

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED

FEB 04 2011

APPLICANT: LORI WROTENBERY,)
DIRECTOR, OIL AND GAS)
CONSERVATION DIVISION,)
OKLAHOMA CORPORATION)
COMMISSION)
)
RESPONDENT: REED POWER TONGS, INC.) CAUSE EN NO.
a.k.a. Reed's Power Tongs, Inc.) 200900142
)
RELIEF SOUGHT: CONTEMPT)

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a.k.a. Reed's Power Tongs, Inc.) 200900191
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RELIEF SOUGHT: CONTEMPT)

REPORT OF THE OIL AND GAS APPELLATE REFEREE

These Causes came on for hearing before **Susan R. Osburn**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 7th and 16th day of July, 2010, 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: **Keith T. Thomas**, attorney, appeared on behalf of applicant, Lori Wrotenbery, Director, Oil and Gas Conservation Division for the Oklahoma Corporation Commission (the "Director" or "Commission"); and **John C. Moricoli, Jr.**, attorney, appeared on behalf of respondent, Reed Power Tongs, Inc. ("Reed Power"); and **David Pepper**, attorney, appeared on behalf of R.L. Sias, Inc. ("Sias") an offset surface owner.

The Administrative Law Judge ("ALJ") filed her Report of the Administrative Law Judge on the 5th day of August, 2010, to which an Appeal was timely filed and proper notice given of the setting of the Appeal.

The Oral Arguments on Appeal were referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 8th day of November, 2010. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

SIAS, REED POWER AND THE DIRECTOR APPEAL the ALJ granting the Director's applications finding in each case that Respondent Reed Power failed to prevent pollution at the Brown #1-W SWD ("Brown SWD") site; finding that a total fine of \$10,360 be assessed for the earlier ongoing pollution problems at the Brown SWD site and to cover the Commission cost for sampling at this site; denying the Director's request to vacate Order No. 206530, which authorized the Brown SWD well as a salt water disposal well; and denying the Director's request to increase the surety for Reed Power to \$100,000.

These 3 cases are all applications of the Director seeking contempt action against Reed Power for the Brown SWD site located in Seminole County. The Director argues that this is a site which has had repeated problems. The Director asserts there have been three spills at this site which have

contaminated soil and water in the area, in an unnamed creek tributary and Sand Creek. The Director believes that Reed Power has not completed remediation or cleanup at this site, although there have been some activities. Reed Power takes the position that they have followed the instructions of the Director and reported spills when they knew about them prior to the Director's knowledge. In June 2009 they were notified by the Director of the problem at the site. Reed Power has expended money on clean up and hired an environmental company to prepare a remediation plan which the Director rejected. Reed Power states that they have worked on the site and followed the instructions of the field inspectors or Director's employees to clean the site. The Director believes Reed Power has shown themselves to not be a responsible operator and have asked to vacate Reed Power's Brown SWD well order, a \$25000 fine, and an increase in their surety as an operator in the State of Oklahoma. Reed Power takes the position that it was through no fault of their own that the pollution occurred and that they have done everything the Director has instructed for cleanup. Thus, no fine should attach and their surety should not increase because they are capable of plugging wells they operate and always have if the Director required it. The disposal authority Order No. 206530 should not be vacated Reed Power asserts since they will have to shut-in five producing wells and lose both income personally and income for the State of Oklahoma.

DIRECTOR TAKES THE POSITION:

(1) In all three causes the Director sought the entry of a Final Order against Reed Power for failure to prohibit pollution and failure to report a nonpermitted discharge in violation of OAC 165:10-7-5; for illegally discharging a deleterious substance to surface waters in violation of OAC 165:10-7-18; for failure to specify the method of clean-up to be implemented in violation of OAC 165:10-7-5; for failure to post lease signs in violation of OAC 165:10-3-17.

(2) Each of the Complaints is a separate occurrence and as such should not be considered a single violation of the rules of the Commission, but rather each indicates the disregard that Reed Power shows for the environment of the State of Oklahoma.

(3) Due to multiple violations involving pollution committed by Reed Power that have negatively impacted the environment, the Director sought to increase the amount of Category B surety required of Reed Power to \$100,000 as allowed by OAC 165:10-1-10(d).

(4) Reed Power had approximately 120 complaints since 1997 and approximately 30 spills in the last 2 years. Reed Power operated 53 wells in the State of Oklahoma and that the \$25,000 Category B surety posted by Reed

Power would not be sufficient to cover the plugging expense if it were necessary for the State of Oklahoma to plug more than just a few of the wells operated by Reed Power.

(5) The Director asked that the Final Order direct Reed Power to reimburse the Commission for administrative costs in the form of sample analysis expenses in the amount of \$360 within 60 days of the date of the issuance of the Final Order. The Director additionally asked that the Final Order direct Reed Power to submit a Plan of Remediation for the Brown SWD well to the Pollution Abatement Department of the Commission, and within 60 days of the date of the order Reed Power is to have the site fully remediated. Lastly, the Director requested that due to the repeated pollution on the Brown SWD well a Final Order should enter immediately vacating Order No. 206530 that authorized Reed Power to dispose of fluids into the Brown SWD well.

(6) The ALJ's Report is contrary to law as for good cause shown concerning pollution by an operator the Commission may require the filing of additional security. See 52 O.S. Section 318.1. The ALJ ignored Oklahoma law when he failed to recognize the fact that due to the numerous pollution occurrences perpetrated by Reed Power on its oilfield sites over many years the increase in surety sought by the Director was warranted.

(7) The ALJ's Report is contrary to the evidence that Reed has repeatedly caused pollution and seldom cleaned up said pollution until the Commission filed a Contempt action, fine was levied, or both.

(8) The ALJ's Report is arbitrary and unreasonable in that it fails to affect the ends of the prevention of pollution as is required by applicable laws of the State of Oklahoma and the rules of the Commission.

(9) The Director respectfully asserts that the ALJ erred in her interpretation of the purpose of rule OAC 165:10-1-10(d) and failed to recognize that this rule is not simply about limits on surety, but is also intended to be an avenue by which the Commission can control pollution by operators and thus protect the State of Oklahoma.

(10) In recommending no increase in the amount of surety required of Reed Power the ALJ ignored Reed Power's years of abuse and the egregious nature of the willful acts perpetrated by Reed Power. The Director believes the ALJ ignored the evidence regarding Reed Power's unwillingness to remediate pollution when directed to do so by the Commission. Further, the ALJ either gave little weight to, or completely ignored, the evidence regarding Reed Power's causing pollution on the property of an adjacent surface owner.

REED POWER TAKES THE POSITION:

(1) The recommendation of the ALJ that a fine should be assessed in these combined causes of "no more" than \$10,000 is not supported by the evidence and must be reversed. The record in these cases is clear that Reed Power did not cause the SWD spill of which the State complains. Reed Power complied with each and every instruction and order given by the District Office with respect to this property. Reed Power has incurred in excess of \$121,000 in cleanup and remediation expenses. Any time delays that have occurred have been the result of waiting on orders from the District Office, or waiting upon performance by outside third party contractors. There is no evidence in this case that warrants the imposition of monetary sanctions and the levying of such sanctions is inequitable and unjust.

(2) Reed Power requests that the recommendation of the ALJ that a fine be assessed of "no more" than \$10,000 be reversed and that no fine or other sanction be imposed against Reed Power in these combined causes.

SIAS TAKES THE POSITION:

(1) The ALJ erred when failing to revoke the permit of the disposal well described as the Brown SWD well. The evidence clearly showed that the Brown SWD well has had numerous discharges and has acted as a detriment to the landowners in the adjacent units. Further the evidence clearly showed that Reed Power had failed to provide available technology to prevent said discharge. The evidence clearly showed that Reed Power has been and continues to be a violator of numerous Commission rules. The standard which Reed Power employs in order to deal with the Oklahoma Corporation Commission is they commit violations and then wait until the Oklahoma Corporation Commission acts by filing contempt proceedings. These type of imprudent operations should not be allowed to continue as to the Brown SWD well, and said permit should be revoked.

THE ALJ FOUND:

(1) The ALJ recommended that the applications in ENs 200900142, 200900147 and 200900191 be granted in part and denied in part. Based on the evidence in the cause that there have been pollution problems at this site, it was the recommendation that a fine attach. However, the evidence also showed that Reed Power had been working at the site to do clean up and had expended over \$120,000 so far to remediate this site. There is more work still to do and Reed Power has indicated that they will do such work. Reed Power indicated an intent to work with the Commission/Mr. Pryor on further clean up requirements and has hired someone to help obtain a soil farm permit. Because of this ongoing effort the ALJ is not persuaded that a \$25,000 fine is

in order. There has been miscommunication between Reed Power and field personnel particularly in regard to the catch pit, the "flushing" instruction, and the standard for the dig and haul. The 1085 form clearly states Reed Power is to flush the creek however Reed Power said the field inspector told him to flush everywhere the water ran. The follow-up 1085 does not reference field inspector's criticism of Reed Power's flushing and in fact refers to flushing the gully. It appears Reed Power believed the flushing they started after the June 25, 2009 report issued was in conformance with the field inspector's instruction and they had no feedback to the contrary. As to the pit, Reed Power said it was dug at the instruction of the field inspector as a catch pit to stop any further spill from reaching the tributary. This sounds like a reasonable interpretation of the field inspector's instruction and of Reed Power's action, since at the July 20th follow-up inspection the field inspector instructed Reed Power to "fill pit" and he did not refer to it as an illegal pit. In fact Reed Power both filled the pit and brought in salt water tanks to hold salt water at the site. Clearly the instructions on the standard for how deep to dig was misunderstood by Reed Power and therefore they did not realize they had already complied with one of the standards on the dig and haul of contaminated soil.

(2) Reed Power did not deny the first spill and has taken the requested action to clean up the area including digging contaminated dirt and holding it in the diked area on site while awaiting receipt of a soil farm permit. Reed Power first tried to haul this dirt to another one of their sites but was told by the field inspector not to do that, so they have held it on the disposal site to date. Reed Power denies the October 2009 spill, believing it to be rain water. Reed Power did not make a formal report of the first spill since Field Inspector Hirn was aware of it before even Reed Power knew of it. The second spill in July was found by the District Office Manager. He alerted the pumper who then got the pump working and immediately had a truck out there to suck out the water. Reed Power denies a third salt water spill, although they admit photographs do show one of the tanks they brought in for salt water storage did have sludge dripping from it. They now have that tank hooked into their disposal system and it has no more oil drips. Reed Power plans to complete the digging of the contaminated soil; obtain a soil farm permit; line the bermed area; put in a sump pump and follow any other instruction by the Commission/Mr. Pryor for this site. Reed Power further plans to maintain the new signs they have put up and the new gauge they have installed. Upon completion of this work it was the opinion of the ALJ that the fine should be no more \$10,000. Reed Power is the operator and therefore responsible for operations at this site and the ALJ believes this fine amount is reasonable given the circumstances. Additionally the \$360 expense paid by the Commission/Director for sampling the site should also be included in the fine. The ALJ would further recommend that the kill switch recommended by the

Commission/Mr. Lord be implemented. In spite of Reed Power's claim that it can't be done here, it can and should be done.

(3) As to the increased surety the ALJ found that an increase is not recommended. While field personnel are not satisfied with the response to the requested work at this site, the record shows Reed Power has made effort and spent money to comply with the Commission/Director's requirements. It is the opinion of the ALJ that the fine addresses any problem regarding the Commission/Director's dissatisfaction with the proper response by Reed Power here and that a surety increase is not called for at this time. Operators have problems from time to time with specific wells or at particular sites and when the operator is unable to plug a well or complete their work, forfeiture of the surety to cover that would be in order. It is doubtful that surety is envisioned for plugging every well of an operator or there would be greater amounts required for surety for even a smaller operator than Reed Power.

(4) As to the request to vacate the SWD order it is the opinion of the ALJ that it would be counterproductive to do this. If the clean up continues as Reed Power has indicated and the site is properly remediated and then operated and overseen by the operator and pumper, Reed Power will be able to activate production for 5 wells. It would be wasteful to vacate the order, plug the well and cause abandonment of production or cause delay in production while Reed Power drills a new disposal well. The disposal well itself is fine and the site is being cleaned up. In fact the record indicates the excavation of contaminated soil is essentially complete and now Reed Power is only awaiting the soil farm permit.

(5) It is the recommendation of the ALJ that Reed Power work with the Commission/Mr. Pryor and any necessary environmental specialist/company to prepare and submit an acceptable plan of remediation for completion of clean up of the site. The plan should be submitted within 60 days of issuance of an order in the cause and final clean up should be done within 60 days of approval of the plan.

(6) Because of the miscommunication between operator and field staff it is the recommendation of the ALJ that every effort be made to give clear instructions to Reed Power and that Reed Power insure that they understand any instruction from the Director's field Staff. The dig and haul standards are a case in point. The instructions were three separate alternate standards, not three requirements for a single standard. Because Reed Power did not understand that, they have more than met the 3 foot standard for digging because they were trying to meet the 2500 or less total dissolved solvents standard too. Careful communication would have solved several of the problems in this case.

POSITIONS OF THE PARTIES

THE COMMISSION

- 1) **Keith Thomas**, Assistant General Counsel, appearing on behalf of the Commission, stated the ALJ failed to realize this is a case about ongoing pollution on the Brown SWD site of which Reed Power has been the operator for the past 30 years. The Commission notes the pollution extends over half a mile in distance to Sand Creek, which is a half mile from the Brown SWD well.
- 2) The Commission notes that prior to the merit hearing a field inspector visited the Brown SWD site and observed water in the diked area and leaking tanks.
- 3) The Commission believes the Brown SWD site is a hazard to the State. The Commission further believes that Reed Power has consistently ignored requests to cleanup pollution. The Commission is concerned that if Reed Power does not change their ways of operations, that the fresh water would be harmed.
- 4) The Commission notes that Reed Power hired consultant Basin who did not appear with the Commission inspectors in April 2010 at the arranged meeting to take samples at the Brown SWD site. The Commission contacted Reed Power only to learn that Reed Power had already taken samples at the site. The Commission notes the sampling took place approximately ten months after the complaint was initially filed (see Exhibit 17). The Commission points out that these Reed Power samples were not tested for the leaking hydrocarbons that had breached the dike area and which flowed into the creek.
- 5) The Commission witness Inspector Pryor stated that neither Reed Power gave the sample results to the Commission for review or arranged for the Commission to witness such test per Commission rules.
- 6) The Commission notes the ALJ allowed Reed Power to make hearsay statements about the retired inspector who had worked with Reed Power. The Commission points out that Inspector Hirn was available to testify yet Reed Power did not subpoena any of the prior inspectors.
- 7) The Commission relied on the normal business paper documents to indicate Inspector Hirn's past communications with Reed Power. The Director notes the Form 1085 inspection reports do not reflect the verbal hearsay instructions given to Reed Power by Inspector Hirn.

8) The Commission acknowledges that Reed Power claims to have spent approximately \$120,000 on the remediation yet Reed Power brought no receipts or invoices to corroborate those expenses. The Commission notes the ALJ accepted Reed Power's hearsay statement as evidence which was clearly error.

9) The Commission notes that even Sias' hired geologist had confirmed the Commission witness Inspector Pryor's opinion that prior to the current three spills at issue that there had been previous multiple spills.

10) The Commission notes the second issue relates to vacating Order No. 206530. The Commission believed Reed Power had ignored all requests to cleanup pollution at the Brown SWD site and considered such site to be a hazard. Further, the Commission finds the ALJ gave no reason as to the denial of the Commission's request to vacate the above disposal order.

11) The Commission's witness Charles Lord believed the past complaint incidents showed the continued unreported surface spills on the Brown SWD site could ultimately cause groundwater pollution.

12) Commission orders allowing disposal are issued with the caveat that the operator must not cause pollution nor endanger groundwater.

13) The Commission notes the tanks on site have no valves and allowed oil to seep to the surface inside the dike area, resulting in the wall collapsing with contaminated water being released to the surface.

14) The Commission notes that Reed Power had no workable pressure gauge on the Brown SWD well, due to it being broken and unreadable. The Commission believes that without a proper gauge there was no way for Reed Power to accurately determine whether the disposal was being done at the 100 psi level.

15) The Commission asserts that Reed Power is guilty of both onsite pollution and endangering groundwater. The Commission believes the massive pollution evidence showing the high contamination levels was ignored by the ALJ. The Commission's burden of proof was met by showing Reed Power's long history of pollution complaints. The Commission believes the ALJ erred by overlooking the operating experience of Reed Power with its history of pollution. The Commission believes the ALJ's decision is arbitrary and unreasonable.

16) The Commission witness Inspector Winlock pointed out that Reed Power had approximately 53 wells with a \$25,000 surety limit. The Commission believes that if Reed Power was unable to plug these wells the State would be required to cover the difference. The Commission feels the \$25,000 surety is insufficient to remediate the site and plug possibly all 53

wells. The Commission believes if Reed Power is allowed to be an operator with the current \$25,000 surety level that the State of Oklahoma will be threatened by future pollution. Based on Inspector Winlock's opinion of Reed Power being an irresponsible operator with an inadequate surety level, the Commission felt the surety bond should be raised to \$100,000.

17) The Commission notes that Reed Power, without obtaining a permit or using a ground liner, stockpiled contaminated soil on Reed Power's own property which violated Commission rules.

18) The Commission notes that Reed Power in the last 12 years has had over 130 pollution complaints. The Commission notes that complaints are filed normally when the operator fails to respond to the district personnel requests. The Commission notes that had Reed Power initially followed Commission rules, then the 16 complaints (see Exhibit 10), where Reed Power ultimately complied with the rules, would not have been filed.

19) The Commission felt the ALJ ignored Rule 165:10-1-10 that "all operators are treated equally at the Commission." OCC 165:10-1-10(a)(2) states "...The Commission is authorized to establish Category B surety in an amount greater than \$25,000.00 in US dollars based upon the past performance of the operator and its insiders and affiliates regarding compliance with the laws of this state, and compliance with any rules promulgated thereto, including but not limited to the drilling operation and plugging of wells, closure of surface impoundments, or removal of trash and equipment." The Commission notes the rule does not state that all wells must be abandoned in order to be plugged, merely that the operator must post surety.

20) The Commission also believed the ALJ ignored the true interpretation of Rule 165:10-1-10(d) that: "Irrespective of (a), (b), and (c) of this Section, for good cause shown concerning pollution or improper plugging of wells by an operator posting either Category A or Category B surety or by an insider or affiliate of such operator, the Commission, upon application of the Director of the Conservation Division after notice and hearing, may require the filing of additional Category B surety in an amount greater than \$25,000.00 in U.S. dollars but not to exceed \$100,000.00 in U.S. dollars." The Commission believes the rule above was intended to be an avenue for the Commission to control pollution caused by operators. The Director contends it is to protect the State and is not just about limits on surety as the ALJ found.

21) A third issue the Commission disputes is the recommended fine established by the ALJ. The Commission notes that these three causes are based on three separate spill incidents located on the Brown SWD site. For judicial economy only, the Commission chose to hear the cases together despite there being no filed Motion for Consolidation of the causes.

22) The Commission estimates the fines per complaint to be \$3453, which for the quantity of pollution here seems to be a very low figure.

23) The Director notes that 52 O.S. Section 139 and OCC 165:10-7-5 grants power to the Commission to regulate oil and gas. Further, the Commission is mandated with prevention of pollution. The Commission believes this Brown SWD well threatens the groundwater in the State. The Commission submits that Reed Power should pay the full amount of the requested fine for the documented pollution.

24) The Commission feels certain that once the Court reviews the history of the violations over the past 12 years of Reed Power's' being operator that it will find the ALJ did not give proper weight to the totality of the evidence concerning raising Reed Power's surety limits. The Commission would assert their request to raise the surety to \$100,000 is well-based.

25) The Commission thinks that Reed Power should not be allowed to remain in business as an operator and keep on polluting State lands and groundwater. The Commission believes the ALJ should not be allowed to ignore the pollution evidence here in light of the Commission rules prohibiting such pollution.

REED POWER

1) **John C. Moricoli, Jr.**, attorney, appearing on behalf of Reed Power, stated the case breaks down to two issues: 1) the surface pollution resulting from the saltwater spills at the Brown SWD site, and 2) the status of Order No. 206530.

2) Reed Power notes the property is flat where the Brown SWD well is located with a slope on one side with the creek on the opposite end of the slope.

3) Reed Power realizes the Commission is concerned with the remediation of the alleged pollution and needed sanctions and/or fines appropriate thereto.

4) Reed Power notes the Brown SWD well is used for five producing wells. Reed Power asserts the Brown SWD well is vital to dispose of the salt water generated from these producing wells. Reed Power points out that these five wells generate approximately \$16,000 a month revenue which benefits all parties, both Reed Power and the State of Oklahoma through the prevention of

waste. Without such use of the Brown SWD well, Reed Power would be out approximately \$2450 per truck load for SWD disposal, resulting in the operation being uneconomical. If such were to occur, Reed Power asserts this would require the plugging of the Brown SWD well.

5) Reed Power observes the Commission called on inspectors to testify who had no first-hand knowledge of retired field Inspector Hirn's conduct and verbal communications with Reed Power on this site. Reed Power believes the field inspectors relied on inadequate Commission paper records in which to base their testimony.

6) Reed Power notes the Commission witness Inspector Winlock's testimony revolved around Cause EN 200900191 which related to the contaminated soil removal request by Inspector Hirn, which was then reversed by Inspector Winlock when Winlock took over the case.

7) Reed Power wonders why the Commission opted not to contact or request Inspector Hirn's presence at the hearing to provide actual evidence to prove up the Commission's belief that Reed Power had been ignoring state regulations and field inspector's directives in cleaning up this site.

8) Reed Power notes that there is a current tank system in place due to Inspector Hirn's request that will take care of any future pollution problems. Reed Power does note there was an equipment failure with the junction box that controlled the electric pump that sent water down into the well formation for disposal, i.e. damage caused by outside forces beyond Reed Power's control. Reed Power's analysis indicated the fried wiring was likely due to a lightning strike.

9) Reed Power was unaware of the broken pump until it was pointed out to them by Commission Inspector Hirn. Reed Power points out that Reed Power would have contacted the Commission field personnel about the leak however the field inspector Hirn noticed it first and notified Reed Power. Reed Power felt it would have been duplicative effort and waste of time to report the leak to the Commission as it was already known to the Commission. Reed Power followed Commission Inspector Hirn's verbal instructions to remediate the pollution promptly.

10) Reed Power even built a dike around the tanks to keep future water from overflowing down into the creek until the remediation was repaired satisfactorily for Inspector Hirn. Reed Power notes this "catch pit" was constructed at the request of Inspector Hirn in case of rainwater causing future problems. Reed Power notes though that upon Inspector Winlock taking over the case Winlock reversed Inspector Hirn's orders and labeled the pit to be of improper construction.

11) Reed Power did comply with Inspector Hirn's orders on cleaning up this site to the best of their ability. Reed Power flushed the area impacted by the salt water with fresh water and used tanker trucks to draw up the salt water and hauled the salt water away to a disposal site.

12) Reed Power notes that once the injection well and dike were repaired that Inspector Hirn gave Reed Power additional instructions on how to remediate the soil.

13) Reed Power notes the Commission inspectors requested a remediation plan be prepared so Reed Power hired the consultant Envirotech. Reed Power notes that it took several months before Envirotech came up with a remediation plan. Reed Power had this plan submitted to the district office only to have it rejected due to the Commission's belief that the chemical used would result in chlorides leaching out of the soil.

14) Reed Power notes a few months after the plan was denied, the Commission personnel now were requesting that Reed Power dig up the contaminated soil and replace with fresh soil. Reed Power was given two requirements to comply with: 1) dig down to a depth of three feet below the surface in the impacted area or dig and remove the soil down to bedrock, whichever occurred first or 2) dig down to a certain level, taking samples until the total dissolved solvents were 2500 parts per million or less.

15) Reed Power, due to a miscommunication with Commission personnel, did all three of the requirements rather than just one. Reed Power asserts that due to their digging beyond normal depths that Reed Power has complied with the Commission's remediation requests. Reed Power believed they were in full compliance with all the instructions told to them by the Commission inspectors.

16) Reed Power disagrees with the Commission that Reed Power took no actions to speed up the cleanup of this site. Reed Power did not ignore the problem but acted immediately when requested to take action by the Commission field inspectors.

17) Reed Power reiterates the pollution problem here was caused by something beyond Reed Power's control. Reed Power does not feel it is appropriate to be fined over an Act of God. Reed Power acknowledges that Reed Power is responsible for the property. Reed Power attempted to remediate it once the problem was realized. Reed Power believes that due to Reed Power's quick response to requests from the field inspectors that no punishment or fine should attach to Reed Power.

18) Reed Power does note that the weather did cause some delays in the dig-and-haul process. Reed Power notes that their testimony of their efforts was not rebutted by the Commission.

19) Reed Power notes that in excess of \$121,000 was spent on remediation. Reed Power did not find any need to present cancelled checks or invoices into evidence. Reed Power's vice president testified with his accounting books on hand as to the charges that had accumulated up to that point in time. Reed Power asserts that Reed Power has been responsive to the Commission's cleanup requests.

20) Reed Power points out that Tim Baker had reviewed everything at the site and approved the efforts. Reed Power notes that Charles Lord testified regarding the second issue, i.e. vacating the injection order No. 206530.

21) Reed Power observes that despite the Commission's witness Charles Lord not finding any evidence the Brown SWD well was misconfigured, he was still of the opinion the order should be voided. Reed Power observes there was no evidence of the maximum pressure rate listed in Order 206530 of being exceeded. Reed Power notes there was no proof that any subsurface water had been polluted. Reed Power notes there were soil samples on the soil and the creek yet no evidence the pollution would actually leach into the groundwater.

22) Reed Power notes that the Commission has not done any drilling to test the subsurface water in this area at the 75 feet base of the treatable water. Reed Power points out the disposal well is sound, with no technical reason to vacate it and force Reed Power to drill another SWD well. Reed Power finds there was no evidence to support the alleged claim to vacate the SWD disposal order. Reed Power believes the Commission is using speculation as to what might happen to validate the Commission's request to vacate Reed Power's disposal well Order No. 206530. Reed Power believes that anything is possible, however, the Commission's personnel have made no studies to determine the probability of their fears actually occurring.

23) Reed Power notes due to these being stripper oil wells, it would be uneconomical to drill another SWD well to recover these reserves and waste would occur if the Commission required such action. Reed Power notes the Commission is mandated to prevent waste and requiring these wells to be plugged would promote waste. Reed Power believes this to be inappropriate.

24) Reed Power notes the EN 200900142 claim that Reed Power did not report the pollution leak to the Commission is utter nonsense. Reed Power notes the district inspectors contacted Reed Power about it so there was no reason to remind them and report it to them.

25) Reed Power notes that Inspector Hirn saw some dike water with oil sheen on top of it. Reed Power said that occasional water may get in the diked area and cause the soil oil to float to the top resulting in an oil sheen visible to the eye. Reed Power reiterates there was no need to file that pollution Cause EN 200900174 against Reed Power.

26) Reed Power notes the EN 200900191 was a mistake on Reed Power's part. Reed Power admits they owned the surface area and took the impacted dug soil to that location, intending to leave it there until their soil farm permit could be processed. Reed Power notes that the Commission inspector Winlock observed that and requested Reed Power return the contaminated soil to its original place, which Reed Power complied with and returned it to the Brown SWD site.

27) Reed Power believes since the problem was initially caused due to outside forces that no fine should attach due to Reed Power's response to complying with the Commission inspector's verbal orders.

28) Reed Power admits there was a pollution problem here yet it was created by outside forces. Reed Power notes this well has been in operation for approximately 30 years. Reed Power does not believe that the Commission knows where this water came from. Reed Power believes it was rainwater.

29) Reed Power believes that Rule 165:10-1-10(a)(2) pertains to an initial surety request for a party seeking a plugging bond, which is not the situation here. Reed Power finds that Subsection (d) applies to the situation at hand, i.e. for good cause shown concerning pollution or improper plugging the surety can be raised to higher limits and also where the operator does not cooperate with the Commission personnel.

30) Reed Power has cooperated with the Commission here. Reed Power believes there is no evidence of a substantial nature to warrant the vacation of the injection order nor the raising of the surety to \$100,000.

31) Reed Power would request the Court to review Exhibit 10 and most of those complaints have been resolved by agreements. Reed Power notes some were dismissed and some had minor fines, yet overall none of the complaints amounted to anything of substance.

32) Reed Power was given orders by the district office field people which were complied with by Reed Power to the best of their ability. Reed Power finds the site has been remediated. Reed Power's conduct here should be more than sufficient to discharge their obligations to the State. Reed Power finds the Commission's charges fail for lack of proof. Reed Power would therefore request the ALJ be affirmed in all aspects, with the exception of the fines which

Reed Power thinks should be reversed with a total of zero fine and an order denying all of the Commission's requested relief.

RESPONSE OF THE COMMISSION

- 1) The Commission notes that Exhibit 10 shows only a portion of the track record of the approximate 130 cases filed on Reed Power over the years.
- 2) The Commission points out that all three separate spills were unreported. None of the Form 1085s indicated that Reed Power had reported the spills to the Commission.
- 3) The Commission notes that Reed Power did admit that initially their tanks, berms and diking around the Brown SWD well were inadequate.
- 4) The Commission notes that all operators believe fines are unnecessary when an operator has spent their own monies to comply with the Commission remediation requests.
- 5) The Commission believes that fines can be punitive when an operator is guilty of polluting. The Commission could have asked for a \$5000 a day fine for not complying with the rules. Fines are necessary to punish those who violate the Commission rules. Further, the Commission is required to help an operator to abide by the rules.
- 6) Reed Power hired Basin, not Envirotech which was Sias' expert. The Commission meeting with Reed Power's consultant, Basin for sampling never occurred. The Commission has no idea where Reed Power took their samples. The Commission never received the analysis of these samples.
- 7) The Commission did take samples at the Brown SWD site at a cost of \$360 which the Commission should be reimbursed for. The Commission feels that Reed Power shows disregard for the Commission rules. There is nothing to prevent Reed Power from folding up shop and walking away and leave the Commission to plug and restore these well sites at their \$25,000 current surety level.
- 8) The Commission notes these samples confirmed there was pollution at the Brown SWD site. The Commission wishes to make Reed Power more accountable by increasing their surety level to \$100,000.
- 9) The Commission differs with Reed Power's interpretation of Rule 165:10-1-10(d) as it just deals with surety limits, not initial surety limits. The

Director has a right to seek an increase in an operator's surety limit based on past performance.

10) The Commission witness Charles Lord's opinion was that the disposal order should be vacated due to the potential for groundwater contamination. A threat to groundwater is grounds for vacating a disposal order. Reed Power should lose their ability to keep on using this SWD well under the circumstances.

11) The Commission acknowledges the Forms 1085 did allow Reed Power to have a pit yet Inspector Hirn only advised Reed Power to flush the creek. Reed Power did not contact Hirn prior to actually building the pit. While the Commission notes that there may have been a miscommunication between Reed Power and the Commission inspectors the current Forms 1085 indicate the pollution was never cleaned up.

12) The verbal statements of conversations had between Hirn and Reed Power should not have been allowed as Hirn was not present to validate his statements given to Reed Power.

13) Witness Inspector Hirn's statements were shown on the three Form 1085s (see Exhibit 2). Hence, the Commission had no need to subpoena Hirn as the paperwork speaks for him.

14) The amount of money spent by an operator is of no consequence when determining if a site has been properly cleaned up. Compliance per a Commission order or rules does not hinge on the amount of money spent by an operator in complying with Commission field personnel instructions.

15) The Commission points out that Exhibit 11 maps and Exhibit 12 samples do show widespread pollution. The third map actually shows how extensive this pollution reaches.

16) Reed Power brings up the possible cause of the pollution being an Act of God, i.e. a lightning strike. The Commission admits it does not know the actual cause of these spills. However, the Commission does know that Reed Power violated Commission rules in declining to report the spills or clean up the spills.

17) Even the Sias' expert confirmed the Commission's opinion that the site pollution was a threat to groundwater.

18) Reed Power caused the pollution to flow onto Sias' property due to Reed Power's operations on the Brown SWD site. There has been long-term widespread pollution on this site.

19) No cleanup had been done prior to the merit hearing being had. All that Reed Power did was to move dirt around and basically conduct a Chinese fire drill. A job started is not a completed job until approved by the Commission.

20) The Commission notes that the parties motivation here is not at issue. The Commission believes that if an operator of a disposal well abuses the Commission order or approved permit or violates same that the operator should lose their ability to use that disposal well.

21) The Commission would request that the ALJ be reversed and the full relief requested by the Director be allowed.

RESPONSE OF REED POWER

1) Reed Power notes that pollution did occur through no fault of its own when the junction box wires got fried, shorting out everything and stopping the injection pump. Reed Power did clean up the pollution. Reed Power notes this case was tried last summer. Reed Power's site (Exhibit 17) looks much different today with the tanks in place.

2) Reed Power notes the Commission witness Charles Lord recommended something over and beyond what the regulations require. Reed Power notes that adequate tankage is now on this location to catch any leaks before injuries occur.

3) Reed Power further notes that for the Director to demand a surety bond increase based on future rule violations is arbitrary, capricious and unwarranted behavior. Reed Power believes such is not authorized by either statutes or rules. While the Commission may dislike Reed Power's response time, Reed Power does not believe that is a reason to throw the book at them for something that is out of their control. Reed Power noted the ALJ agreed with that also.

CONCLUSIONS

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

I.

REED POWER SHOULD BE HELD IN CONTEMPT FOR FAILING TO PREVENT POLLUTION AT THE BROWN SWD SITE

1) The Referee finds the ALJ's recommendation that Reed Power failed to prevent pollution at the Brown SWD site and that a total fine of \$10,360.00 be assessed for the pollution problems at this site plus \$360.00 and to cover the Commission cost for sampling at this site is supported by the weight of the evidence and free of reversible error. The ALJ has written a well-reasoned report.

2) A contempt proceeding is characterized as *sui generis* in Oklahoma. *Vogel v. Corporation Commission of Oklahoma*, 121 P.2d 586 (Okl. 1942). It is neither a civil nor a criminal proceeding. *State ex rel. Short v. Owens*, 256 P. 704 (Okl. 1927). The Commission's contempt power is derived from both the Oklahoma Constitution and statute. See, Article 9, Section 19, Oklahoma Constitution; 52 O.S. Section 102. As such the Commission's contempt power is unique. "It is neither civil nor criminal, but may partake of either in its nature." The Commission's contempt power therefore 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. Section 102. *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okl. 1984); *Burmah Oil & Gas Company v. Corporation Commission*, 541 P.2d 834 (Okl. 1975); and *Kingwood Oil Company v. Hall-Jones Oil Corporation*, 396 P.2d 510 (Okl. 1964).

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.

- 3) The Oklahoma Constitution, Article 9, Section 19, provides:

Section 19. Powers of court of record - Additional powers - Failure or refusal to obey orders.

In all matters pertaining to the public visitation, regulation, or control of corporations, and within the jurisdiction of the Commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the Commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company (after it shall have been first duly cited, proceeded against by due process of law before the Commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness, or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law. The Commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation, or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the

rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisal of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the Commission, within reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the Commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense: Provided, That should the operation of such order or requirement be suspended, pending any appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

Thus, the nature of a Commission contempt order is unique and may be fashioned by the Commission to address the particular facts and circumstances presented to the Commission.

4) The ALJ found:

Based on the evidence in the cause there have been pollution problems at this site and it is the recommendation of the ALJ that a fine attach. However, the evidence also showed that respondent has been working at the site to do cleanup and has expended over \$120,000 so far to remediate this site; there is more work still to do and respondent has indicated that they will do that. Respondent indicated an intent to work with Mr. Pryor on further cleanup requirements and has hired someone to help obtain a soil farm permit. Because of this ongoing effort the ALJ is not persuaded that a \$25,000 fine is in order.

* * *

Respondent plans to complete the digging of the contaminated soil, obtain a soil farm permit, line the bermed area, put in a sump pump and follow any other instructions by Mr. Pryor for this site. He further plans to maintain the new signs he has put up and the new gauge he has installed. Upon completion of this work it is the opinion of the ALJ that the fine should be no more than \$10,000. Reed is the operator and therefore responsible for operations at this site and the ALJ believes this fine amount is reasonable given the circumstances. Additionally the \$360 expense paid by Staff for sampling the site should also be included in the fine. The ALJ would further recommend that the kill switch recommended by Mr. Lord be implemented.

5) The ALJ found that there had been miscommunication between Reed Power and Commission field personnel particularly in regard to the catch pit, the "flushing" instruction, and the standard for the dig and haul. The ALJ recommended that every effort be made to give clear instructions to Reed Power and that the operator Reed Power make sure that he understands said instructions from the field Staff. Apparently the instructions on the standard for how deep to dig were misunderstood by Reed Power and therefore Reed Power did not realize they had already complied with one of the standards on the dig and haul of contaminated soil.

6) Further, the ALJ recommended Reed Power should work with Mr. Pryor and any necessary environmental specialist/company to prepare and submit an acceptable plan of remediation for completion of the cleanup of the site. The Plan should be submitted within 60 days of the issuance of an order in the present cause and final cleanup should be done within 60 days of approval of the Plan. Under these circumstances and for the above stated reasons, the Referee recommends that the ALJ should be affirmed.

II.

COMMISSION'S REQUEST TO VACATE ORDER NO. 206530

1) It was the opinion of the ALJ that it would be counter productive to vacate Order No. 206530 which authorized the Brown SWD well and therefore

denied the applicant's request. The ALJ found that if cleanup continues as Reed Power has indicated and the site is properly remediated, operated and overseen by Reed Power, then Reed Power will be able to activate production for five wells. The ALJ stated:

It would be wasteful to vacate the order, plug the well and cause abandonment of production or cause delay in production while respondent drills a new disposal well. The disposal well itself is fine and the site is being cleaned up. In fact the record indicates the excavation of contaminated soil is essentially complete and now respondent is only awaiting the soil farm permit.

The Referee finds that the ALJ's determination to recommend that the Brown SWD well be allowed to remain as a non-commercial disposal well is supported by the weight of the evidence and should be affirmed.

III.

**REQUEST TO INCREASE THE SURETY FOR REED POWER
TO \$100,000**

1) The Referee finds that the ALJ should be affirmed in finding that surety for respondents Reed Power should not be increased to \$100,000. While the Commission field personnel have not been satisfied with the response by Reed Power to their requests for certain work at this site, the record shows that Reed Power has expended effort and money to comply with the Staff requirements. It is therefore the opinion of the ALJ that the fine addresses any problem regarding the Commission Staff's dissatisfaction with the proper response by Reed Power and that an increase in surety is not called for at this time. The Referee agrees with the recommendation of the ALJ and believes that the increase in surety bond should be left indefinite at this time and not increased to \$100,000 upon the consideration of Reed Power's actions to continue pursuing rapid remediation of the well site in question.

RESPECTFULLY SUBMITTED THIS 4th day of February, 2011.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
ALJ Susan Osburn
Keith T. Thomas
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