

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
MAY 11 2011

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: **GARY S. WALKER, DIRECTOR,**)
 PETROLEUM STORAGE TANK)
 DIVISION, OKLAHOMA)
 CORPORATION COMMISSION)
)
RESPONDENT: **PAT SHIREY, SHIREY**) **CAUSE EN NO.**
 MECHANICAL, SHIREY) **201000115**
 ENTERPRISES, INC.)
)
RELIEF SOUGHT: **CONTEMPT**)
)
)
)

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **Michael Porter**, Administrative Law Judge ("ALJ") for the Corporation Commission of the State of Oklahoma, on the 11th day of February, 2011, at 8:30 a.m. in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **Jeffrey P. Southwick**, Deputy General Counsel, and **Kathy L. Nelson**, Assistant General Counsel, appeared on behalf of applicant, Gary S. Walker, Director, Petroleum Storage Tank Division, Oklahoma Corporation Commission ("PSTD"); **Patrick Shirey**, 10305 Hollyhead Way, Yukon, Oklahoma 73099, appeared Pro Se; and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The ALJ filed his Report of the Administrative Law Judge on the 17th day of March, 2011, to which Exceptions were filed and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Oral Exceptions were referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 6th day of May, 2011. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

PATRICK SHIREY, SHIREY MECHANICAL, SHIREY ENTERPRISES, INC. ("SHIREY") APPEALS the ALJ recommendation that the Oklahoma Corporation Commission and the PSTD should refuse to accept any tank related work reports performed or submitted by Shirey until such time as Shirey becomes recertified by the manufacturer of the testing equipment and Shirey can assure the Commission that invalid reports will never be again submitted; the ALJ's recommendation that Oklahoma Corporation Commission PSTD employees should review and monitor any tank system where Shirey has performed tank tightness testing in the past 12 months to insure prompt action regarding any leaks, if any are present; and the ALJ's recommendation that Shirey should pay a fine of \$30,000 within 90 days of the issuance of an order in this cause.

PSTD alleged that Shirey had not complied with Oklahoma Statutes by willfully and knowingly submitting erroneous tank tightness testing reports where Shirey allegedly performed tank tightness testing on various underground storage tank ("UST") systems.

SHIREY TAKES THE POSITION:

- (1) The ALJ's Report is contrary to the law and the evidence in this cause.
- (2) The ALJ's Report recommendations, if adopted, will result in injustice.
- (3) The ALJ's Report is arbitrary, capricious, unreasonable, discriminatory, and fails to effect the ends of justice provided for by statute.
- (4) The ALJ's Report will work an economic hardship on Shirey.
- (5) The ALJ's Report does not give any credence to Shirey's position as a small business. Shirey contends that the Commission has turned a blind eye to Shirey as a small business and Shirey's inability to pay the fine.
- (6) The ALJ's recommendation of paying a \$30,000.00 fine will put Shirey out of business.

THE ALJ FOUND:

- (1) It is grossly apparent that Shirey furnished multiple invalid documents to the Commission. These documents could mislead the Commission's PSTD employees into believing there are no problems with the tanks tested. The

Commission is charged with ensuring that petroleum based products are not discharged into the environment. As such, it is imperative that valid information be gathered and furnished to the Commission. Shirey on six occasions submitted documents that did not reflect accurate or valid information.

(2) The ALJ recommended that the Oklahoma Corporation Commission PSTD should refuse to accept any tank related work reports performed or submitted by Shirey until such a time as Shirey became recertified by the manufacturer of the testing equipment and Shirey can assure the Commission that invalid reports will not be submitted.

(3) Oklahoma Corporation Commission PSTD employees should review and monitor any tank system where Shirey performed tank tightness testing in the past 12 months to ensure prompt action regarding any leaks should they be present.

(4) Shirey should pay a fine of \$30,000 within 90 days of issuance of an order in this cause.

POSITIONS OF THE PARTIES

SHIREY

1) **Patrick Shirey**, appearing Pro Se, stated that he was no longer in the business of petroleum storage tank tightness testing. He did not plan to object to anything that the PSTD recommended and he just wanted to see this case over with. Shirey does not intend to be in the petroleum business field anymore. The only exception that Shirey has to the ALJ Report is the fine of \$30,000. Shirey would like to have the fine waived. Shirey has not been able to do any tank tightness testing for six months. He has closed his business down and sold his equipment just to literally pay his bills. He does not have \$30 much less \$30,000.

PSTD

1) **Jeffrey P. Southwick**, Deputy General Counsel, Oklahoma Corporation Commission, appeared on behalf of the Oklahoma Corporation Commission, PSTD and stated that the PSTD has no objection to the relief that

Shirey is requesting as far as the fine is concerned of \$30,000 with the understanding that Shirey will not step foot at a station system or facility or anything that has regulated substances on it except to fill his car up with gasoline at a service station. Shirey has agreed to this requirement. Shirey has shown remorse at the previous hearing and he is receptive to what the Commission is proposing and understands that this is a business he no longer needs to be in. The Oklahoma Corporation Commission PSTD has no objection to waiving the \$30,000 fine. PSTD would urge the Court to grant the relief requested by Shirey with the understanding that the order to issue would state that Shirey was out of the tank testing business and he will not do anything workwise, compensationwise, free gratis or for any other purpose at a service station or other facility that requires petroleum storage tank regulated PSTD work.

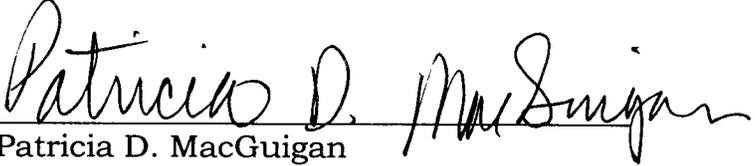
CONCLUSIONS

The Referee finds the Report of the Administrative Law Judge should be affirmed, but modified with respect to the recommended fine of \$30,000.

- 1) The Referee finds the Report of the ALJ is supported by the weight of the evidence and free of reversible error. However, due to PSTD's recommendation and agreement as set forth above, the ALJ's Report should be modified with respect to the fine of \$30,000 to be paid by Shirey within 90 days of issuance of an order in this cause. The PSTD, as stated above, has agreed with Shirey that the \$30,000 fine prescribed by the ALJ shall be waived if Shirey ceases to be in the petroleum/hazardous substances storage tank testing business.
- 2) Thus the \$30,000 fine imposed upon Shirey by the ALJ shall be waived by the Oklahoma Corporation Commission PSTD if Shirey or any other company under Shirey's ownership, dominion or control, or other ownership interest whether specifically acknowledged or undisclosed, is prohibited from performing any work subject to PSTD's regulation including, but not limited too, cathodic protection testing, tank testing, line testing, leak detector testing, calibration of dispensers, installations, removals or repairs.
- 3) It is the understanding of PSTD that Shirey is no longer in the business of tank testing and has sold all of his equipment. The Oklahoma Corporation Commission does not license the tank testers. The tank tester is certified by the equipment manufacturer, not by the Oklahoma Corporation Commission. See OAC 165:25-3-6.22.

4) Therefore, it is the Referee's recommendation that pursuant to the agreement reached by the Oklahoma Corporation Commission PSTD and Shirey, an order should issue containing the above listed provisions. It is the further recommendation of the Referee that said agreed upon proposed order should be drafted by Deputy General Counsel, Jeffrey P. Southwick.

RESPECTFULLY SUBMITTED THIS 11th day of May, 2011.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
ALJ Michael Porter
Jeffrey P. Southwick
Kathy L. Nelson
Pat Shirey
Office of General Counsel
Michael L. Decker, OAP Director
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