

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
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CORPORATION COMMISSION
OF OKLAHOMA

<u>APPLICANT:</u>	OVERFLOW ENERGY, LLC)	
)	
<u>RELIEF SOUGHT:</u>	AUTHORIZATION FOR A)	CAUSE PD NO.
	CONVERSION OF THE 3330)	201100071
	SWD WELL TO A)	
	COMMERCIAL DISPOSAL)	
	WELL)	
)	
<u>LEGAL DESCRIPTION:</u>	NE/4 NE/4 NE/4 OF SECTION)	
	2, TOWNSHIP 15 NORTH,)	
	RANGE 26 WEST, ROGER)	
	MILLS COUNTY, OKLAHOMA)	

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause Causes came on for hearing before **Michael Norris**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 2nd day of September, 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: **Karl F. Hirsch**, attorney, appeared on behalf of applicant, Overflow Energy, LLC ("Overflow"); **Richard J. Gore**, attorney, appeared on behalf of Calvin and Julia Bachmann ("Bachmann"); **Windle Turley**, attorney in the State of Texas, appeared in his capacity as a property owner of a ranch located 3 miles east of the proposed well site; and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed his Report of the Administrative Law Judge on the 7th day of November, 2011, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Oral Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 16th day of December, 2011. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

BACHMANN APPEALS the ALJ's recommendation that the amended application of Overflow filed herein be approved with consideration given to the alternative site. Overflow seeks approval to drill a commercial disposal well. Overflow met all the requirements under the statutes and rules. It demonstrated compliance with proper casing, tubing, packers and cementing.

Overflow will utilize the Wolfcamp formation with injection interval being as listed in Overflow's Amended Application between 3,500 feet and 6,750 feet as the disposal interval. The base of the treatable water was established at 680 feet. Overflow requested an injection pressure of 1740 PSI and the injection rate of 15,000 barrels per day.

Bachmann argued that one of the greatest concerns against this application is the traffic congestion. There are blind intersections onto Highway 33 within a few miles of the proposed well. There is already heavy traffic on the two main highways with a lot of petroleum development vehicles. The entrance to the proposed commercial disposal well is only 150 feet from the intersection of these two highways.

Bachmann is greatly concerned about the protection of the treatable water. The proposed well is approximately 100 yards from the only freshwater well for one of protestants' businesses, the City of Durham and a nearby trailer park. Bachmann states d that their freshwater well is in the Ogallala aquifer. Bachmann advocates an alternative site approximately eight miles from the proposed location. Bachmann states the alternative site is not located in the Ogallala aquifer and would not pose a threat to treatable water.

BACHMANN TAKES THE POSITION:

- (1) The Report of the ALJ is both contrary to law and to the evidence and arbitrary, unreasonable and discriminatory.
- (2) The ALJ Report fails to effect the ends of the prevention of waste and the protection of correlative rights as is required by applicable law of the State of Oklahoma.

(3) Granting the relief requested would place the sole water supply for the Town of Durham at risk.

(4) If the requested commercial disposal well was drilled a mere three miles south/southeast of the requested location, it would not even encounter the Ogallala aquifer and would therefore pose no risk to the fresh water supply of Durham, Oklahoma.

(5) There have been numerous casing failures in the Dolomite in this area which present an opportunity for pollution of fresh water.

(6) The Commission never acquired jurisdiction to grant the relief requested because Overflow published notice that it was converting an existing saltwater disposal well to a commercial saltwater disposal well. Overflow never republished notice that it was actually requesting to drill a new well.

(7) The additional truck traffic and the pollution from the disposal facility will be a nuisance and burden on the small town of Durham and likely result in the closure of the only store in town. Bachmann requests that the recommendation of the ALJ to authorize the drilling of a commercial disposal well at the requested location should be reversed and the commercial disposal well at the requested location be denied.

THE ALJ FOUND:

(1) It is recommended that this application be approved with consideration given to the alternative site and incorporate all of the equipment and procedures proposed by Overflow's expert engineer.

(2) Overflow has complied with the Commission requirements for approval of the requested commercial disposal well. The prerequisites have been met and sufficient evidence has been presented for approval.

(3) It is recommended that cement be circulated to the surface in this well or as close as possible.

(4) It is recommended that the monitoring equipment, Murphy switch and redundant system be utilized as discussed by Overflow's engineer.

(5) It is urged that the alternative site be scrutinized as a workable substitute. The protection of the fresh water is and should be a primary concern. Overflow's expert witness thoroughly demonstrated the actions to be taken by Overflow to complete and utilize this well in a safe manner.

(6) The close proximity of the proposed site to the only freshwater source in this area causes great concern. Bachmann states that Overflow's well is located in the Ogallala aquifer and suggested an alternative site in the Red Shale Hills that is not underlain by the aquifer.

(7) It is recommended that this application be reviewed by UIC to determine the viability of the alternative site suggested by Bachmann. As presented, it appears to be a feasible option that would protect the only fresh water source in this area.

POSITIONS OF THE PARTIES

BACHMANN

1) **Richard J. Gore**, attorney, appeared on behalf of Bachmann taking exceptions to the ALJ's November 7, 2011 Authorization for a Conversion of the 3330 SWD well to a Commercial Disposal well. Bachmann stated that this matter is not a conversion project, but in actuality would require the drilling of a new well.

2) Bachmann states that the property in this matter (the NE/4 NE/4 NE/4 of Section 2, T15N, R26W, Roger Mills County, Oklahoma) has been in the Bachmann family since 1901.

3) Bachmann states that the freshwater well located on the property that is the subject of this matter is a de facto municipal water supply for the Town of Durham. Citizens are supplied the freshwater at the Bachmann' convenience store, the Hitchin' Post.

4) Bachmann asserts that the concern of pollution of this water supply is of great importance in this matter. Bachmann contends that the proposed disposal well could be drilled approximately three to eight miles away from the proposed location and pose no danger to the underlying Ogallala aquifer.

5) Bachmann asserts that the publication notice of July 28, 2011 concerning the September 2, 2011 hearing was misleading in its characterization of the project as a conversion, and that this characterization dissuaded citizen protests. Bachmann contends that the notice of July 28, 2011 was defective, and therefore the Commission did not acquire jurisdiction in this matter.

6) Bachmann asserts that in amending the application (i.e., see Exhibit 2) and changing the relief sought (i.e., drilling a new well, rather than converting

an existing well), required Overflow to give notice in the manner that notice was given for the original application. Bachmann cites Commission Rule 165:5-9-2(d) in support.

7) Bachmann also assert that Commission Rule 165:5-9-2(d) requires that an applicant must file a new application when the relief requested is altered. Therefore Bachmann contends that Overflow must refile its application with the actual relief sought, a new commercial saltwater disposal well, stated in the caption. The Amended Application changes the injection interval, raises the pressure and adds 4.5 inch tubing.

8) Bachmann cites Commission Rule 165:5-7-27(d), which requires that notice of application for a commercial disposal well be published twice in a newspaper of general circulation. Bachmann contends that because Overflow did not publish the amended application prior to the September 2, 2011 hearing, notice was deficient and the application should be denied.

9) Bachmann asserts that Overflow did not publish the amended application until November 3, 2011, and that the publication did not provide the correct PD number but cited the application number 1107430020, not the actual PD Number, PD 201100071. The publication of November 3rd also cites a Commission rule which does not exist, 165:5-7-327. Bachmann also asserts that the notice of November 3, 2011 characterized the relief sought as the conversion of a saltwater disposal well.

10) Bachmann contends that if the application is not denied, the protest of the Amended Application dated November 14, 2011 should be deemed timely as submitted within 30 days of the last publication (November 3, 2011). Bachmann cites Oklahoma Corporation Commission Rule 165:5-7-27 (e) in support.

11) Bachmann references the figures provided in Exhibit 7, and asserts that power loss at the proposed injection well during injection will cause a rise in salt water that will endanger the fresh water reservoir. Bachmann contends according to Exhibit 7, a loss of power while injecting at 1740 psi will result in a rise in water up to a depth of 700 feet, only 20 feet from the fresh water which is at a depth of 680 feet. Bachmann also claims that injection at 1750 P.S.O. might endanger the reservoir.

12) Bachmann asserts that power loss concerns ought to be addressed in a new radius of endangerment calculation. Bachmann also notes the unreliability of electricity in the area.

13) Bachmann contends that a witness for Overflow admitted that a risk of communication between the multiple Dolomite wells drilled in the area existed, and that this communication could endanger freshwater.

14) Bachmann notes an admission by a witness for Overflow that any increased injection pressure would drive the injected saltwater back to the surface.

15) Bachmann cites *Samson Res. Co. v. Oklahoma Corp. Comm'n*, 1993 OK CIV APP 67, 859 P.2d 1118, in support of the contentions that jurisdiction cannot be conferred to the Oklahoma Corporation Commission by waiver or appearance and that the issue of jurisdiction may be raised at any time in the process.

16) Bachmann reasserts that the issue of jurisdiction is appropriately raised, that the original notice of hearing was defective, that there was no notice of the Amended Application, that Bachmann is entitled to a hearing on the Amended Application, and that the ALJ recommendation ought to be vacated.

17) Bachmann contends that the appropriate process is for Overflow to file a new application with an appropriate caption conveying the actual relief sought.

18) Bachmann requests that the recommendation be denied and that a new application be required to be filed.

OVERFLOW

1) **Karl F. Hirsch**, attorney, appeared on behalf of Overflow stated Overflow objects to the consideration of the November 3, 2011 publication provided to the Referee as it was not part of the record.

2) Overflow asserts that it is unfamiliar with the publication provided by Bachmann and that it might be an error by the publisher.

3) Overflow contends that no substantial changes were made in the Amended Application that would require additional notice. Overflow asserts that the change made was the addition of tubing.

4) Overflow asserts that the inclusion of “3330 Saltwater Disposal Well” in the caption of the application only provides the name of the well and that no inferences can be derived regarding the presence of a well on the property from the caption.

5) Overflow contends that all that is required of notice for a saltwater disposal well is the well name, the legal description of the land, the name of the

operator, the zone to be disposed, the footage, the disposal rate, and the pressure.

6) Overflow asserts that so long as notice is reasonably calculated under all of the circumstances to apprise the parties of the pendency of the action and affords the parties an opportunity to timely interpose their objections then jurisdiction is conferred. Overflow cites *Bomford v. Socony Mobil Oil Co.*, 1968 OK 43, 440 P.2d 713, and *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), in support.

7) Overflow contends that the application requested 1740 psi rather than the 1750 psi as claimed by Bachmann.

8) Overflow asserts that notice was published twice, and that the parties that elected to protest the application were sent a copy of the application, which clearly outlined that the application sought a new well and not to convert an existing well.

9) Overflow states that Bachmann did not object to the caption during the hearing on the application.

10) Overflow cites *Oates v. Freeman*, 1915 OK 898, 157 P. 74, contending that participation in the hearing precludes Bachmann from challenging jurisdiction based upon invalid notice.

11) Overflow asserts that so long as notice gives the parties enough information to defend their interests, then notice is proper.

12) Overflow contends that propriety of notice in this matter is evidenced by the Bachmann participation in the case.

13) Overflow asserts that the phrasing in the caption (i.e., the word "conversion") did not cause any party not to protest that otherwise would have.

14) Overflow reasserts that the only addition in the Amended Application was tubing, and that the formation was not changed as Bachmann claims. As well, Overflow reasserts that the same pressurization was requested in both applications.

15) Overflow contends that the area of endangerment is created and used by the Commission, rather than Overflow, and that the evaluation presented no concerns.

16) Overflow notes that it was the only party to present engineering evidence, and that this evidence was satisfactory to the ALJ.

- 17) Overflow stresses that the ALJ only recommended that UIC consider another location, rather than denial of the application.
- 18) Overflow notes that the engineer testified that no risk to freshwater is presented by saltwater injection at this location under the proposed conditions.
- 19) Overflow asserts that there is no risk of corrosion in this well. As Overflow's engineers explained, the water is non-corrosive, the well will be cemented, and the saltwater is leaving the well, rather than entering it.
- 20) Overflow contends that the reliability of electricity is not an issue, asserting that injection will be suspended at electricity loss and that the hydrostatic head in the wellbore prevents backflow from occurring.
- 21) Overflow asserts that the ALJ misinterpreted the evidence concerning the water well at the Hitchin' Post. Overflow maintains that the evidence shows that the Ogallala Aquifer is the only source of water for Durham, rather than solely the well located at the Hitchin' Post. Overflow contends that the ALJ's recommendation of review by UIC was based on this misconception.
- 22) Overflow reasserts that the aquifer will be protected; that the Application was in compliance with Commission regulations; that notice was sufficient; and that jurisdiction was proper.
- 23) Overflow requests that the recommendation of the ALJ be confirmed.

RESPONSE OF BACHMANN

- 1) Bachmann reasserts that the publication notice in The Cheyenne Star conveyed that an existing well was to be converted and that the notice was misleading.
- 2) Bachmann contends that Overflow submitted an Amended Application that did not comply with the Commission's publication rules.
- 3) Bachmann asserts that Overflow altered both the injection interval and the pressure in its Amended Application.
- 4) Bachmann contends that an increase in pressure of the injection well affects the radius of endangerment and that the radius of endangerment ought to be recalculated.

- 5) Bachmann asserts that they filed an Entry of Appearance and a Notice of Protest in this matter on July 11, 2011 and did not receive notice regarding the September 2, 2011 hearing until the day prior to the September 2, 2011 hearing via telephone.
- 6) Bachmann states that any abnormalities in the transcript of the September 2, 2011 hearing are due to the insufficient notice they received prior to the hearing.
- 7) Bachmann reasserts that they did not receive notice of the September 2, 2011 hearing.
- 8) Bachmann reasserts that appearance does not waive jurisdictional defects.
- 9) Bachmann contends that the ALJ ought to have recognized the deficiency of the notice and denied the application on jurisdictional grounds.
- 10) Bachmann reasserts that Commission rules require notice of an Amended Application be given in the same manner as the original application.
- 11) Bachmann reasserts that the November 3, 2011 publication made alterations to the application both in interval and pressure. Bachmann contends that Overflow's argument that the November 3, 2011 publication was an error made by the publisher is spurious because the November 3, 2011 publication was a new and different document.
- 12) Bachmann asserts that Overflow's engineer stated that the risk of contamination of the reservoir was remote, rather than nonexistent as argued by Overflow.
- 13) Bachmann contends that cementing does not eliminate the risk of corrosion because perforation allows for the entry of corrosive liquids.
- 14) Bachmann asserts that there is an increasing risk of backflow and contamination during an electrical outage as the pressure employed in the saltwater injection increases.
- 15) Bachmann posits that pollution of the Ogallala Aquifer would have wide-ranging effects.
- 16) Bachmann request that the ALJ's recommendation be reversed.

CONCLUSIONS

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

1) The Referee reverses the ALJ's recommendation that the application of Overflow be approved for the drilling of a new well to act as a commercial disposal well in the NE/4 NE/4 NE/4 of Section 2 based upon the jurisdictional issue raised by Bachmann on appeal.

2) Overflow's application for administrative approval pursuant to OCC-OAC 165:10-5-5 was prepared by Overflow on May 27, 2011 with the filing of the application by Overflow with the Corporation Commission on July 15, 2011. This application requested a commercial disposal well with the name of 3330SWD. The application also reflects that the box was checked for the well to be drilled. The requested injection rate and pressure was listed as 1740. The injection interval was to be between the depth of 3500 feet to a depth of 6800 feet in the Wolfcamp formation. The base of the treatable water was listed as 680 feet. The requested injection rate was 15,000 BPD. The initial application also provided for surface casing and production string.

3) Also filed at the Corporation Commission on July 15, 2011 along with the initial application was the Notice of Hearing, with the header/description as follows:

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

<u>APPLICANT:</u>	OVERFLOW ENERGY, LLC)	
)	
<u>RELIEF SOUGHT:</u>	AUTHORIZATION FOR A CONVERSION OF)	APPLICATION
	THE 3330 SWD WELL TO A COMMERCIAL)	NUMBER NO.
	DISPOSAL WELL)	1107430020
)	
)	CAUSE PD NO.
)	201100071
)	
<u>LEGAL DESCRIPTION:</u>	NE/4 NE/4 NE/4 OF SECTION 2,)	
	TOWNSHIP 15 NORTH, RANGE 26 WEST,)	
	ROGER MILLS COUNTY, OKLAHOMA)	
)	

4) The Notice of Hearing further provided:

NOTICE IS HEREBY GIVEN that pursuant to OCC-OGR Rules 165:10-5-5 and 165:10-5-6 and ROP

165:5-7-30, Applicant in this Cause is requesting an Order issue authorizing the **conversion of the 330** (sic) SWD well located in the NE/4 NE/4 NE/4 of Section 2, Township 15 North, Range 26 West, Roger Mills County, Oklahoma, to a commercial salt water disposal well with a maximum injection rate of 15,000 barrels per day and maximum injection pressure of 1,740 psi in the Wolfcamp formation in the interval from 3,500 feet to 6,800 feet.

* * *

NOTICE IS FURTHER GIVEN that this Cause will be heard before an Administrative Law Judge on the Pollution Docket at the Corporation Commission, 1st Floor, Jim Thorpe Building, Oklahoma City, Oklahoma, at 8:30 a.m., on the 2nd day of September, 2011, and that this Notice be published as required by law and by the rules of the Commission.

As can be seen by the above quoted language in the Notice of Hearing the relief requested was authorization for "conversion" of the 3330 SWD well to a commercial disposal well. In addition, the Notice of Hearing did not accurately describe the SWD well as the 3330 SWD well but described it as the "330 SWD well".

5) On July 19, 2011 an affidavit of mailing was filed by Overflow stating:

...on the 19th day of July, 2011, copies of the Form 10(sic) and Notice of Hearing in the above cause were placed in the U.S. Mail with sufficient postage prepaid, to the following parties with known addresses, and, no copies were mailed to the following parties with no known addresses:

Exhibit A attached to the Affidavit of Mailing reflects that respondents with known addresses were Calvin Bachmann and Julia Bachmann. Also, the reference to "Form 10" in the Affidavit of Mailing is incorrect as the form should have been stated as being Form 1015.

6) On July 26, 2011 the Journal Record in Oklahoma City, Oklahoma, published a Notice of Hearing concerning the present application which was filed with the Oklahoma Corporation Commission on July 27, 2011 stating:

RELIEF SOUGHT: AUTHORIZATION FOR
CONVERSION OF THE 3330 SWD WELL TO A
COMMERCIAL DISPOSAL WELL.

A Notice of Hearing was also published in the Cheyenne Star, the Cheyenne, Oklahoma newspaper on July 28, 2011 and filed with the Commission on July 29, 2011 stating:

RELIEF SOUGHT: AUTHORIZATION FOR
CONVERSION OF THE 3330 SWD WELL TO A
COMMERCIAL DISPOSAL WELL.

In both the Journal Record and the Cheyenne Star the Notice of Hearing stated:

NOTICE IS HEREBY GIVEN that pursuant to OCC-OGR Rules 165:10-5-5 and 165:10-5-6 and ROP 165:5-7-30, Applicant in this Cause is requesting an order issue authorizing the **conversion of the 330** SWD well located in the NE/4 NE/4 NE/4 of Section 2, Township 15 North, Range 26 West, Roger Mills County, Oklahoma, to a commercial salt water disposal well with a maximum injection rate of 15,000 barrels per day and maximum injection pressure of 1,740 psi in the Wolfcamp formation in the interval from 3,500 feet to 6,800 feet.

Again, there is an error in the name of the well stating it was the "330 SWD well" rather than the correct name of the well being 3330 SWD well.

7) On September 2, 2011 the protested hearing was held before the ALJ. Marked as Exhibit #1 was the original application which had been filed on July 15, 2011 at the Commission. Also marked as Exhibit #2 was another application that reflected certain changes/amendments to the original application (hereinafter described as the "Amended Application"). The Amended Application was never filed at the Commission and was introduced for the first time at the protested hearing. Nobody knew anything about the Amended Application before September 2, 2011. The ALJ entered Exhibit #2. Exhibit #2, the Amended Application, lists the application number as 1107430020 and the PD number as 201100171. It lists as the perforation of injection interval as the top being 3,500 feet and the bottom being 6,750 feet with the injection zone being the Wolfcamp formation. It also lists the injection pressure as 1,750 psi at an injection rate of 15,000 barrels. It also provides for 4.5 inch tubing to be

set at 3,500 feet. Thus, the Amended Application changes the injection interval, raises the injection pressure and adds 4.5 inch tubing.

Overflow did not provide any notice concerning the Amended Application according to the statute or rules under which the original application was filed. OCC-OAC 165:5-9-2(d) and OCC-OAC 165:5-7-27(d).

8) On Thursday, November 3, 2011, a new notice was published in the Cheyenne Star in Cheyenne, Oklahoma, concerning the Overflow application. Said Notice provided in part:

PD No. 1107430020

* * *

NOTICE IS HEARBY GIVEN: That Overflow Energy, LLC PO BOX 354, Booker, TX 79005, is requesting that the Commission, pursuant to OCC-OGR Rules 165:10-5-5 and 165:10-5-6 and ROP 165:5-7-327 (sic) administratively authorized the approval of commercial disposal of salt water into following commercial disposal well as follows: 3330 SWD #1, NE NE NE SEC 2 to 15N 26W Roger Mills County, Oklahoma.

NAME OF DISPOSAL ZONE AND DEPTH: WOLFCAMP FORMATION, TOP: 3500', BOTTOM: 6750', DISPOSAL RATE AND PRESSURE: 15,000 Bbs/Day, 1750 Psi/Surface.

It should be noted that the PD number is incorrect. The application number of 1107430020 was listed as the PD number, whereas, the correct PD number is PD 201100071. It should also be noted that the listing of ROP 165:5-7-327 is incorrect and should have been listed as ROP 165:5-7-30. It should also be noted that the injection interval was 3500 feet in the Wolfcamp formation with the top at 3,500 feet and the bottom at 6750 feet with a disposal rate and pressure of 15,000 Bpd at 1750 psi. Thus, the bottom depth of 6,750 feet is the same as listed in the Amended Application and the 1750 psi is the same injection pressure listed on the Amended Application. It should also be noted that notice for the Amended Application was not provided until November 3, 2011, not before the hearing of September 2, 2011 but more than two months after said hearing.

9) A third entry of appearance and notice of protest was filed by Bachmann with the Commission on November 14, 2011 entering and amending the Bachmann appearance "specifically to the Notice published in the Cheyenne Star newspaper, Roger Mills County, Oklahoma, on November 3, 2011, Application No. 1107430020, and requests that all further pleadings and notices be mailed to him at the address shown below."

10) OCC-OAC 165:5-7-27(d) provides in pertinent part:

Notice of an application relating to injection, disposal or commercial wells shall be published...two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which land embraced in the application are located.

11) OCC-OAC 165:5-9-2(d) provides pertinent in part:

An amended application is acceptable where notice is given according to the statutes or rules under which the original application was filed. Provided, however no amended application shall be filed which changes the applicant's name, the type of relief requested, the legal description of the lands involved or the caption in the original application; instead, any such changes from the original application shall require the filing of a new application and in accordance with Subchapter 5 of this Chapter.

In the present case there was no notice provided by publication for the Amended Application until November 3, 2011, approximately two months after the hearing by the ALJ on September 2, 2011. As stated above, out of abundance of caution and to protect its interests Bachmann filed its Third Entry of Appearance and Notice of Protest after the publication notice of November 3, 2011 in the Cheyenne Star. Bachmann believes pursuant to the rule that since they have filed a written objection to the Amended Application, there should be a hearing required by the Commission and notice of that hearing be given as required by OCC-OAC 165:5-7-27(e) after the filing of the Amended Application. It should also be noted that the Amended Application has never been filed with the Commission by Overflow.

12) The Referee notes that in all the pleadings filed in the present case the relief sought has been "Authorization for a Conversion of the 3330 SWD Well to

a Commercial Disposal well". The "Relief Sought" by Overflow was never changed to authorization for the drilling of the 3330 SWD well to be used as a commercial disposal well. As a result the Referee believes that interested parties were never informed of the type of relief requested by Overflow.

13) The U.S. Supreme Court in *Mullane v. Central Hanover Tr. Company*, 339 U.S. 306 (1950) provided:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457; *Grannis v. Ordean*, 234 U.S. 385; *Priest v. Las Vegas*, 232 U.S. 604; *Roller v. Holly*, 176 U.S. 398. The notice must be of such nature as reasonably to convey the required information, *Grannis v. Ordean*, supra, and it must afford a reasonable time for those interested to make their appearance, *Roller v. Holly*, supra and cf. *Goodrich v. Ferris*, 214 U.S. 71.

* * *

But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.

The Referee finds that the inaccurate description of the relief requested being the conversion of a SWD well rather than the drilling of a SWD well was significantly misleading and did not provide notice conveying required information. Thus, interested parties were not apprised of the proper information which would afford them the opportunity to present their objections. The ALJ's decision to grant the Overflow application should therefore be reversed.

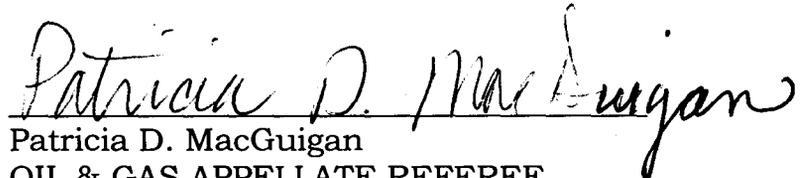
14) There are several aspects of the Amended Application that warrant concern. The Amended Application changed the injection interval from a depth of 3500 feet to a depth of 6750 feet rather than 6800 feet. The Amended Application also changed the injection pressure from 1740 psi in the original application to 1750 psi in the Amended Application. Lastly, the tubing of 4.5 inches was added in the Amended Application setting at 3500 feet. No

publication notice was filed by Overflow prior to the September 2, 2011 hearing concerning the Amended Application changes. There was notice published on Thursday, November 3, 2011 in the Cheyenne Star. However as provided in OCC-OAC 165:5-9-2(d) the requirement of notice of the Amended Application was not performed, and as stated above since the type of relief requested was inaccurate, a new application should be required providing the accurate relief sought giving adequate notice to all parties.

14) The rules and regulations enacted by the Commission pursuant to the powers delegated to it have the force and effect of law and are presumed to be reasonable and valid. *Toxic Waste Impact Group v. Leavitt*, 755 P.2d 626 (Okl. 1988). The rules of the Commission have the force and effect of law and must be followed. *Brumark Corporation v. Corporation Commission*, 864 P.2d 1287 (Okl.App. 1993); *Ashland Oil Inc. v. Corporation Commission*, 595 P.2d 423 (Okl. 1979).

15) For the above stated reasons, the Referee recommends that the Commission reverse the ALJ's recommendation to approve Overflow's application and instead would recommend that Overflow be required to file a new application in accordance with OCC-OAC 165:5-7-27.

RESPECTFULLY SUBMITTED THIS 3rd day of February, 2012.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
ALJ Michael Norris
Karl F. Hirsch
Richard J. Gore
Windle Turley
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