

Delib
7-24-12

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

FILED
JUL 12 2012

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

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

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) CAUSE EN NO. 201000062
FINES, COMPLIANCE WITH)
COMMISSION RULES AND)
FORFEITURE OF SURETY) ITN: 10-21612

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **David Leavitt**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 8th day of February, 2012, 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: **Richard Gore**, attorney, appeared on behalf of applicant, Superior Oil and Gas Company of Oklahoma, The Fictitious Name of Superior Oil and gas Company, a Nevada Corporation and NBC Oklahoma (collectively "Superior"); **Susan D. Conrad**, Assistant General Counsel, appeared on behalf of the Pollution Abatement Department of the Oil and gas Division of the Oklahoma Corporation Commission; 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 9th day of March, 2012, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions. Superior filed a Motion to Dismiss the cause on April 5, 2012, which was heard by the ALJ on April 17, 2012 and subsequently denied with additional findings by the ALJ.

The Appellate argument concerning the Oral Exceptions to the findings by the ALJ concerning the Motion to Dismiss and the exceptions to the ALJ's Report were referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 11th day of May, 2012

After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

SUPERIOR appealed the ALJ's recommendation that Superior's Motion to Extend Time to obtain a pooling order under Order No. 590835 be denied and that Superior's \$25,000 letter of credit surety bond be forfeited and the proceeds of the bond immediately be surrendered to the Commission, being used to plug the well and restore the site in accordance with Commission Rules. The ALJ further recommended that all other wells operated by Superior in the State of Oklahoma be ordered shut-in until Superior filed a new letter of credit surety bond with the Commission in the amount of \$50,000.

On June 22, 2010, Lori Wrotenbery, the Director of the Oil and Gas Conservation Division of the Oklahoma Corporation Commission filed a complaint against Superior for various violations of rules found in OCC-OAC 165:10-11, 165:10-3 and 165:10-7 with respect to the following described site: the E/2 of the W/2 of the W/2 of the NE/4 of Section 25, T16N, R6W of the Indian Meridian, Kingfisher County, Oklahoma. The hearing was subsequently held on July 14, 2010 and Interim Order No. 577936 was issued by the Commission whereby Superior was required to pay a \$1,000 fine, remove the weeds from the site and either plug the well, and close the pit or make progress towards drilling a well on the site, including obtaining a valid lease and Permit to Drill by September 30, 2010.

Superior paid the fine but failed to comply with the other requirements in the Interim Order by the deadline. Superior did not remove the weeds from the site and failed to either plug the well and restore the site or obtain a permit to drill by September 30, 2010. As a consequence of administrative action, Superior was assessed an additional fine of \$1,000 which they paid. Superior then continued on its path towards drilling a well on the site.

Because the Interim Order required the cause to be re-opened to hear evidence and testimony on whether Superior complied with the Order, a second hearing was held on May 25, 2011 for this purpose. At the hearing, the Commission's staff alleged that Superior did not comply with the terms of the Interim Order and failed to make progress towards drilling a well. During the hearing, the inspector for the Commission testified that Superior removed the weeds from

the well-site, maintained the lease-road, installed a fence around the well-bore and cleaned up the site but failed to obtain all of the valid leases or a pooling order that would allow them to commence drilling operations. The CEO for Superior admitted the above and said that there is no rig on the site and that he is not yet ready to commence drilling a well.

The Commission's staff therefore recommended that Superior be found in non-compliance with the Interim Order, fined an additional \$2,500 and forfeit their \$25,000 surety bond, with the funds to be used by the Commission to plug the well, fill in the pit and close the site. They also recommended that the Commission order all wells operated by Superior to be shut in until such time that Superior files a \$50,000 surety bond. Superior pleaded for the Commission to allow them to go forward to drill the well and not attach their surety. The ALJ recommended that Superior:

1. Pay a fine in the amount of \$1,500 to the Commission within 30 days after the date of the order to issue in this cause;
2. Complete one of the following options:
 - a. Plug the subject well, close the pit, remove gravel from the site and otherwise restore the site and bring the site into compliance with Commission rules within 60 days after the date of the order to issue in this cause; or
 - b. Obtain all valid leases regarding the tract or obtain a forced pooling order from the Commission that pools the interests of all un-leased parties for the section of land and common sources of supply subject to the well to be drilled within 90 days after the date of the order to issue in this cause; pay all bonuses and comply with all the provisions of the pooling order; and commence drilling operations in compliance with Commission rules within 270 days after the date of the order to issue in this cause or otherwise bring the site into compliance with Commission rules within the same time period.
3. In the event that Superior fails to fully comply with the above requirements within the time period set forth herein, Superior's \$25,000 Letter of Credit Surety Bond is forfeit and the proceeds of the bond shall immediately be surrendered to the Commission and used to plug the well and restore the site in accordance with Commission rules. All other wells operated by Superior in the State of Oklahoma will then be ordered shut-in until Superior files a new Letter of Credit Surety Bond with the Commission in the amount of \$50,000.

The Commission adopted the recommendations of the ALJ in second Interim Order No. 590835 that issued on November 8, 2011. The Order set the cause to be re-opened to take further evidence and testimony related to compliance on February 8, 2012.

On January 31, 2012, Superior filed their Motion to Extend Time to Obtain a Pooling Order under Order No. 590835. The matter was heard on February 8, 2012 along with the taking of evidence and testimony related to compliance with Order No. 590835.

On April 5, 2012 Superior filed a Motion to Dismiss this cause stating that Superior had plugged the conductor casing and restored the well site (spending \$35,000) to the satisfaction of the surface owner and the Commission. Consequently, since the well site, which is the subject of this action, has been restored, the Commission relief requested is moot and this case should be dismissed.

SUPERIOR TAKES THE POSITION:

- 1) The Report of the ALJ is contrary to the law and contrary to the evidence.
- 2) The ALJ's Report is arbitrary, unreasonable and discriminatory, and fails to effect the ends of the prevention of waste and the protection of correlative rights as is required by the laws of the State of Oklahoma.
- 3) The recommendation of the ALJ that Superior's Motion to Extend Time to Obtain a Pooling Order Under Order No. 590835 be denied and that Superior's \$25,000 Letter of Credit Surety Bond be forfeited and the proceeds of the bond immediately be surrendered to the Commission and used to plug the well and restore the site in accordance with Commission rules, that all other wells operated by Superior in the State of Oklahoma be ordered shut-in until Superior files a new Letter of Credit Surety Bond with the Commission in the amount of \$50,000 will result in waste as follows:
 - a) Superior built a well site location and drilled a mouse hole in preparation for the drilling of a well, after which the CEO of this small company died, throwing the company into turmoil.
 - b) The son of the CEO has done what he can to hold the company together.
 - c) The current Order No. 590835 requires that a well be drilled or the site restored within 270 days of November 8, 2011, or by August 4, 2012.

d) The Order also contains a provision that the Unit be leased and/or pooled within 90 days from November 8, 2011, which means the 180-day pooling order would expire on or before the August 4, 2012 deadline to commence operations for the drilling of a Well.

e) Pooling the unit with an order that expires on or before the date commencement of operations is required constitutes waste.

f) Superior, in the alternative, made a deal with Chesapeake Energy, LLC ("Chesapeake") to have Chesapeake lease as much of the Unit as possible and assign those unit leases to Superior in exchange for another prospect which Superior owns.

g) To consummate the deal, Superior has to obtain any leases Chesapeake was unable to acquire.

h) Superior put in evidence that it has a verbal deal with the sole remaining unleased mineral owner who is in prison in California.

i) Superior put in evidence of its efforts to obtain this lease, which is difficult due to communication delays caused by the prison system

j) It constitutes waste to spend \$25,000 to restore a site which will then have to be rebuilt to drill the well within the timeframe contained in Order No. 590835.

k) Once Superior obtains the lease from the sole remaining mineral owner, no pooling will be necessary.

l) It is also excessive punishment to take Superior's plugging bond, shut in all of its wells and require a double bond.

m) The real deadline in Order No. 590835 is the commencement of operations by August 4, 2012, not the interim requirement of pooling the Unit which may not ever be necessary.

4) Superior requested that the decision of the ALJ be reversed and Superior be given until August 4, 2012, in accordance with Order No. 590835, to either commence operations for the drilling of a well or restoration of the drill site.

5) Superior asserted additionally in its April 5, 2012, Motion to Dismiss that Superior had plugged the conductor casing and restored the well site to the satisfaction of the surface owner and the Commission.

**THE ALJ'S FINDINGS IN HIS REPORT OF THE ADMINISTRATIVE LAW
JUDGE ISSUED MARCH 9, 2012.**

1) OCC-OAC 165:10-3, *et seq.* describes rules for the proper and safe operation and maintenance of well-sites and related equipment and facilities. OCC-OAC 165:10-11, *et seq.* and OCC-OAC 165:10-7 *et seq.* describes rules for plugging wells and closing pits. Superior was found in violation of these rules during a hearing held on July 14, 2010 and Interim Order No. 577936 was issued. Superior was found in violation of OCC-OAC 165:10-11-3(c), 165:10-3-17(l), 165:10-3-17(c), 165:10-3-17(m) and 165:10-7-16(e)(7) by the Interim Order. The Interim Order levied a fine of \$1,000 against Superior and imposed upon them certain obligations that they were to meet by September 30, 2010. Under the Interim Order, Superior was required to pay the fine, remove the weeds from the site and either plug the well and close the pit or make progress towards drilling a well on the site including obtaining a valid lease and obtaining a valid Permit to Drill.

2) Superior paid the fine by the deadline but failed to complete the other obligations in time. As a consequence, the Commission imposed another \$1,000 fine and allowed Superior to continue their efforts to drill a well. Superior then paid the additional fine but still failed to timely comply with the terms of the Interim Order and violated the rules of the Commission.

3) On May 25, 2011, the cause was re-opened to take evidence and testimony with respect to that Interim Order. The evidence and testimony presented during the hearing showed that Superior had made enough progress to allow them to continue their efforts to drill the well, and the ALJ recommended that Superior be allowed to continue in their efforts to drill the well subject to certain conditions and a strict performance timeline intended to encourage them to meet their obligations. The performance timeline included deadlines for obtaining a forced pooling order from the Commission and for drilling the well and penalties to be imposed for non-compliance. The Commission adopted the recommendations of the ALJ in second Interim Order No. 590835 that issued on November 8, 2011. The Order set the cause to be re-opened to take further evidence and testimony related to compliance on February 8, 2012.

4) On February 8, 2012, the cause was re-opened to take evidence and testimony with respect to the second Interim Order and to consider Superior's motion. The evidence presented showed that Superior is still not ready to commence drilling more than 21 months from the date of the original hearing in this cause, and still doesn't have the right to drill in the unit. Superior failed to adhere to the strict deadlines imposed by the second Interim Order to obtain all valid leases regarding the tract or obtain a forced pooling order from the

Commission that pools the interests of all un-leased parties for the section of land and common sources of supply subject to the well to be drilled and to pay all bonuses and comply with all the provisions of the pooling order. In accordance with alternative terms in the Order, Superior had also not plugged the subject well, closed the pit, removed gravel from the site and otherwise restored the site and brought the site into compliance with Commission rules.

5) Superior's argument that it is still in compliance with the most critical term of the second Interim Order, that which allows it 270 days in which to commence drilling operations, was not persuasive because all of the terms of the Oder were imposed upon Superior to insure it made substantial progress towards either the prevention of waste by the drilling of a well or towards the protection of human health and the environment by properly plugging the well and restoring the site. Superior had failed to make substantial progress since the date of the second Interim Order to do either action within the time periods required by the Order. Thus, Superior had now failed to comply with terms of both the Interim Order and the second Interim Order, and its failure to comply with the terms of both orders didn't create an impression that it would be able to comply with the terms of yet another Interim Order.

6) Superior argued that it was close to obtaining a lease from Mr. Crawford, and that it would be able to obtain a lease and the right to drill soon if allowed more time to do so by the Commission. Superior provided correspondence from Mr. Crawford who is incarcerated in support of its position, but the language in the letters didn't appear to show that the parties were close to an agreement, only that Mr. Crawford required more information and was willing to pursue the matter.

7) Superior also alleged that they had a deal in progress with Chesapeake to develop the hydrocarbons in the unit, but wasn't willing or able to disclose any information about the nature of the deal or provide any substantial evidence of its existence to the Commission. Without more information, the ALJ noted that he could not make a determination about the probative value of this deal with respect to Superior's progress towards drilling a well in the unit.

8) After taking into consideration the pleadings in the cause and arguments of the attorneys, it was the recommendation of the ALJ that Superior's Motion to Extend Time to Obtain a Pooling Order under Order No. 590835 be denied and that Superior's \$25,000 Letter of Credit Surety Bond be forfeited and the proceeds of the bond immediately be surrendered to the Commission and used to plug the well and restore the site in accordance with Commission rules. The ALJ further recommended that all other wells operated by Superior in the State of Oklahoma be ordered shut-in until Superior filed a new Letter of Credit Surety Bond with the Commission in the amount of \$50,000.

**ALJ'S RECOMMENDATION CONCERNING SUPERIOR'S MOTION
TO DISMISS**

1) **ALJ Leavitt** heard the Motion to Dismiss in this case on April 17, 2012 and issued a recommendation that the Motion to Dismiss be denied. ALJ Leavitt contends he denied the motion because he felt an order should be issued from the Commission regarding this cause.

2) ALJ Leavitt states he re-recommended all of the terms in the Second Interim Order at the time he recommended the Motion to Dismiss be denied. ALJ Leavitt states one of these terms was that all Superior wells would be shut-in until Superior filed a \$50,000 surety bond with the Commission.

3) ALJ Leavitt states after reviewing the file after the hearing, he noted Superior complied with the terms of the Second Interim Order No. 590835, although not in a timely manner. ALJ Leavitt contends Superior spent \$35,000 plugging the well in question. ALJ Leavitt states Superior spent the money that otherwise would have come from their existing surety bond.

4) ALJ Leavitt argues because Superior has spent more money than the Commission would have had available had Superior not plugged the well themselves, the imposition of the \$50,000 surety bond is no longer necessary for Superior to continue their operation of wells throughout the state.

POSITIONS OF THE PARTIES

CONSERVATION DIVISION

1) **Susan Conrad**, Assistant General Counsel, appearing on behalf of the Oil and Gas Conservation Division ("Conservation Division") takes exception to ALJ Leavitt's revised recommendation that a mandatory imposition of a new surety bond in the amount of \$50,000 as previously recommended is no longer necessary.

2) Conservation Division states the first Interim Order, Order No. 577936, was issued in August of 2010. Conservation Division states a field inspector inspected the site in question in March of 2010 in response to a complaint from the surface owner.

3) Conservation Division argues field inspector, Mr. Wayne Hendricks, reported that Superior was not returning telephone calls regarding this site. Conservation Division contends that Superior received a complaint notice by certified mail in April of 2010. Conservation Division states this complaint notice established a deadline in which to comply with Commission rules. Conservation Division states Superior's failure to comply with Commission rules resulted in the filing of an enforcement action which was heard before ALJ Leavitt in July of 2010.

4) Conservation Division states Interim Order No. 577936 required Superior by September 30, 2010 to plug the well, close the pit, remove the gravel and restore the site, or in the alternative, obtain an approved intent to drill.

5) Conservation Division argues ALJ Leavitt's report filed June 30, 2011 found that Superior had violated Commission rules and failed to timely comply with the terms of the Interim Order. Conservation Division, referencing Page 11 of ALJ Leavitt's June 30, 2011 report, states ALJ Leavitt recommended Superior be allowed to continue efforts to drill the well, subject to a strict performance time line.

6) Conservation Division states Superior did not file any exceptions or appeal to the ALJ's June 30, 2011 report.

7) Conservation Division states the second Interim Order, Order No. 590835, was issued in this cause on November 8th, 2011. Conservation Division states Order No. 590835 required Superior to plug the well, close the pit, remove gravel from the site and bring the well site in compliance with Commission rules within 60 days. Conservation Division states alternatively, within 90 days Superior could obtain all valid leases or get a forced pooling order in place. Conservation Division states one of these two actions was required by Order No. 590835.

8) Conservation Division, referencing Page 4 of Order No. 590835, argues the consequences for failing to comply with the deadlines were clearly spelled out in the Order. Conservation Division states one of the listed consequences for Superior's lack of compliance was the forfeiture of Superior's \$25,000 surety bond to the Commission. Conservation Division states the other consequences for Superior's failure to comply with Order No. 590835 included forcing Superior to shut-in all of their wells until they filed a new letter of credit or surety bond with the Commission in the amount of \$50,000.

9) Conservation Division states Superior filed a Motion to Extend the Time to obtain a pooling order under the second Interim Order. Conservation Division states on February 8th, 2012, the cause was reopened before ALJ

Leavitt to take evidence and testimony with respect to the second Interim Order as well as to consider Superior's motion.

10) Conservation Division states that ALJ Leavitt's second report was filed March 9, 2012. Conservation Division, referencing ALJ Leavitt's second report, argues Superior still was not able to drill a well 21 months from the date of the original hearing in this cause. Conservation Division, referencing ALJ Leavitt's second report, states Superior failed to either make substantial progress in preventing waste by the drilling of a well or towards the protection of the environment by properly plugging the well and restoring the site.

11) Conservation Division contends ALJ Leavitt recommended Superior's Motion to Extend Time for the pooling order be denied, the \$25,000 surety bond be forfeited to the Commission with the proceeds used to plug the well, and that all other wells operated by Superior be shut-in until they file a new letter of credit or surety bond in the amount of \$50,000.

12) Conservation Division states Superior filed exceptions to the ALJ's Report on March 19, 2012. Conservation Division argues that since that date Superior has plugged the well and restored the site.

13) Conservation Division argues because it took Superior close to two years to plug the well, close the pit and clean the site while also failing to comply with two Interim Orders, the Commission is justified in requiring Superior to file an increased letter of credit or surety bond in the amount of \$50,000 before it is allowed to operate in the state.

14) Conservation Division reasserts they believe the requirements set out in Interim Order No. 590835, approved and signed by the Commissioners themselves, should be affirmed as to forcing Superior to shut-in their wells until they file a \$50,000 letter of credit or surety bond with the Commission.

15) Conservation Division states Superior has preserved its existing \$25,000 letter of credit by finally getting the well in question plugged and the pit closed. Conservation Division argues Superior need only post an additional \$25,000 with the Commission in order to be allowed to continue to operate as required by the terms of the Interim Order No. 590835. Conservation Division argues that because the Commission rules permit the Commission to require an operator to post up to a \$100,000 surety for failure to comply with Commission rules, the imposed \$50,000 requirement is reasonable.

16) Conservation Division argues that Superior was involved in an enforcement action a year ago involving Superior's failure to plug a different well as required by Interim Order. Conservation Division states cause EN 201000083 involves an Interim Order concerning an action by the Commission against Superior regarding a well in Blaine County. Conservation Division

states a report issued by the ALJ in that case on May 20, 2011 found that Superior had not complied with any aspect of the Interim Order. Conservation Division argues that again, only upon the issuance of the second Interim Order and a final order did Superior finally plug the well.

17) Conservation Division reasserts that the requirements in Second Interim Order No. 590835, the filing of an additional Letter of credit or surety bond in the amount of \$50,000, be adhered to for the protection of the Commission.

SUPERIOR

1) **Richard Gore**, attorney, appearing on behalf of Superior, believes the testimony of ALJ Leavitt, recommending not requiring a \$50,000 Letter of credit or surety bond, should guide the Referee's decision.

2) Superior argues ALJ Leavitt would not have come to this appeal and changed his decision "unless there was a really good reason to do so." Superior contends ALJ Leavitt has been at every hearing and issued every report, and has concluded that "these people are not criminals."

3) Superior states an extra \$25,000 in surety bond money would place them out of business. Superior argues that the Conservation Division is aware this increase in surety will place them out of business.

4) Superior states Dan Loyd, Sr., the former head of Superior, died suddenly a couple of years ago in New York City. Superior asserts that since that time Dan Loyd, Jr. has been attempting to hold the company together at a young and inexperienced age. Superior states the company has been struggling since the passing of Dan Loyd, Sr.

5) Superior argues that the younger Dan Loyd, Jr. has no personal liability in these wells and could have chosen to walk away from the business. Superior contends that had Dan Loyd, Jr. chosen to walk away from the problems the company was having, the Commission would have had only \$25,000 to take care of all of their wells. Superior argues that \$25,000 would not have afforded the Commission enough money to plug and clean up one well site.

6) Superior states they spent \$35,000 plugging the well in question. Superior states that before Dan Loyd, Sr. died this particular well location had

only a road constructed and a rat hole drilled. Superior asserts after Dan Loy, Sr.'s death "everything sort of went to pot."

7) Superior argues they have been working diligently to get this particular well drilled. Superior contends they have spent between \$200,000 and \$300,000, yet have still been unable to get a well drilled. Superior argues they have attempted to do the right thing, and as ALJ Leavitt has testified, should not be punished.

8) Superior states they have continued to show up at the hearings at the Commission rather than simply walk away and let the Commission handle the burden of plugging their wells.

9) Superior states they are currently operating six wells. Superior argues at a cost of \$25,000 to plug a well, it would cost the Commission at least \$150,000 to plug all six of these wells if Superior were to either walk away from these wells or become insolvent. Superior argues if they are placed out of business the Commission will only have the original \$25,000 surety bond to plug their six wells.

10) Superior argues the Conservation Division failed to address why ALJ Leavitt's revised testimony was unreasonable.

11) Superior contends that while it has taken a couple of years for them to comply with Commission orders regarding certain wells, including the one in question, they have now done so and have shown up for every Commission hearing in the process.

12) Superior argues that contrary to Conservation Division's claim, they have returned every phone call from field inspector Wayne Hendricks.

13) Superior argues there are companies that have hundreds of wells with only \$25,000 in surety bonds. Superior argues the plugging liability for such large companies is far greater than the plugging liability of their six wells.

RESPONSE OF CONSERVATION DIVISION

1) Conservation Division reasserts Interim Order No. 590835 was approved by the Commissioners and required the posting of a \$50,000 letter of credit or surety bond if Superior failed to comply with the "very clear" deadlines.

- 2) Conservation Division argues Superior has shown a pattern of noncompliance with Commission rules and orders.
- 3) Conservation Division contends Superior is making the same type of argument they presented a year ago in another compliance case involving Superior.
- 4) Conservation Division, referencing page 3 of the first Interim Order, Order No. 577936, argues that field inspector Mr. Wayne Hendricks testified he attempted on several occasions to contact representatives of Superior about the need to get this site in compliance with Commission rules. Conservation Division states Superior did not return these phone calls.
- 5) Conservation Division argues Superior has been given repeated opportunities to comply with Commission rules and orders. Conservation Division reasserts the consequences for these failures were clearly articulated.
- 6) Conservation Division reasserts Interim Order No. 590835, including the requirement of a new letter of credit or surety bond in the amount of \$50,000, should be adhered to.

CONCLUSIONS

The Referee finds that the March 9, 2012 Report of the Administrative Law Judge should be affirmed but modified as requested by the ALJ, and the ALJ's denial of Superior's Motion to Dismiss should be affirmed.

1) It has been recognized in the past that the Commission's contempt proceedings are characterized as *sui generis* in Oklahoma. *Vogel v. Corporation Commission of Oklahoma*, 121 P.2d 586 (Okl. 1942). The Commission's contempt power is neither a civil or 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, see Art. 9, Sec. 19, Oklahoma Constitution and Statute 52 O.S. Section 102. As such, it is therefore unique. "It is neither civil nor criminal, but may partake of either in its nature." Thus, 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. Section 102. *Tenneco Oil Co. 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); *Kingwood Oil Company v. Hall-Jones Oil Corporation*, 396 P.2d 510 (Okl. 1964); and Oklahoma Constitution, Article 9, Section 19. 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.

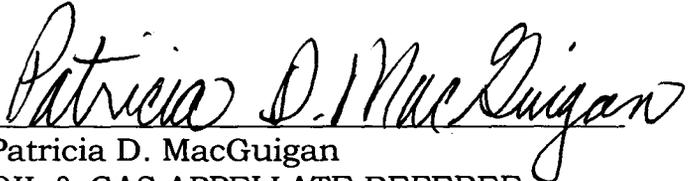
2) The ALJ denied the Motion to Dismiss because he determined that an order should be issued from the Commission regarding this cause. The ALJ recommended all of the terms in the Second Interim Order No. 590835 except for the term whereby Superior's wells would be shut-in until Superior filed a \$50,000 surety bond with the Commission. The ALJ noted that Superior complied with the terms of the Second Interim Order No. 590835 but not in a timely manner. The ALJ stated that Superior spent \$35,000 plugging their well in question using their own money. Superior spent their own money that otherwise would have come from Superior's existing \$25,000 surety bond. In other words Superior completed the work that the Commission would have had to do. The ALJ therefore found that the imposition of the \$50,000 surety bond in order to keep Superior's other wells from being shut-in is not necessary. Superior already spent \$35,000 to plug the well. Superior thus spent more money than the Commission would have had available had Superior not plugged the well themselves. Thus, the imposition of the \$50,000 surety bond is no longer necessary for Superior to continue their operations of wells throughout the State.

3) The Referee agrees with the determination of the ALJ and recognizes that the Commission's task regarding remediation of pollution is to use the funds of the guilty party rather than state funds for corrective actions. The Referee therefore sees merit in the reduction of the \$50,000 surety bond to \$25,000, since Superior already spent \$35,000 which is more than what the Commission would have had to spent using the Superior's \$25,000 surety.

4) 52 O.S. Section 318.1(A)(2) provides that the setting of Category B surety is discretionary by the Commission. The ALJ is the trier of fact. The Referee believes that the ALJ's determination is supported by the weight of the evidence and free of reversible error. The evidence reflected that the head of this company Dan Loyd apparently died of a heart attack and his son Dan Loyd, Jr. is attempting to continue the operation of the company. The testimony reflected that another \$25,000 being needed for surety would put Superior out of business. If Superior goes out of business then the Commission would be responsible for the six wells that are being operated by Superior. At a cost of at least \$25,000 to plug a well, it would cost the Commission \$150,000 to plug all six Superior wells if Superior were to either walk away or become insolvent. If Superior is placed out of business, the Commission will only have the original \$25,000 surety bond to plug Superior's six wells.

5) For the above stated reasons the Referee would affirm the ALJ's recommendations affirming the terms of the Second Interim Order No. 590835 except for the imposition of a new \$50,000 surety bond. The Referee would affirm the recommendation of the ALJ that the surety bond be set at \$25,000.

RESPECTFULLY SUBMITTED THIS 12th day of July, 2012.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
ALJ David Leavitt
Richard Gore
Susan D. Conrad
Office of General Counsel
Michael L. Decker, OAP Director
Oil Law Records
Court Clerks – 1
Commission Files