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**BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA**

FILED
MAY 20 2011

APPLICANT: **LORI WROTENBERY,**)
 DIRECTOR, OIL AND GAS)
 CONSERVATION DIVISION,)
 OKLAHOMA CORPORATION)
 COMMISSION)

RESPONDENT(S): **SUPERIOR OIL AND GAS CO.**)
 OF OKLAHOMA, THE)
 FICTITIOUS NAME OF)
 SUPERIOR OIL AND GAS CO.,)
 A NEVADA CORPORATION,)
 AND NBC OKLAHOMA)

RELIEF SOUGHT: **CONTEMPT, FINES,**)
 COMPLIANCE WITH)
 COMMISSION RULES AND)
 FORFEITURE OF SURETY)

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

CAUSE EN NO.
201000083

ITN: 10-22571

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **Michael Norris**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 13th day of April, 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: **Susan Conrad**, Assistant General Counsel, and **Sally Shipley**, Deputy General Counsel, appeared on behalf of Applicant, Lori Wrotenbery, Director, Oil and gas Conservation Division, Oklahoma Corporation Commission ("Director"); **James W. George**, attorney, appeared for Superior Oil and Gas Company ("Superior"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed his Oral Bench Decision on the 13th day of April, 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 9th 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

SUPERIOR APPEALS the ALJ's decision finding for the Director. The Director alleged that the respondent Superior violated the provisions of 52 O.S. Section 86.1 et seq., concerning the Lonesome River #1 well, NW/4 NW/4 SE/4 SW/4 of section 1, T19N, R10W, Blaine County, Oklahoma. Specific alleged act(s) of violation and authority thereto include: a) that Superior has violated 165:10-11-3(e) in that it has failed to timely plug the subject well; b) that Superior has violated 165:10-3-17(l) in that it has failed to timely remove equipment, trash and debris from the above described site and to restore said site; c) that Superior has violated 165:10-3-17(c) in that it has failed to remove surface trash, debris and junk from the above-described site; d) that Superior has violated 165:10-3-17(m) in that it has failed to timely restore the subject lease road; and e) that Superior \$25,000 Category "B" surety on file at the Commission be forfeited and that the proceeds be used to plug the well and restore the subject site in accordance with 165:10-1-10, et seq, 165:10-3-17, 165:10-11-3, et seq. and O.S. 52 Section 318.1.

SUPERIOR TAKES THE POSITION:

(1) Superior had intended that the cause be conducted as a protested matter, however, the ALJ did not treat the matter as such. Superior presented no witnesses, but it did cross examine the Director's witnesses. Otherwise, the cause operated as a protested matter. The ALJ, at the end of the hearing, made a bench ruling.

(2) On April 15, 2011, Susan Conrad sent Superior a proposed order for their approval. Superior sent a reply by email to Ms. Conrad insisting that there should first be a Report of the ALJ. Ms. Conrad disagreed. On April 19, 2011 Superior and Ms. Conrad met with the ALJ where the ALJ advised both parties that he had assumed that the cause was unprotested and suggested that Superior file an appeal from his decision. Thus, Superior files this appeal from both ALJ decisions finding that the cause was to be unprotested. Superior maintains that the original hearing conducted before the ALJ had

been a protested matter and Superior insists that it is entitled to a Report of the ALJ. Superior gives notice of its appeal from the decisions of the ALJ on both April 13, 2011 and April 19, 2011.

THE ALJ FOUND:

(1) Pursuant to Interim Order No. 583776 this cause was reopened on April 13, 2011. At that hearing the controversy arose concerning Superior's belief that it intended to protest the initial interim order hearing and did not want a final order to issue as Superior thought this was a protested case. This case was heard originally on March 11, 2011 and at that time Superior was represented by a lawyer named Stephen J. Merrill, not by Mr. George. The report of the inspector was heard as to the violations by Superior and the recommended fines and penalties. There were items of cleanup to be done by Superior plus there was a plugging issue. This proceeding has been going on since June of 2010 to complete all of these requests. This case was reopened pursuant to the interim order for the final hearing and Mr. George appeared as representing Superior. The oil and gas field inspector was again present at the April 13th hearing and he stated under oath nothing had changed since the initial hearing on March 11, 2011. Nothing had been done on this property. The well had not been plugged, trash had not been removed, and the road had not been repaired. Mr. George gave his arguments as to Superior's status and since he had just been hired by Superior, he stated he would like a little more time for Superior to do what was requested by the interim order. The ALJ stated that sufficient time had been granted to Superior to address the issues in the interim order and no more time was warranted. Therefore, the ALJ recommended that a final order should issue granting the request of the Director as to the issues and penalties involved. Also, the ALJ recommended forfeiting the letter of credit to help plug the well. The record was then closed. Before the Final Order issued the ALJ was contacted by Mr. George on April 19, 2011 and was told by Mr. George that it was his intent when he came to the hearing on April 13, 2011 to protest the hearing on behalf of Superior. There was no announcement of a protest at the time of the hearing on March 11, 2011 or April 13, 2011 and none of the parties were aware of a protest. The ALJ felt it was beyond the timeframe, as the initial hearing was had with everybody being represented and no protest. However, the ALJ suggested that an oral appeal could be made from the final order hearing to state Superior's case.

POSITIONS OF THE PARTIES

SUPERIOR

1) **James W. George**, attorney, appearing on behalf of Superior, stated that he had nothing to add to ALJ Norris' statements. The ALJ set out the facts quite well and accurately. However, Superior would request this hearing be continued to a week from Friday, May 6, 2011. The reason for this is that Superior has made arrangements with the Jewish faith to finance the plugging of the subject well. Members of the Jewish faith are currently celebrating Passover and as a result they cannot conduct any business until Wednesday morning May 4, 2011 under the rules of their faith, Considering all of the paperwork, etc. that needs to be done, Superior would request May 6th so that the financial arrangements can be made. Thus, Superior would ask that the appellate hearing be continued until Friday, May 6, 2011. At that time this proceeding should be settled and the actions required by the interim order can be completed. Wellco is a well known plugging company and they have agreed to plug the well but they want their money in advance. If this matter is continued so that the financing can be obtained, everything that the Commission wants in their interim order as far as plugging the well, etc. will be accomplished by Superior.

2) The Appellate hearing was continued from April 26, 2011 to May 6, 2011 at 9:30. At such time Superior stated that the well had not been plugged, but the "plugging was taking place as we speak." Superior is confident that the well will be formally plugged by Monday, May 9, 2011. Superior is therefore asking again that this Appellate hearing be continued until Monday, May 9, 2011. There are unusual circumstances concerning this matter. The plugging company stated that this well would already be plugged but the owner of the plugging company had to go into the hospital because of chest pains.

3) The case was continued from May 6, 2011 to Monday, May 9, 2011 and at that hearing Superior stated that the well had been plugged. However, there was a fine that was to be paid by Superior. It has not been paid. There has been no cleanup, but Superior has a letter agreement with Dustin Donley Construction Services and said agreement states that on or before May 23, 2011 Dustin Donley Construction Services will "remove from the premises all surface trash, debris and junk associated with Superior's operations relating to the well."

DIRECTOR

1) Susan Dennehy Conrad, Assistant General Counsel for the Oklahoma Corporation Commission, stated that the Director would request that Superior's Motion to Continue be denied. The initial hearing for the interim order took place in this cause before ALJ Norris on March 11, 2011 and by Interim Order No. 583776 the well was to be plugged and the fine paid by April 13, 2011. The original complaint alleged that Superior had failed to plug the Lonesome River #1 well and remove trash and debris from the site. The Director also asked that Superior's surety of \$25,000 be forfeited and the proceeds be used to plug the subject well and restore the subject site. The initial hearing took place on March 11, 2011 and Superior was represented at that hearing by a different counsel, Stephen J. Merrill, and Superior had an opportunity to present witnesses at the hearing but failed to do so. The Counsel for Superior cross examined the Staff witness. The Director's witness stated that there had been a number of times that Superior had insured the Commission that it would plug the well but nothing had been done. The inspector's initial inspection of the site occurred in June 2010 and the conditions that he observed on March 10, 2011 the day before the hearing were the same as when he first inspected the site. The inspector also testified on April 13th at the reopening that he had inspected the site the day before on April 12, 2011 and the conditions were the same as his initial inspection.

2) There is apparently junk in the hole and the well was a threat to water. The interim Order No. 583776 requires Superior before April 11, 2011 to pay a \$1,500 fine and to complete one of two options, either plug the well and restore the site or produce the well and remove trash and debris from the site and bring the site into compliance with the Commission rules. Superior has done nothing. The consequences for failure to comply with the requirements appearing in the interim order were that the \$25,000 letter of credit issued by Legacy Bank be forfeited and the proceeds used to plug the well and restore the site. Additional fines could be assessed also and also all wells operated by Superior in the State would be shutin and remain shutin until Superior filed and obtained from the Commission approval of Category B surety in the amount of \$50,000.

3) Counsel for Superior at the March 11th hearing did not raise any objections to these requirements in the interim order. Stephen Merrill never announced a protest either orally or in writing and he signed the interim order. OAC-OCC Rule 165:4-13-4(a)(6) provides that in oil and gas causes and pollution causes the ALJ's Report "shall be prepared only when a party of record in the hearing...has formally, either orally or in writing protested the granting of the application, or, in the judgment of the Administrative Law Judge, the issuance of a report is required." Mr. Merrill did not object or

protest the hearing. He did review the order and sign it. The interim order was properly mailed to Mr. Merrill and to the Bank and the reopening took place on April 13, 2011 before ALJ Norris. The question before the Court on April 13th was simple, did Superior comply with the requirements of the Interim Order No. 583776. They did not comply with any of the requirements of the interim order. Superior also had not paid the \$1,500 fine.

4) The Director would request: that Superior be required to pay a \$5,000 fine; that all of the wells by Superior be shutin and remain shutin until such time as Superior files and obtains a Category B surety in the amount of \$50,000; that the equipment be removed and trash from the site with restoration of the lease road; and all in accordance with Commission rules. The Category B \$25,000 surety should be forfeited and the proceeds be used to plug the subject well and restore the subject site in accordance with OAC 165:10-1-10, et. seq. See also 52 O.S. Section 318.1.

5) The Appellate hearing was continued to May 6, 2011. On May 6, 2011 this Appellate argument was reopened and the plugging of the well was in progress. The Director did not believe that even if the well was plugged by Monday, May 9th that the site could be restored by that time. Plus Superior needed to pay the fine. The well could be plugged and finished before Monday, May 9, 2011, however the site cannot be restored by Monday nor could the lease road be restored by Monday. A quarter of mile of shale from the lease road could not be removed by Monday and the rock and the shale from the tank battery could not be removed by Monday. There is junk and debris; tubing rods; and a fence around the tank battery. Also, part of the pumping unit pad could not be removed by Monday. Even if the well is plugged by Monday the other requirements must also be completed and will not be able to be done by Monday.

6) On May 9, 2011 the case was reopened and the Director stated that the well was plugged by Saturday May 7th and some site cleanup had been done but not all that needs to be done. The Director would request that a final order issue in this matter with the ALJ's recommendation; that Superior has violated the Commission rules and failed to comply with the interim order; that Superior immediately pay a fine of \$5,000; and that for any site cleanup that is not completed by Superior or Superior does not obtain an agreement with the surface owner to leave the site in good condition that the letter of credit of \$25,000 be forfeited to complete the restoration of the site in accordance with Commission rules. Also all the wells which Superior operates in the State of Oklahoma be shutin and remain shutin until Superior files with and obtains the Commission's approval of a Category B surety in the amount of \$50,000.

CONCLUSIONS

The Referee finds that the Report of the Administrative Law Judge should be affirmed but modified.

1) The Appellate hearing concerning the exceptions filed by Superior to the ALJ's bench decision finding for the Director were continued by the Appellate Referee from April 26, 2011 to May 6, 2011 and then again continued to May 9, 2011. The continuances were granted by the Appellate Referee due to the assurance by Superior that the Lonesome River #1 well would be plugged with trash being removed from the site in accordance with Interim Order No. 583776. As a result of the continuances, the Lonesome River #1 well was plugged. Further there is an agreement between Superior and Dustin Donley Construction Services dated May 5, 2011 which states that Dustin Donley Construction Services "shall remove from the premises all surface trash, debris and junk associated with Superior's operations relating to the subject well."

2) A contempt proceeding is characterized as sui generis in Oklahoma. *Vogel v. Corporation Commission of Oklahoma*, 121 P.2d 586, 588 (Ok1. 1942). It is neither a civil or criminal proceeding. *State ex rel. Short v. Owens*, 256 P. 704 (Ok1. 1927). The Commission's contempt power is derived from both the Oklahoma Constitution and statute. See, Art. 9, Sec. 19, Oklahoma Constitution; 52 O.S. §102. As such it is unique. "It is neither civil nor criminal, but may partake of either in its nature." In other words the Commission's contempt power is what it wishes it to be so long as the Commission stays within the express and implied jurisdictional limits placed on it by the Oklahoma Constitution and 52 O.S. §102. *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049 (Ok1. 1984); *Burmah Oil & Gas Company v. Corporation Commission*, 541 P.2d 834 (Ok1.1975); and *Kingwood Oil Company v. Hall-Jones Oil Corporation*, 396 P.2d 510 (Ok1. 1964). Oklahoma Constitution, Article 9, Section 19.

3) 52 O.S. § 102 provides in relevant part:

Punishment for contempt by the Commission of any person, guilty of any disrespectful or disorderly conduct in the presence of the Commission while in session, or for disobedience of its subpoena, summons or other process, may be by fine not exceeding One Thousand Dollars (\$1,000.00) or by confinement in the county jail of Oklahoma County not exceeding one (1) year, or by both. Any person who shall disobey or violate any of the provisions of Section 86.1 et seq. of

this title or any of the orders, rules, regulations or judgments of the Commission issued, promulgated or rendered by it, shall be punished as for contempt. Punishment by the Commission in proceedings as for contempt for disobedience or violation of any provision of Section 86.1 et seq. of this title or any of its orders, rules, regulations or judgments, issued, promulgated or rendered under the provisions of Section 86.1 et seq. of this title shall be by fine not exceeding in amount Five Thousand Dollars (\$5,000.00), and each day such disobedience or violation shall continue shall constitute a separate and additional contempt, and shall be punished by separate and additional fines each in amount not in excess of aforesaid amount.

4) While the Lonesome River #1 well has been plugged and there is a contract with Superior and Dustin Donley Construction Services to cleanup the site, the Referee believes that another Interim Order should be issued replacing Order No. 583776. Use of interim orders in cases concerning abatement and remediation of pollution is a remedy by which the Commission can retain active control of the remediation process and ascertain what steps have been taken, or still need to be taken, to bring the site into compliance with the Commission rules.

5) It is the recommendation of the Appellate Referee that a new Interim Order be issued with the following provisions being included in said Interim Order.

a) On or before 30 days from the date of the issuance of the interim order Superior is required to pay a fine in the amount of \$1,500 to the Commission in connection with this cause.

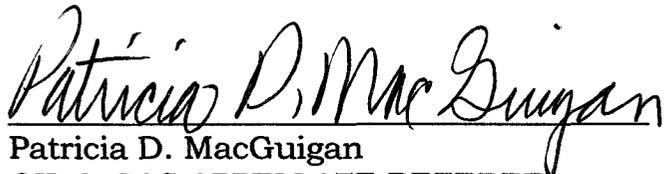
b) On or before 30 days from the issuance of said interim order, Superior is required to remove equipment and trash from the site and restore the site and lease road, all in accordance with Commission rules.

c) If Superior fails to fully comply with all of the requirements appearing in this interim order, the Commission may request forfeiture of the \$25,000 letter of credit issued by Legacy Bank at the reopening of this cause and that the surety proceeds be used to restore the site in accordance with Commission rules. The Commission could also request the assessment of an additional

fine against Superior if it failed to fully comply with the requirements appearing in the interim order. Additionally, if Superior fails to fully comply with all the requirements appearing in this interim order, the Commission may request at the reopening of this cause that all of the wells which Superior operates in the State of Oklahoma be shutin and remain shutin until such time as Superior files with and obtains the Commission's approval of a Category B surety in the amount of \$50,000.

6) This cause shall be reopened at 8:30 a.m. 30 days from the date of the issuance of this interim order on the Pollution/Enforcement Docket at the Oklahoma Corporation Commission, first floor courtroom, 2101 North Lincoln Boulevard, Jim Thorpe Building, Oklahoma City, Oklahoma, to determine if Superior has complied with the requirements of this replacement interim order and to address the need for additional relief.

RESPECTFULLY SUBMITTED THIS 20th day of May, 2011.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
ALJ Michael Norris
Susan Conrad
Sally Shipley
James W. George
Office of General Counsel
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