disposal capacity offered by Prospect's application is in the public interest as it meets the industry's needs. The Protestants offered no evidence to the contrary.

The Protestants raised concerns about noise, dust and traffic that will increase if the disposal well is permitted and construction. The Examiners note that these issues are not within the Commission's jurisdiction. Dust or air pollution falls within the jurisdiction of the TCEQ, and traffic safety issues are within the jurisdiction of the Texas Department of Transportation.

The evidence in the record indicates the subject well is in the public interest pursuant to Texas Water Code § 27.051(b)(1).

### ***Endanger or Injure Any Oil, Gas, or Other Mineral Formation***

The nearest active producing well is the Perry Operating Inc. B. F., Rankin Lease, Well No. 7, and is located about 2,600 feet to the west. Within a two mile radius there is current or historical production from a number of hydrocarbon-bearing formations, all of which are shallower than the proposed disposal interval. The deepest well drilled within a one-quarter mile of the proposed disposal well was completed at a depth of 3,130 feet. The Barnett Shale Formation, at a depth of about 5,360 feet to 6,000 feet, directly overlies the disposal interval. The Ellenburger Formation is underlain by crystalline basement rock.

The Protestants offered no evidence that the proposed disposal well may harm any oil, gas, or other mineral formation. The Examiners conclude Prospect has met its burden of proof with this element of the Texas Water Code. The evidence in the record demonstrates the proposed disposal well will not endanger or injure any oil, gas, or other mineral formation pursuant to Texas Water Code § 27.051(b)(2).

---

<sup>8</sup> Statewide Rule 8 (16 TAC §3.8) defines a washout pit as a "Pit located at a truck yard, tank yard, or disposal facility for storage or disposal of oil and gas waste residue washed out of trucks, mobile tanks, or skid-mounted tanks." Statewide Rule 8 (d) (2) requires a permit for the operation of a washout pit.

***Prevent Pollution of Ground and Surface Fresh Water***

The Commission's Groundwater Advisory Unit (GAU) indicates the interval from the ground surface to a depth of 250 feet (the base of usable quality groundwater, "BUQW") must be protected. The base of the underground sources of drinking water ("USDW") is 575 feet. The well will be completed with 450 feet of surface casing that will be cemented to the surface. The production casing will be cemented from about 6,200 feet to 4,511 feet. The GAU concludes that, if otherwise compliant with Commission rules and guidance, drilling and using this disposal well and injecting oil and gas waste into the subsurface stratum will not endanger freshwater strata in the area.

There are ten wellbores within the one-quarter mile area of review around the proposed disposal well. None of these wells are currently producing; all have been plugged, most prior to 1962 and the last well was plugged in 1989. The deepest well was drilled to a depth of 3,130 feet. None of the wellbores within the one-quarter mile area of review penetrate the disposal interval.

The Protestants all expressed concern about their groundwater resources, and several wells in the area produce from depths as shallow as 150 feet. Commercial disposal permits contain standard permit provisions regarding surface facilities, tanks and secondary containment structures. The Examiners find that these structures, in addition to the proposed well completion scheme, will be protective of ground and surface fresh water. The evidence in the record demonstrates that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution pursuant to Texas Water Code § 27.051(b)(3).

***Demonstrate Financial Responsibility***

Prospect has an active Organization Report (Operator No. 681492, Form P-5 expires on July 1, 2016). Prospect currently reports its business activity as a salt water hauler (Permit No. 5257, expiration date of July 31, 2016). Therefore, under its current P-5 a financial assurance obligation is not required. However, should the Commission approve this application and grant a permit, Prospect would be required to file the appropriate financial assurance with the Commission prior to obtaining a drilling permit for the well.

The Protestants presented no testimony or evidence with regard to Prospect's ability to meet its financial assurance obligations. The Examiners recommend a permit condition be adopted requiring Prospect to obtain the necessary financial assurance. Upon satisfaction with this condition, the Applicant will make a satisfactory showing of financial responsibility as required by Texas Water Code § 27.073 pursuant to Texas Water Code § 27.051(b)(4).

**FINDINGS OF FACT**

1. Notice of this hearing was given to all parties entitled to notice at least ten days prior to the date of hearing.
2. On May 15, 2015, notice of the application was published in the *Jack County Herald*, a newspaper of general circulation in Jack County, Texas. On June 11, 2015, copies of the application were mailed to the surface owner, Jack County Clerk, offset operators within one-half mile radius of the proposed well, and surface owners of tracts adjoining the proposed disposal tract.
3. The application was protested at the hearing by Robert Tomison and by Dana Rice, who represented herself and 26 other persons.
4. The proposed disposal well will be drilled, completed, and operated as follows:
  - a. Drilled to a total depth of 7,500 feet;
  - b. Surface casing (8 5/8-inch) will be set at a depth of 450 feet and cemented to the surface;
  - c. Long-string casing (5 1/2-inch) will be set to a depth of 6,200 feet and cemented to a calculated depth of 4,511 feet with 310 sacks of Class H cement;
  - d. The open-hole injection interval will be from 6,200 feet to 7,500 feet in the Ellenburger Formation;
  - e. Injection tubing (3 1/2-inch) will be set with a packer at a depth of 6,120 feet;
  - f. The maximum daily injection volume will be 20,000 bwpd and the estimated average daily injection volume will be 10,000 bwpd;
  - g. The maximum surface injection pressure will be 3,100 pounds per square inch gauge ("psig") and the average surface injection pressure will be 1,500 psig;
  - h. Injected waste will be limited to produced salt water and non-hazardous oil and gas waste exempt from regulation under the Resource Conservation and Recovery Act.
5. The use or installation of the injection well is in the public interest.

- a. More than 600 wells have been drilled in the immediate area.
  - b. Underground injection provides for the safe disposition of oil and gas waste.
6. The use or installation of the injection well will not endanger or injure any oil, gas, or other mineral formation.
- a. The nearest active producing well is the Perry Operating Inc. B. F., Rankin Lease, Well No. 7, and is located about 2,600 feet to the west.
  - b. Within a two mile radius there is current or historical production from a number of hydrocarbon-bearing formations, all of which are shallower than the proposed disposal interval.
  - c. The deepest well drilled within a one-quarter mile of the proposed disposal well was completed at a depth of 3,130 feet.
  - d. The Barnett Shale Formation, at a depth of about 5,360 feet to 6,000 feet, directly overlies the disposal interval.
7. With proper safeguards, both ground and surface fresh water can be adequately protected from pollution.
- a. Groundwater in the area is encountered at depths as shallow as 150 feet.
  - b. The base of usable quality groundwater ("BUQW") is at a depth of 250 feet.
  - c. The well will be completed with 450 feet of surface casing that will be cemented to the surface. The production casing will be cemented from about 6,200 feet to 4,511 feet.
  - d. There are ten wellbores within the one-quarter mile Area of Review around the proposed disposal well. None of these wells are currently producing; all have been plugged, most prior to 1962 and the last well was plugged in 1989. The deepest well was drilled to a depth of 3,130 feet. None of the wellbores within the one-quarter mile Area of Review penetrate the disposal interval.
  - e. The 640-foot thick Barnett Shale Formation directly overlies the disposal interval.

8. The Applicant has met its burden of proof and its application satisfies the requirements of Chapter 27 of the Texas Water Code and the Railroad Commission's Statewide Rule 9, with the exception of the financial assurance bond that it will establish upon permit approval.
  - a. Prospect has an active Organization Report (Operator No. 681492, Form P-5 expires on July 1, 2016). Prospect currently reports its business activity as a salt water hauler (Permit No. 5257, expiration date of July 31, 2016).
  - b. Prospect has not yet placed a \$25,000 bond or other financial assurance with the Commission, but will have the bond in place prior to drilling the proposed well.
  - c. A permit condition requiring the establishment of financial assurance will demonstrate a satisfactory showing of financial responsibility as required by Section 27.073.

#### **CONCLUSIONS OF LAW**

1. Resolution of the subject application is a matter committed to the jurisdiction of the Railroad Commission of Texas. Tex. Nat. Res. Code § 81.051
2. Findings of fact may be based only on the evidence and on matters that are officially noticed. Tex. Gov't Code §2001.141 (b).
3. All notice requirements have been satisfied. 16 Tex. Admin. Code § 3.9
4. The use or installation of the proposed disposal well is in the public interest. Texas Water Code § 27.051(b)(1).
5. The use or installation of the proposed disposal wells will not endanger or injure any oil, gas, or other mineral formation. Texas Water Code § 27.051(b)(2).
6. With proper safeguards, both ground and surface fresh water can be adequately protected from pollution. Texas Water Code § 27.051(b)(3).
7. A permit condition requiring Prospect Operating, LLC to establish the applicable financial assurance bond will produce a satisfactory showing of financial responsibility. Texas Water Code § 27.051(b)(4).

8. Prospect Operating, LLC has met its burden of proof and its application satisfies the requirements of Chapter 27 of the Texas Water Code and the Railroad Commission's Statewide Rule 9.

**RECOMMENDATION**

Based on the above findings of fact and conclusions of law, the Examiners recommend the Commission enter an order granting the application of Prospect Operating, LLC for commercial permit to dispose of oil and gas waste by injection into a porous formation not productive of oil or gas, for the Ellenburger SWD, Well No. 1, in the Jack County Regular Field, Jack County, Texas.

Respectfully submitted,



Paul Dubois  
Technical Examiner



Marshall Enquist  
Administrative Law Judge