

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL
CONSERVATION DIVISION FOR THE
PURPOSE OF CONSIDERING:**

**CASE NO. 14110
ORDER NO. R-12977**

**APPLICATION OF THE NEW
MEXICO OIL CONSERVATION
DIVISION FOR A COMPLIANCE
ORDER IMPOSING PENALTIES AND
CANCELLING OR SUSPENDING THE
AUTHORITY OF QUANNAH, INC. TO
TRANSPORT LIQUID WASTES,
LEA COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on April 17, 2008, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 7th day of August, 2008, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) This is a compliance proceeding brought by the Division pursuant to Rules 51, 52 and 1227 against a transporter of oil field waste. The Division alleges that Quannah, Inc. ("Quannah") violated Rule 52 by disposing of produced water into a tank connected to a disposal system without authorization from the operator of the tank or the operator of the disposal system. The Division

asks for imposition of a civil penalty and for cancellation or suspension of Quannah's permit to transport oil field waste, pursuant to Rule 51.E.

(3) Quannah denies the allegations of illegal dumping, asserting that its trucks were present at the site alleged in the application only to remove fluids from the tank temporarily so that a leaking valve on the tank could be replaced.

(4) The Division appeared at the hearing through counsel and presented the testimony of four witnesses: Maxey Brown, Division Inspector; Rex Smith, Production Foreman for Energen Resources, Inc. (Energen), operator of the disposal system; Kevin O. Butler, operator of the well where the tank in question is located, and Daniel Sanchez, Division Compliance and Enforcement Manager.

(5) Mr. Brown testified as follows:

(a) He went to the site of the State R Well No. 3 in Section 27, Township 14 South, Range 33 East, Lea County, New Mexico, on February 7, 2008, in response to a call from Rex Smith, who reported seeing two Quannah trucks at that site earlier that morning, apparently unloading into a water tank. Mr. Smith met him at the site.

(b) The State R Well No. 3 is located on a lease road a short distance east of State Highway 457. The site is surrounded by a barbed wire fence with an opening on the north side. The water tank is located on the south boundary of the location, a short distance from the barbed wire fence. The water tank has two outlet valves, one on the north side, facing the location, and the other on the south side, facing the southern boundary fence. The outlet on the north side is connected to a "T," with a valve between the tank and the T branch and another valve outside the branch. The pipe that forms the stem of the T runs to a water pump that pumps water to a co-operative disposal system operated by Energen (the disposal system). The outlet on the north side has only a single valve.

(c) The motor on the water pump was new. An old pump motor, not connected to anything, was also observed on the site, close to the new pump.

(d) According to Mr. Smith, two Quannah trucks had been parked behind (on the south side) of the location. One of the trucks was connected to the outlet valve of the water tank by a hose extending through the barbed wire fence, and the other truck was apparently waiting behind the first truck. There would have been no reason for trucks to connect to this water tank since the water from this location is disposed of through a pipeline to the disposal system.

(e) No Quannah trucks were present at the site when Mr. Brown was there. However Mr. Brown observed evidence of trucks traveling to and from the back side of the location, including evidence that the trucks had cut across vegetation to access the back of the location by a route that was not a constructed road. Also, there was a relatively wide clearing behind the location that trucks had evidently used to turn around. In addition, Mr. Brown observed evidence of heavy truck traffic that had turned from the public road into the lease road. Mr. Brown had visited the site for a routine inspection several weeks earlier, and he did not then observe the evidence of truck traffic to the south side of the location as he observed on February 7.

(f) Mr. Brown observed "a spill or some kind of discharge" in the area where trucks had apparently been moving on the south side of the location fence. One of Mr. Brown's photographs shows either wet spots or puddles immediately south of the water tank. He testified that the spill area showed evidence of salt crusting, indicating spillage at an earlier time, or over a period of time.

(g) When Mr. Brown arrived at the site, there was a truck at the location labeled "R&B Roustabout," from which a man was unloading a backhoe. The backhoe operator proceeded to move the back hoe across the area of the apparent release mixing the stained soil with surrounding soil. A photograph (admitted as Exhibit 5) shows the backhoe operating behind the South location fence. The backhoe operator disclaimed knowledge of who ordered his company's services, and Mr. Brown did not indicate whether or not he asked the operator about when the services had been ordered.

(h) Neither of the valves on the water tank had been recently repaired or replaced, and Mr. Brown did not observe any valve leaking. On cross-examination, counsel for Quannah called Mr. Brown's attention to a stained area on outside wall of the tank adjacent to the valve on the south side (as shown on a photograph admitted as Exhibit 4). Mr. Brown did not know what caused the staining. Mr. Brown again inspected the site on April 16, 2008, and neither valve had been repaired or replaced.

(i) The State R Well No. 3 is operated by Kevin O. Butler & Associates. Louis Edgett, who is a principal of Quannah, is the pumper for this well. Mr. Edgett is also a principal of Louray Oil Company, LLC, a registered oil and gas operator in New Mexico. Louray Oil Company has a permitted salt water disposal well, the Government E Well No. 1 (API No. 30-025-23708), located in Section 25, Township 19 South, Range 34 East, Lea County, that was out of service from January 25 to April 3, 2008.

(j) Disposal of water into a disposal system without the knowledge or authorization of the operator of the system can cause environmental problems because introduction of unknown quantities of fluid into a system can overload the system and cause spills. Furthermore if the water introduced is not compatible with the system, it can cause scaling in the disposal wells.

(6) Mr. Smith testified as follows:

(a) As production foreman for Energen Resources, Inc., he is responsible for overseeing the operation of the disposal system. All of the wells on the disposal system are connected to the system by pipes, and there would be no legitimate reason to dump water from a truck into a water tank at a well connected to the system.

(b) On February 7, 2008, at approximately 7:20 a.m., Mr. Smith drove by the State R No. 3 well site en route to another well, and observed a dark-colored truck backed up to the water tank. He instructed his pumper, Kenny Tucker, to check out the situation at the State R No. 3. Based on a call from Mr. Tucker, Mr. Smith returned to the site between 10:00 and 10:30 a.m. He saw two trucks parked behind (on the south side of) the location, both of which were labeled as Quannah trucks. One, a dark-colored vacuum truck, was connected by a hose to the water tank. The other, a lighter colored truck that may have been a vacuum truck or a transport truck, was parked in close proximity.

(c) Mr. Smith confronted the operator of the dark-colored truck, whom he identified as Don Buckingham, a Quannah witness at the hearing. When Mr. Smith demanded that Mr. Buckingham "put it back in his truck and get out of there," Mr. Buckingham reversed the pump on his vacuum truck. Soon afterwards both trucks left.

(d) Mr. Smith saw water leaking from under Mr. Buckingham's truck.

(e) Mr. Smith called Quannah principals, Ray Lopez (presumably Greg Lopez, another Quannah witness) and Louis Edgett, and Kevin O. Butler. Mr. Smith told Mr. Lopez that "If I ever saw another Quannah truck in there, that he would be responsible." By his own testimony, Mr. Smith "got pretty rowdy" with Mr. Lopez. On cross-examination, Mr. Smith admitted that he may have said he was going to try to put Quannah out of business.

(f) Mr. Edgett told Mr. Smith that the Quannah trucks were there "to change out a valve." Mr. Smith did not clearly state whether

both Mr. Edgett and Mr. Lopez, or only Mr. Edgett, offered that explanation.

(g) Mr. Edgett did not observe anything at the site that caused him to conclude that Mr. Buckingham's truck was unloading into the tank, rather than loading from the tank, but he based his conclusion on Mr. Tucker's report of what Mr. Buckingham had said to him (Mr. Tucker), and on the fact that Mr. Buckingham reversed his vacuum pump, and later left the site, without offering any explanation.

(h) The salt water disposal system experienced higher than normal inflows for about ten days prior to February 7, 2008. The system was overloaded at the time, and ordinarily they had to haul approximately three truckloads per day of overload from the system. During that ten day period, they hauled an average of six to eight truck loads per day several times. After February 7, the load entering the system returned to normal.

(i) Introduction of unknown amounts of water into a disposal system can cause problems throughout the system. If the water introduced is incompatible, it can cause scales and corrosion.

(7) Mr. Butler testified as follows:

(a) He is the owner of Kevin O. Butler & Associates, operator of the State R Well No. 3. Louis Edgett is the contract pumper. Mr. Edgett has authority to make minor repairs. There is no definite dollar-amount limitation on Mr. Edgett's authority. He would have had authority to replace a valve on the water tank without securing advance approval.

(b) About thirty days before the incident at issue, Mr. Edgett reported that the water pump was out and obtained Mr. Butler's approval to replace it. Mr. Edgett arranged for Quannah to haul water from the site while the pump was down, and Quannah billed Kevin O. Butler & Associates for that hauling.

(c) Mr. Edgett did not report to Mr. Butler (or any employee of Kevin O. Butler & Associates) that the valve on the water tank was leaking, or that he planned to have it replaced. Neither did Mr. Edgett report a spill or release at the State R No. 3, nor the hiring of R&B Roustabouts to clean up any spill.

(d) Mr. Butler visited the site with his field superintendant, Bruce Martin. He observed the evidence that heavy truck traffic had turned into the lease road, and that trucks had gone to the back of the site,

and turned around. He thought the tracks indicated more truck traffic than the water hauling would account for. He confirmed that the valve on the tank had not been replaced, and he did not see any evidence of leakage at the tank. He also confirmed that most of the spill clean-up appeared to have been done outside the fence, in the truck turning area.

(e) Mr. Butler identified an email report he received from Mr. Martin. Although Mr. Martin did not testify, the email was admitted without objection. Mr. Martin stated that he "saw no signs of the old circulating pump leaking at all," and that "the only cleanup that had been done was outside the location where it was obvious multiple trucks had been turning around." Mr. Martin's email also states that "the valve on the back of the tank had not been replaced and there were no signs of leaking. Mr. Martin's e-mail was admitted in evidence as Exhibit 18, without objection.

(8) Mr. Sanchez testified that the Division takes illegal dumping very seriously, and asks that the Director assess the maximum civil penalty allowed for a single-instance violation (\$1,000) and suspend Quannah's permit to transport oilfield waste for at least one month.

(9) Quannah appeared at the hearing through counsel and presented the testimony of three witnesses: Louis Edgett (pumper for the State R Well No. 3 and Quannah co-owner), Gregorio Lopez (Quannah co-owner) and Don Buckingham (truck driver).

(10) Mr. Edgett testified as follows:

(a) He and Greg Lopez jointly own Quannah, but Mr. Lopez is in charge of day-to-day operation.

(b) Mr. Edgett denied the allegations of illegal dumping, and asserted that the Quannah trucks were at the location of February 7 to facilitate a valve replacement.

(c) In January of 2008, the water pump at the State R Well No. 3 began to leak. The pump went out on January 18. From then until January 24, Quannah hauled water from the location so they could keep the well producing. On January 26, the pump was replaced, and they resumed pumping water into the disposal system. When they resumed pumping with the new pump, the 400-barrel water tank was full, presumably accounting for the surge that Mr. Smith experienced in the disposal system. Quannah introduced a purported gage sheet to substantiate this testimony.

(d) In addition to the pump leak, which accounted for most of the spilled fluid at and around the site, the valve on the water tank was leaking. Because the flange behind the valve was damaged, water would spray out behind the valve, causing the discoloration apparent on the photographs of the tank (Exhibit 4). Accordingly, Mr. Edgett decided that have the valve repaired.

(e) On February 7, two Quannah trucks went to the State R No. 3 to empty the water tank in order to repair the valve. Two trucks were dispatched because there was both water and oil in the tanks. The plan was that one truck would unload the water and hold the water in the truck while the valve was being changed. The other truck would unload the oil and transfer it to the oil tank. Both trucks were vacuum trucks. Mr. Buckingham was driving the truck that was to unload the water. The trucks went to the back of the location because it would have been difficult to maneuver the large trucks inside the location fence.

(f) Mr. Edgett was working at another well site on the morning of February 7 when Mr. Smith called him from the State R No. 3 site complaining about the presence of the Quannah trucks there. Mr. Smith accused Mr. Edgett of illegal dumping and cursed him. Mr. Edgett tried to explain, but Mr. Smith would not listen. Mr. Edgett then called Mr. Buckingham and instructed him to load the water back into the tank and leave the location.

(g) On February 9, Mr. Edgett returned to the site, sucked the oil off the tank and transferred it to the oil tank. He did not then or thereafter remove the water from the tank, and the valve has not been repaired. The valve does not leak unless the tank is close to full. Hence, he has seen to it, since February 7, that the load in the tank is kept low so the valve will not leak.

(h) The water spilled outside the fence came from the old pump, when it was leaking before they shut it off and replaced it. Mr. Edgett had ordered R&B Roustabouts to clean up the spill about a week before February 7. He did not know they would be on the location with the backhoe on February 7.

(i) There had been a workover done in January on another well on the State R lease for which a pulling unit had come in along the lease road, which could account for tracks on and near the highway.

(j) In addition to hauling water from the Sate R No. 3 while the pump was down, trucks had come to the outlet valve of the water tank to remove water to "load" other Kevin O. Butler wells, and to return water used for that purpose.

(11) Mr. Lopez testified as follows:

(a) He is a part owner of Quannah, and is the "managing partner."

(b) On February 7, 2008, he dispatched two trucks to the State R #3 site, pursuant to Mr. Edgett's request, to unload the water tank so that a valve could be replaced.

(c) The trucks left Quannah's facility in Hobbs around 6:45 to 7:00 a.m., and would have arrived at the well site at 8:00 to 8:30.

(d) He knew the trucks would go to the back of the location because of the difficulty of maneuvering a truck inside the location fence and because the valve on the back of the tank is a three-inch valve; whereas the valve on the front is a two-inch valve. It is faster to pump through a three-inch valve. He approved the trucks going to the back of the location.

(e) Sometime that morning, Mr. Smith called him and was very excited. Mr. Smith made threats about what he would do if he ever saw a Quannah truck on that location again. Mr. Lopez did not say whether or not he explained or attempted to explain what the Quannah trucks were doing at the State R No. 3 that morning.

(f) In view of Mr. Smith's threats, Mr. Lopez was unwilling to dispatch a truck to the State R #3 again "unless it's a loaded test or something different."

(g) Quannah does not illegally dump. Disposal charges are included in Quannah's charge to the customer, and there would be no profit in illegal dumping.

(h) Any suspension of Quannah's permit to haul oilfield waste, even for one week, would put them out of business because their customers would have to make other arrangements.

(i) He believes the leaking fluid came from the pump because he saw water leaking when the pump was repaired, but he "didn't really look to see where the water was coming from." However, he believes the vacuum trucks could not have been leaking because a leak in the tank would cause a vacuum truck to explode.

(12) Mr. Buckingham testified as follows:

(a) He was the driver of the Quannah vacuum truck that was sent to the State R No.3 site to unload the water tank so the valve could be repaired.

(b) His truck is dispatched out of Lovington, not Hobbs, and he left Lovington about 6:00 a.m. Mr. Lopez called him while he was en route to another location, and told him to go to the State R No.3. Mr. Edgett approved his going to the back of the location to unload the water tank through the valve on the back of the tank.

(c) He had been at the well site about 10 minutes when Mr. Tucker arrived and asked him if he was "loading or unloading." Mr. Buckingham said, "I'm loading and unloading." Mr. Tucker went back to his pickup and got on the phone.

(d) About 10 minutes later, Mr. Smith arrived and also asked Mr. Buckingham if he was loading or unloading. He gave Mr. Smith the same answer. Mr. Smith was very vituperative, and Mr. Buckingham did not have a chance to explain. Mr. Smith asked Mr. Buckingham for his boss's phone number, and he gave him Mr. Edgett's number. Then Mr. Smith called Mr. Edgett.

(e) Mr. Smith threatened to shut the valve on the line from the water pump to the disposal system if Mr. Buckingham continued pumping. Mr. Buckingham told him that would burn up the water pump, but Mr. Smith said he did not care. So Mr. Buckingham turned off the water pump, and then reversed the pump on his vacuum truck to pump the water back into the water tank.

(f) The ground around the water tank was dry when Mr. Buckingham arrived. However, he may have spilled a few gallons out of his hose when he disconnected it.

(g) His vacuum truck was not leaking. He would have known if there had been a leak in the tank of his truck because it would not pump if it had a leak and could not create a vacuum in the tank.

The Director concludes that:

(13) This case presents greater than usual difficulty because all of the evidence is circumstantial. A further complication is the evident bias of the witness, Mr. Rex Smith, against Quannah, a bias confirmed by his own testimony.

(14) The Division offered evidence of circumstances tending to indicate that Quannah's trucks were illegally disposing of waste into the disposal system.

(15) The principal circumstances evidencing illegal dumping, however, were the following:

(a) the presence of water trucks connected to the water tank at a site where the water tank was connected to a disposal by pipeline;

(b) evidence of multiple truck tracks leading to the back of the location and turning around behind the location, which was consistent with a lot of trucks accessing the water tank;

(c) evidence of spilled fluid that was salty in the area behind the fence, which was consistent with trucks accessing the water tank at various times; and

(d) evidence that the disposal system to which the State R No. 3 was connected received higher daily loads during the approximate two-week period prior to the date when Quannah's trucks were observed at the State R No. 3 site.

(16) Quannah attempted to explain these circumstances as follows:

(a) the Quannah trucks came to the State R No. 3 site to facilitate repair of a leaking valve on the water tank;

(b) the truck traffic to the water tank could be explained by the fact that water had been hauled from this well for a period of time in January, 2008 when the water pump was out of service;

(c) the fluid spill resulted from the old water pump leaking; and

(d) the additional load on the disposal system could be explained, or at least partially explained, by the increased water production from the well when it was re-opened following replacement of the water pump.

(17) The only evidence supporting any of these explanations, however, came from witnesses who are owners or employees of Quannah. Circumstantial evidence and the testimony of witnesses, including Mr. Brown, Mr. Butler and Mr. Bruce Martin (who did not testify, but whose email concerning what he observed at the site was admitted without objection), does not support Quannah's explanations.

(18) There is minimal evidence, other than the testimony of Quannah's witnesses, that the valve on the water tank was leaking. Mr. Brown and Mr. Butler both testified that they did not see any evidence that the valve was leaking,

and Mr. Martin said the same thing in his email. The only evidence, apart from the testimony of the Quannah witnesses, is the discoloration on the wall of the tank around the valve, depicted in the photograph admitted as Division Exhibit 4. The attention of both Mr. Brown and Mr. Butler was specifically called to this discoloration, and both thought that it was probably an old stain on the tank. The undisputed fact that the valve has not been subsequently repaired also raises doubts as to whether it was actually leaking. Quannah's explanation that they were intimidated from coming back to the tank because of Mr. Smith's threats is weakened by Mr. Edgett's testimony that he did, in fact, return to the site with a Quannah truck on February 9 to remove oil from the water tank.

(19) Mr. Butler specifically testified that the evidence of truck tracks behind the well site indicated more traffic than could be explained by the water hauling for a short period of time, of which he was aware because he was billed for that hauling.

(20) Regarding the water pump as being the source of the spilled fluid, Mr. Brown and Mr. Butler both testified that most of the spilled fluid was outside the fence, where there was evidence of trucks turning. Furthermore, Mr. Martin's email specifically states that he did not see any evidence that the water pump had leaked, and photograph of the area around the pump (admitted as Division Exhibit 8) also does not apparently show spillage around the pump. Also, the photograph of the backhoe in operation (Exhibit 5) shows it moving dirt behind the fence.

(21) As corroboration for the increased water production from the State R No. 3 as an explanation, Quannah offered a gage report that was admitted as Quannah Exhibit 2. The value of this report as corroboration is limited since it was authenticated only by the testimony of Quannah employees. However, even if it is accepted, it would not fully explain the increase load. Mr. Smith testified that the overload on the disposal system increased, during the relevant time, from an average of three truckloads per day to an average of six to eight truckloads per day. The gage report might explain an increased load of a truckload per day, but not an increase of three to five truckloads per day.

(22) The evidence thus supports the Division's assertion that Quannah disposed of water without authorization into the water tank at the State R No. 3 well site, with the intention that the water be pumped into the disposal system.

(23) Mr. Brown testified that disposal of water into a system without the knowledge and permission of the operator could overload the system and cause spillage, a possibility accentuated by Mr. Smith's testimony that the system was already overloaded, necessitating haulage of water to other disposal facilities. Mr. Smith testified also that if the water were incompatible with that for which the system was designed, it could cause corrosion. Logically, corrosion in pipes and tanks could result in leaks. Accordingly, the evidence supports the conclusion that Quannah disposed of water in a manner that could "constitute a

hazard to fresh water . . . or the environment" in violation of Division Rule 51.A(2).

(24) Because of the violation found, Quannah should be assessed a civil penalty in the amount of \$1,000, as authorized by NMSA 1978, Section 70-2-31.A, and its permit to transport oilfield waste should be suspended, as authorized by Division Rule 5.E, for a period of six months. A six-month suspension is warranted because this same penalty has been previously assessed for a similar infraction, according to the testimony of Mr. Sanchez.

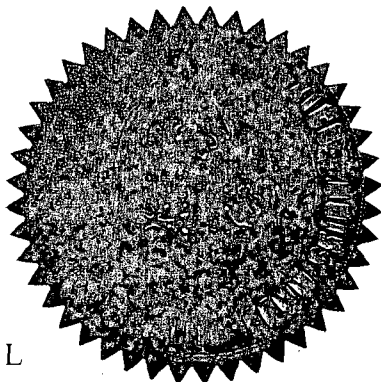
IT IS THEREFORE ORDERED THAT:

(1) By reason of illegal dumping of produced water at the site State R Well No. 3 (API No. 30-025-01157), in Lea County, New Mexico, on February 7, 2008, a civil penalty is hereby assessed against Quannah, Inc. in the amount of \$1,000.00. Quannah shall pay the penalty so assessed by certified check or money order payable to the New Mexico Oil Conservation Division, which shall be delivered to the Division's Santa Fe office, to the attention of Daniel Sanchez, Compliance and Enforcement Manager, on or before August 15, 2008.

(2) By reason of the same infraction, Quannah's permit (C-133) to transport oilfield waste is hereby suspended for a term of six months, such suspension to commence on August 15, 2008, and terminate on February 14, 2009.

(3) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, P.E.
Director