

JUL 09 2013

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

**APPLICANT:** CURTIS BRANCH )  
 )  
**RELIEF SOUGHT:** RESOLUTION OF POLLUTION )  
 COMPLAINTS )  
 )  
**LEGAL DESCRIPTION:** SW/4 OF SECTION 15, )  
 TOWNSHIP 22 NORTH, RANGE )  
 1 EAST, NOBLE COUNTY, )  
 OKLAHOMA )

CAUSE PD NO.  
201200146-T

**FILED**  
JUN 21 2013

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

**REPORT OF THE OIL AND GAS APPELLATE REFEREE**

This Cause came on for hearing before **Curtis M. Johnson**, Deputy Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 14<sup>th</sup> day of November, 2012, at 8:30 a.m. in the Commission's Courtroom, Robert S. Kerr Office Building, 440 South Houston, Suite 114, Tulsa, 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:** **William H. Huffman**, attorney, appeared on behalf of applicant, Curtis Branch ("Branch"); **Russell J. Walker**, attorney, appeared on behalf of respondent, David Beier ("Beier"); 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 13<sup>th</sup> day of February, 2013, 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 15<sup>th</sup> day of April, 2013. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

## **STATEMENT OF THE CASE**

**BEIER TAKES EXCEPTION** to the ALJ's recommendation that the application of Branch be granted with Beier/d/b/a Eagles Pass Energy Company ("Beier/Eagles") held responsible for cleaning-up salt water contamination at the site of the reserve pit. The ALJ also recommended that a second request should be made to OERB to remove two tanks off the well site location.

The application of Branch was filed in response to an Incident and Complaint Investigation Report filed by Eddetta Beier Grant concerning salt water contamination and two old steel tanks. The current contact operator, Charter Oak Production Company, LLC ("Charter"), is being instructed to remediate the salt water contamination and remove the steel tanks. Branch filed this application to determine who is the proper party to resolve the two issues. The area contaminated with salt water was subject to a prior complaint against Beier/Eagles. Therefore, a question exists as to whether the prior salt water contamination was properly remediated, or if the salt water contamination resulted from a new spill or leak. If the latter, the current operator Charter would be responsible for the remediation. The old steel tanks were also part of a prior complaint. This historical oil field trash and debris had been referred to OERB, but it was apparently not removed by OERB

### **BEIER TAKES THE POSITION:**

- 1) The ALJ Report is contrary to the evidence, contrary to law and if adopted, will result in injustice.
- 2) There is no evidence that Beier caused or was otherwise involved in an alleged saltwater spill, and there was a preponderance of evidence that Branch actually caused the alleged spill. The Commission should deny the application.

### **THE ALJ FOUND:**

- 1) After taking into consideration all the facts, evidence, Exhibits and arguments of Counsel, it is the recommendation of the ALJ in PD No. 201200146-T, which seeks resolution of pollution complaints concerning the SW/4 of Section 15, T22N, R1E, Noble County, Oklahoma, that Branch's application should be granted with Beier/Eagle being held responsible for cleaning-up the salt water contamination at the site of the reserve pit and a second request should be made to OERB for removal of two tanks.
- 2) The ALJ recommends Beier/Eagle be held responsible for cleaning-up the salt water contamination at the site of the reserve pit. The basis for this conclusion is Beier testified that mud in the pit was buried in the reserve pit

during the remediation of the pit area. Although the salt water was removed from the pit, the mud would still retain salt water. Therefore, when the mud was buried in the pit, some residual salt water would remain in the mud. There was no evidence presented that there had been another spill or discharge on the Lease premises except for the illegal discharge of salt water by Eagles referred to in the Complaint marked as Exhibit 2. The undisputed testimony of Beier provided salt water contaminated mud was not removed from the reserve pit, but rather it was buried in the pit. From the testimony presented, the ALJ contends there is no other logical conclusion for the salt water contamination. The ALJ therefore recommends Beier/Eagle be held responsible for remediating the salt water contamination at the site of the reserve pit referred to in the Complaint marked as Exhibit 5.

3) The ALJ agrees with Branch that a second request should be made to the OERB to remove the two steel tanks referenced in the Complaint marked as Exhibit 5. The undisputed testimony of Branch provided these tanks were historical oil field pollution and should have been cleaned-up as part of the trash and debris referred to the OERB in the Complaint marked as Exhibit 4. Therefore, since this is historical oil field debris, it is clearly not the responsibility of Charter operating on the Lease. Thus the ALJ must agree the removal of these two tanks should again be referred to OERB.

4) Thus, the ALJ recommends the application of Branch in PD No. 201200146-T, which seeks resolution of pollution complaints in the W/4 of Section 15, T22N, R1E Noble County, Oklahoma, should be recommended with Beier/Eagle held responsible for cleaning-up salt water contamination at the site of the reserve pit. Additionally, a second request should be made to OERB to remove two tanks.

## **POSITIONS OF THE PARTIES**

### **BEIER**

1) **Russell James Walker**, attorney, appeared on behalf of Beier, stating that Beier was the operator of two wells drilled in the NW/4 SW/4 of Section 15. There was a saltwater pit to the south of these two wells. A pollution complaint was raised because the pit had become contaminated. Beier followed the Commission's orders and remediated the pit. After this, Beier lost control of ownership of the well in a foreclosure auction.

2) Beier has not been a part of the operation since the Commission closed their pollution complaint against him on January 14, 2010. In the middle of last year, Beier's sister filed a separate pollution complaint with the

Commission. This led Branch to file the current application for resolution of pollution complaints.

3) The main witness at the hearing was Debbie Branch, the sister of appellee Curtis Branch. Ms. Branch testified that if there were any pollution issues on the land that Beier should be responsible for cleaning them up. Beier first argues that Ms. Branch has no personal knowledge of the land and everything Ms. Branch testified to was hearsay. Beier also contends that Beier's liability was relieved when the Commission signed off on the prior pollution complaint. Thus, Branch must be responsible for any new pollution.

4) There also is no evidence of any new pollution on the site. There have been no tests to determine there is pollution. The ALJ in this case determined that Beier must go clean up the pollution on site. This would be difficult to do because there is no evidence there is pollution, and if there is pollution there is no evidence that Beier caused such pollution.

5) Beier requests that the ALJ's report be rejected and that no further obligation to clean up any pollution on the site be placed upon Beier.

### **BRANCH**

1) **William F. Huffman**, attorney appeared telephonically on behalf of Branch. Branch requests that the Report of the ALJ be upheld and that Beier be held as the responsible party to clean up the contaminated soil.

2) The Commission found Beier to be in violation of the rules for dumping saltwater into a reserve pit. The Commission ordered Beier/Eagles to remove the contaminated soil. Branch contends that Beier/Eagles didn't remove the contaminated soil but merely covered it with fresh soil. Beier/Eagles did not follow the orders of the Commission.

3) The Commission closed the original pollution complaint due to belief that Beier/Eagles had removed the contaminated soil when Beier/Eagles in fact had only covered it with fresh soil. Beier's own testimony is that the saltwater contamination still exists at the pit. Thus, given there is no evidence that any new pollution has been created, the saltwater contamination is there because of Beier.

4) The ALJ was correct in his assessment that Beier/Eagles is the responsible party for this pollution complaint. Beier's own testimony shows he did not follow the recommendations of the Commission because Beier/Eagles

did not remove the contaminated soil from the pit. Thus, the ALJ's report should be upheld and Beier should be required to remove the contaminated soil as originally instructed by the Commission.

### **RESPONSE OF BEIER**

- 1) Beier testified numerous times that he did exactly what the Commission told him to do regarding remediating the problem.
- 2) Ms. Branch, during cross-examination, acknowledges that she received a letter from the Commission that the pollution complaint was resolved.
- 3) There is no evidence of any pollution on the site and Beier has already cleaned up the site according to the Commission's recommendations.

### **CONCLUSIONS**

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

1) The Commission is vested with exclusive environmental jurisdiction, power and authority governing the disposition of deleterious substances incidental to petroleum production for the purpose of preventing the pollution of the surface and subsurface waters in Oklahoma. See 52 O.S. Section 139 et. seq.; 17 O.S. Section 52; *Meinders v. Johnson*, 134 P.3d 858 (Ok.Civ.App. 2006); and *State ex rel Pollution Control Coordinating Board v. Oklahoma Corporation Commission and Enserch Exploration Inc.*, 660 P.2d 1042 (Ok. 1983). To employ that power the Commission has generated rules that are intended to carry forth that authority, power and duty. The general rules of the Commission have the force and effect of law and must be followed. *Ashland Oil Inc. v. Corporation Commission*, 595 P.2d 423 (Ok. 1979). 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 (Ok. 1988).

2) Rule OCC-OAC 165:10-7-16 sets forth a number of requirements and regulations concerning the use of a noncommercial pit including operation requirements, maintenance requirements, and closure requirements. Rule OCC-OAC 165:10-7-16(d)(5) Prevention of Pollution states:

(A) All noncommercial pits shall be constructed, used, operated, and maintained at all times so as to prevent pollution.

3) Rule OCC-OAC 165:10-1-2 defines pollution as:

"Pollution" means the contamination of fresh water or soil, either surface or subsurface, by salt water, mineral brines, waste oil, oil, gas, and/or other deleterious substances produced from or obtained or used in connection with the drilling, development, producing, refining, transporting, or processing of oil or gas within the state of Oklahoma.

4) Rule OCC-OAC 165:10-1-2 defines deleterious substances as:

"Deleterious substances" means any chemical, salt water, oil field brine, waste oil, waste emulsified oil, basic sediment, mud, or injurious substance produced or used in the drilling, development, production, transportation, refining, and processing of oil, gas and/or brine mining.

5) Drilling the Cleva Joe #1 well without permit or operator surety by Beier first arose on January 30, 2009 when the Commission received a complaint that Beier was drilling the Cleva Joe #1 without a permit or surety. See Exhibit 1. The well was "red-tagged" and shut down pending Beier receiving surety and a permit. On August 25, 2009 a second complaint was received stating that the operator was dumping salt water from tank battery into a reserve pit. See Exhibit 2. The Commission ordered the dumping cease and Beier was to "remove water and containment mud from reserve pit by September 25, 2009." A third complaint was received on September 8, 2009 stating there was an old tank battery, trash and debris on site. Beier was ordered to remediate site, remove trash and debris. See Exhibit 4. The inspection revealed an old tank battery and referred the cleanup to OERB. A complaint was filed by Eddetta Grant on July 2, 2012 alleging soil contamination from salt water where reserve pit was filled and two abandoned tanks. See Exhibit 5. Charter Oak, the current operator, was ordered to restore the reserve pit site, and remove the old tanks.

6) The complaint filed by Cleva Jo Beier on September 8, 2009, Exhibit 4, stated there was an "old Tank Battery site and Trash and Debris" on the site and recommended that the site be remediated with a request to OERB to

remove the old tank batteries, trash and debris. The undisputed testimony of Debbie Branch, an attorney and petroleum landman for Branch, stated that these tanks were historical oilfield pollution and should have been cleaned up as part of the trash and debris referred to the OERB in the September 8, 2009 complaint.

7) David Beier in his undisputed testimony concerning the salt water soil contamination where the reserve pit was filled, Exhibit 5, states:

Well, they red-tagged the well and we shut down operations immediately. We were instructed by the Corporation Commission's fieldman that we need to dewater the pit, bury the mud, and cover back into their specifications....And then the pit was dug down to about 25 foot and the mud was buried with earth soil - new fresh earth and soil from the farm was put back over the pit....The Corporation Commission told us that we dug it down to shale and bury the mud that was in the pit and put new soil back over the top of it....Oh, I think they required to put six to eight feet of top soil back on.

Transcript of hearing - November 14, 2012; page 53, line 1 - 5, 12 - 15; page 54, line 1 - 3, line 20 - 21.

8) The above undisputed testimony reflects that the mud from the pit was buried in the pit to a depth of about 25 feet with the thickness of the top soil being 6 to 8 feet in the pit. Mr. Beier's testimony also explained that a backhoe dug trenches in the bottom of the pit and the mud was placed in those trenches. Mr. Beier agreed the reason the complaint, Exhibit 2, states "waiting to dry so pit can be filled" is the mud from the pit which obviously was saturated with salt water. Thus, when the mud was buried in the pit, some residual salt water would remain in the mud. No testimony was presented that there had been another spill or discharge on the lease premises except for the illegal discharge of salt water by Eagles' referred to in the complaint marked as Exhibit 2. Thus, the undisputed testimony of Mr. Beier provided that salt water contaminated mud was not removed from the reserve pit.

9) The Referee would agree with the ALJ that there is no other logical conclusion for the salt water contamination where the reserve pit was filled and thus Beier/Eagles should be held responsible for remediating the salt water contamination at the site of the reserve pit referred to in the complaint marked as Exhibit 5. The Referee also agrees with the ALJ that a second request should be made to the OERB to remove the two steel tanks referenced in the complaint marked as Exhibit 5. The undisputed testimony was that these

tanks and the debris were historical oilfield pollution and should have been cleaned up as part of the trash and debris referred to the OERB in the complaint marked as Exhibit 4. The Referee agrees with the ALJ that the removal of these two tanks should again be referred to OERB.

10) In *Application of Continental Oil Company*, 376 P.2d 330, 334 (Okl. 1962) states:

The Commission has a wide discretion in the performance of its statutory duties and this court may not substitute its judgment on disputed questions of fact for that of the Commission, unless the findings of the Commission are not supported by the law and substantial evidence.

See also *Vogel v. Corporation Commission*, 399 P.2d 474 (Okl. 1965).

11) The Supreme Court in *Chenoweth v. Pan American Petroleum Corporation*, 382 P.2d 743 (Okl. 1963) stated:

The determination whether there is "substantial evidence" to support an order made by Corporation Commission does not require that the evidence be weighed, but only that the evidence tending to support the order be considered to determine whether it implies a quality of proof which includes the conviction that the order was proper or furnishes a substantial basis of facts from which the issue tendered could be reasonably resolved.

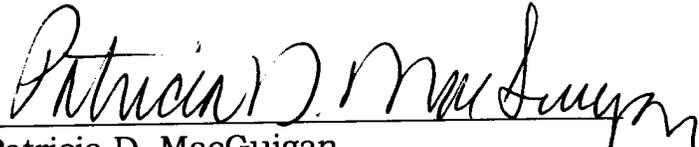
See also *Centurion Oil Inc. v. Stephens Production Company*, 857 P.2d 821 (Ok.Civ.App. 1993); and *Samson Resources Company v. Oklahoma Corporation Commission*, 742 P.2d 1114 (Okl. 1987).

12) The Referee agrees with the ALJ that the undisputed testimony by Mr. David Beier provided that the salt water contaminated mud was not removed from the reserve pit but was buried in the pit. From the Referee's review of the transcript and record, the Referee believes there is substantial evidence to support the conclusion of the ALJ.

13) The Referee would therefore recommend that the ALJ's finding that the application of Branch should be granted, with Beier/Eagles being held responsible for cleaning up salt water contamination at the site of the reserve pit, should be affirmed. The Referee would also recommend affirming the ALJ's

decision that the removal of the two abandoned oil tanks should again be referred to OERB.

**RESPECTFULLY SUBMITTED THIS 21<sup>st</sup> day of June, 2013.**

  
Patricia D. MacGuigan  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas  
Commissioner Anthony  
Commissioner Murphy  
Jim Hamilton  
ALJ Curtis M. Johnson  
William H. Huffman  
Russell J. Walker  
Office of General Counsel  
Michael L. Decker, OAP Director  
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