

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

APPLICANT:           RON DUNKIN, ACTING DIRECTOR  
                          OIL AND GAS CONSERVATION DIVISION  
                          OKLAHOMA CORPORATION COMMISSION

RESPONDENT(S): ENERGY PRODUCTION SERVICES, L.L.C., AN  
                          OKLAHOMA LIMITED LIABILITY COMPANY, AND  
                          COPPERMARK BANK

RELIEF SOUGHT: CONTEMPT,            )            CAUSE EN NO. 201200095  
FINES, COMPLIANCE WITH                )                )  
COMMISSION RULES AND                 )                )  
FORFEITURE OF SURETY                 )                )  
  )                ITN: 10-22079

**FILED**  
JAN 24 2014

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CORPORATION COMMISSION  
OF OKLAHOMA

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

This Cause came on for hearing before **David Leavitt**, Administrative Law Judge ("ALJ") for the Corporation Commission of the State of Oklahoma, on the 1<sup>st</sup> day of March, 2013, 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.

A Motion to Reopen Cause for Additional Testimony was filed on November 15, 2013 and came on for hearing before ALJ Michael D. Norris on November 22, 2013. A Motion to Expedite Hearing Regarding Exceptions and for Expedited Report of the Oil and Gas Appellate Referee was filed on December 16, 2013 and came on for hearing before ALJ David Leavitt on December 23, 2013 and December 31, 2013.

**APPEARANCES:** **Susan D. Conrad**, Deputy General Counsel for the Commission, appeared for the Pollution Abatement Department of the Oil and Gas Division of the Commission ("Commission"); **Larry Stewart**, **Russell James Walker** and **Michael Rogalin**, attorneys, appeared for Energy Production Services, L.L.C., an Oklahoma Limited Liability Company ("EPS") and **Kris K. Agrawal**, appeared Pro Se as a representative of EPS ("Agrawal"); **Doneen Douglas Jones**, attorney, appeared on behalf of Coppermark Bank;

**Bruce Scambler** appeared Pro Se as a working interest owner; and **Jim Hamilton**, Deputy General Counsel for Deliberations, filed notice of appearance.

The ALJ filed his Amended Report of the Administrative Law Judge on the 24<sup>th</sup> day of September, 2013 to correct errors related to selected dates in the Report of the Administrative Law Judge filed on the 18<sup>th</sup> of September, 2013, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions. The Motion to Reopen cause for Additional Testimony was denied by ALJ Norris to which Exceptions were timely filed and proper notice of the setting of the Exceptions was given. The Motion to Expedite Hearings Regarding Exceptions and for Expedited Report of the Oil and Gas Appellate Referee was granted by ALJ Leavitt to which Exceptions were timely filed and proper notice of the setting of the Exceptions was given.

The Appellate argument concerning the Exceptions to the ALJ Report and Oral Exceptions to the above referenced motions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"). After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

### **STATEMENT OF THE CASE**

On July 31, 2012, Applicant Ron Dunkin, the Acting Director of the Oil and Gas Conservation Division of the Commission, filed a Complaint against EPS for various violations of rules found in OCC-OAC. 165:10-11-3 and 165:10-11-17, with respect to the following-described site: NW/4 SE/4 SE/4 SE/4 of Section 19, T22N, R9W, Major County, Oklahoma. Coppermark Bank was also named as a Respondent in the complaint because it holds the surety bond on behalf of EPS.

The Applicant alleged that EPS operated the Emmons #1-19 well in violation of the rules of the Commission by failing to timely plug the well and restore the lease road. The Applicant also alleged that EPS failed to properly post a lease sign on another well. A hearing was subsequently held on September 26, 2012 where the parties presented evidence and testimony. On the day of the hearing, EPS filed its brief in support of a motion to dismiss the cause on the grounds that the Commission doesn't uniformly enforce its own rules related to the plugging of wells and that a surface owner should not be allowed to interfere with the rights of the mineral owners. The Motion to Dismiss was denied by the ALJ.

On December 20, 2012 the ALJ filed a Report in this cause recommending the following actions:

- a) EPS must either produce from or plug the Emmons #1-19 well or in the alternative, obtain a permit from the Underground Injection Control ("UIC") Department to convert the well into a non-commercial SWD well, within 30 days after issue of an order by the Commission in this cause;
- b) In the event that EPS fails to produce or plug the Emmons #1-19 well or obtain a permit to convert the well into a non-commercial SWD well within the 30-day period, EPS shall immediately pay a fine to the Commission in the amount of \$2,000 and EPS's \$75,000 Letter of Credit Surety Bond shall be forfeited and the proceeds of the bond immediately surrendered to the Commission and used to plug the well and restore the site in accordance with Commission rules; and
- c) If EPS's bond is forfeited, the ALJ further recommends that all other wells operated by EPS in the State of Oklahoma be ordered shut-in until EPS files a new Letter of Credit Surety Bond with the Commission in the amount of \$75,000.

A copy of the ALJ's recommendation was properly and timely mailed to Mr. Larry Stewart, attorney for EPS.

EPS did not file an exception to the Report of the ALJ on or before December 31, 2012, and the Commission issued Interim Order No. 606924 on January 24, 2013 adopting the recommendations of the ALJ and setting February 27, 2013 as the date on which the cause should be re-opened to determine whether or not EPS has complied with the Interim Order. Mr. Larry Stewart, attorney for EPS, approved the form and content of the Interim Order on or before January 17, 2013.

On February 25, 2013, EPS filed a Motion asking that the Interim Order be stayed. On March 1, 2013, the cause re-opened to hear evidence and testimony with respect to EPS's motion and compliance with the Interim Order. After taking evidence and testimony, the ALJ continued the cause until receipt of the transcript from the hearing was available on June 3, 2013 when the ALJ took the matter under advisement and issued his report on September 18, 2013 with the Amended Report of the ALJ filed on September 24, 2013.

On September 27, 2013, Russell James Walker filed an entry of appearance in this cause on behalf of EPS. Also on September 27, 2013 Mr. Walker filed exceptions to the Amended Report of the ALJ in the cause on behalf of EPS and filed a Notice of Hearing scheduling the exceptions for hearing on November 15, 2013. On November 6, 2013, Mr. Walker filed a Motion to Continue the captioned cause. On November 13, 2013, the Appellate Referee heard arguments regarding the Motion to Continue the captioned cause and denied the motion to continue issuing a decision sheet on November 14, 2013.

On November 15, 2013, the Appellate Referee heard arguments regarding the exceptions by EPS to the Amended Report of the ALJ David Leavitt and took the matter under advisement.

On November 15, 2013, Mr. Walker filed in this cause a Motion to Reopen Cause for Additional Testimony on behalf of EPS. The Motion to Reopen Cause for Additional Testimony was heard and denied by ALJ Michael Norris on November 22, 2013. On November 27, 2013 Kris Agrawal with EPS filed exceptions to the decision of the ALJ denying EPS's Motion to Reopen Cause for Additional Testimony and filed a notice of hearing that EPS's exception was to be heard on January 21, 2014.

On December 16, 2013 Mr. Walker filed a Motion to Withdraw as counsel for EPS in this cause, which motion was heard and recommended on December 23, 2013. On December 16, 2013 a Motion to Expedite Hearings Regarding Exceptions and for Expedited Report of the Oil and Gas Appellate Referee was filed in this cause and it came on for hearing before David Leavitt, ALJ, on December 23, 2013 and December 31, 2013. ALJ Leavitt recommended that the Motion to Expedite Hearings Regarding Exceptions and for Expedited Report of the Oil and Gas Appellate Referee be granted. On January 6, 2014 EPS filed its exceptions to the Motion to Expedite Hearings Regarding Exceptions and for Expedited Report of the Oil and Gas Appellate Referee. The hearing of EPS's exceptions to said motion was to be heard on January 21, 2014.

**REGARDING THE AMENDED REPORT OF THE ALJ FILED**  
**SEPTEMBER 24, 2013**

**EPS TAKES THE POSITION:**

- 1) The ALJ Report is contrary to the evidence and to the law.
- 2) The ALJ Report's recommendations, if adopted, will result in injustice.
- 3) That the well in question, the Emmons #1-19 well, can be profitably produced. EPS is properly bonded for operations and desires to and proposes to recomplete the Emmons #1-19 well for production. To require the well to be plugged and abandoned will cause rather than prevent waste and will violate rather than protect correlative rights. The request in the Complaint should be denied.

**REGARDING THE MOTION TO REOPEN CAUSE FOR ADDITIONAL  
TESTIMONY FILED ON NOVEMBER 15, 2013:**

**EPS TAKES THE POSITION:**

- 1) The Corporation Commission Staff without authority of law acted on their own to block the Underground Injection Permit and blocked transferring the well to two new operators and blocked EPS from producing the well from its inception.
- 2) There remain several zones behind pipe and within cemented portion of the Emmons #1-19 casing yet to be spaced or produced with permission of the Commission to recover 50,000 barrels of oil equivalent and produced from a 500 feet thick Mississippi formation by horizontal wells.
- 3) EPS will present additional evidence, exhibits, affidavits, and photographs to supplement this request to reopen this cause and to present additional findings and knowledge of new conditions and to protect correlative rights to recover oil and gas equivalent.

**REGARDING THE MOTION TO EXPEDITE HEARINGS REGARDING  
EXCEPTIONS AND FOR EXPEDITED REPORT OF THE OIL AND GAS  
APPELLATE REFEREE FILED ON DECEMBER 16, 2013:**

**EPS TAKES THE POSITION:**

- 1) The ruling of the ALJ is contrary to law, is not supported by facts and rules and procedures of the Commission.
- 2) The Emmons #1-19 is a gas well and exempt from plugging.
- 3) The injection well permit should be granted to EPS and the interim order should be vacated.

**REGARDING THE AMENDED REPORT OF THE ALJ  
FILED SEPTEMBER 24, 2013:**

**THE ALJ FOUND:**

- 1) The record clearly shows that EPS didn't comply with the Interim Order by the February 23, 2013 deadline or by the time of the hearing on March 1,

2013. EPS had 30 days from the date of the issuance of the Order to either plug, produce or obtain a permit to convert the well into a non-commercial SWD well and it failed to do so.

2) During the hearing of September 26, 2012, Mr. Agrawal testified that the Emmons #1-19 well would be best suited as a SWD well because he couldn't get the well to produce any oil in pumping tests and the produced gas was causing problems with the plunger, and he filed an Application for this purpose on September 20, 2012. His Application, however, was incomplete and deficient, and the UIC staff alerted him of the deficiencies that he should correct in order to obtain a permit by letter on October 11, 2012. The record thus shows that Mr. Agrawal had decided upon a course of action to convert the Emmons #1-19 well into a SWD well more than four months before the Commission issued Interim Order No. 606924, and was told what he needed to do to obtain a permit by the UIC staff more than 3 months before the Order was issued and more than four months before the deadline set forth in the Order.

3) EPS's application was still incomplete and deficient by the date of the hearing on March 1, 2013. UIC's Program Manager, Mr. Lord, testified during the hearing that EPS failed to provide two fresh water analysis as provided by the rules of the Commission and has still not informed the Commission of the location of the fresh water well for the analysis that it did submit. Mr. Lord also pointed out that he found numerous water wells located within a one-mile radius of the Emmons #1-19 well from his review of the public records and said that Mr. Agrawal's statement that only one water well was located within a one-mile radius of the Emmons #1-19 well was a false statement.

4) He was concerned that EPS wasn't diligent in giving proper notice to all of the offset operators in proximity to the proposed SWD well and that the well would inject fluid into producing formations. He noted that there was only one well on the lease and that the proposed injection would be into zones that are productive in the surrounding areas, and that EPS didn't operate any producing wells in the area that would need or use a disposal well. He said that Mr. Agrawal applied for a disposal well on land upon which he doesn't own a lease where the right to dispose of produced water comes from the base lease to produce hydrocarbons. He said that was highly unusual for someone who is not involved in a water flood to propose a disposal well into producing formations.

5) Mr. Lord testified that EPS's Application was filed in September 2012 and that it has had sufficient time to submit all of its information and revisions to its Application since that time. He said that the Commission has not placed an onerous burden upon EPS in terms of timing to complete its Application and obtain a permit by the deadlines imposed by the Interim Order.

6) The crux of Mr. Agrawal's argument that EPS should be given more time to comply with the terms of the Interim Order is that it is impossible for anyone to obtain a permit within 30 days. Although Mr. Agrawal testified that he received a copy of the Interim Order "four days late" and didn't receive a copy of the ALJ's report until a day before this hearing, his testimony was contradicted and impeached by his own attorney. Mr. Stewart stated for the record that Mr. Agrawal was given a copy of the Interim Order and that he and Mr. Agrawal got a copy of the ALJ's report and discussed the report together around December 20, 2012. He stated that they made a decision concerning whether or not to file exceptions to the report, and decided that they would be able to get the well permitted.

7) In light of the above, Mr. Agrawal's testimony that he would have filed exceptions to the ALJ's report if he had seen it in time is not credible. If Mr. Agrawal truly believed that it was impossible for EPS to obtain a permit within 30 days, then he should have filed exceptions to the ALJ's report and asked for more time to comply within the time allowed. As stated herein, EPS started work to obtain a permit to convert the Emmons #1-19 well into a SWD well more than four months before the Commission issued Interim Order No. 606924, and had more than two months after reviewing the ALJ's report to complete the work by the deadline imposed in the Interim Order. The record and testimony shows that Mr. Agrawal had reasonable and sufficient time to either plug, produce or obtain a permit to convert the Emmons #1-19 well into a SWD well, or to timely file an exception to the ALJ's report.

8 After taking into consideration the evidence and testimony in the cause, it is the recommendation of the ALJ that EPS shall immediately pay a fine to the Commission in the amount of \$2,000 and EPS's \$75,000 Letter of Credit Surety Bond shall be forfeited and the proceeds of the bond immediately surrendered to the Commission and used to plug the well and restore the site in accordance with Commission rules; and all other wells operated by EPS in the State of Oklahoma be ordered shut-in until EPS files a new Letter of Credit Surety Bond with the Commission in the amount of \$75,000.

**REGARDING THE ORAL REPORT OF THE ALJ ISSUED  
NOVEMBER 22, 2013 DENYING EPS'S MOTION TO REOPEN  
CAUSE FOR ADDITIONAL TESTIMONY:**

**THE ALJ FOUND:**

1) OCC-OAC 165:5-13-3(p) provides a case record may "be reopened for the purpose of taking testimony and receiving evidence which was not or could not

have been available at the time of the hearing on the merits or for the purpose of examining its jurisdiction."

2) The ALJ found that there was a valid reason for EPS wanting to preserve the asset, but this reopening would not present any new evidence that couldn't have been considered and heard at the time of all of these other hearings. Evidence of converting and/or transferring the Emmons #1-19 well was available to the ALJ and that evidence did not persuade him. Also additional evidence as to a transfer of operatorship does not have any bearing on preserving the asset. There has not been any new evidence that has been presented that could not have been submitted or could not have been considered or available at the time of the hearing on the merits.

**REGARDING THE ORAL REPORT OF THE ALJ ISSUED  
NOVEMBER 31, 2013 GRANTING COMMISSION'S  
MOTION TO EXPEDITE HEARINGS REGARDING EXCEPTIONS  
AND FOR EXPEDITED REPORT OF THE OIL  
AND GAS APPELLATE REFEREE:**

**THE ALJ FOUND:**

1) The testimony of the Commission was that the Emmons #1-19 well was leaking salt water on the surface. EPS's testimony was that he needed more time to obtain an attorney and therefore requested the hearings regarding exceptions should be continued. The original hearing date was January 21, 2014, with the request by Commission to expedite the hearing on exceptions to the motion to reopen to be moved to January 7, 2014. The ALJ determined that the potential risk to the state was not an emergency so therefore the ALJ continued the hearing from January 7, 2014 to January 14, 2014, only one week, in order for EPS to obtain an attorney and he would have time to prepare his case.

**POSITIONS OF THE PARTIES REGARDING THE  
AMENDED REPORT OF THE ALJ**

**EPS**

1) **Russell J. Walker**, attorney, appearing on behalf of EPS, stated that it was understood by Mr. Walker that the State wishes to have this well plugged. However, EPS would like to find an economic use for the well rather than have

it plugged, if possible. Mr. Agrawal has an application pending to convert this well into a SWD well.

2) EPS's primary concern is the forfeiture of its \$75,000 surety bond and the economic effects that will have on his business, in addition to the potential economic use of the well at issue here, the Emmons #1-19 well.

3) In 39 years of practicing before the Commission, the Commission has always been asset protection oriented, but it does not seem as though the Commission is concerned with protecting assets in this case.

4) The well at issue is not an environmental concern to the State of Oklahoma. It is not causing any damage; it is just sitting there, unused, as it has been for the previous 12 years. We simply want to have a little more time to transfer this well to someone that can use it.

### **OIL AND GAS CONSERVATION DIVISION/COMMISSION**

1) **Susan D. Conrad**, Deputy General Counsel, appearing for the Pollution Abatement Department of the Oil and Gas Division of the Commission, stated that this action originated because of a complaint by the land owner. The land owner wanted something done with the well and requested that the well be plugged. The field inspector, David Howard testified that first contact was made with EPS in April, 2012, 19 months ago.

2) If this well is actually an asset to the industry, then EPS has had ample time to produce, plug or convert the well into a SWD well, as outlined in Interim Order No. 606924 signed by the three Commissioners.

3) This well has had two hearings previously and an interim order, which EPS has failed to comply with in any respect. Exceptions were filed to the ALJ's Amended Report by EPS.

4) A contempt complaint was filed on July 31, 2012, initial hearing on September 26, 2012. Field inspector for the Commission testified that the well was not producing, there was no drilling equipment, production equipment or tanks at the site as of his initial inspection on April 18, 2012, and there were no changes to the site as of September 25, 2012. Initial hearing resulted in an interim order giving EPS 30 days, after the order was issued, to bring the well into compliance with the Commission's rules.

5) EPS became the operator of the well on April 3, 2012. The well has not produced since May 2001. After conducting some pumping tests on the well,

EPS determined that the well would be better suited as a disposal well and EPS filed a 1015 application to convert the well to a SWD well on September 25, 2012. The application was incomplete. The Commission's UIC department sent a letter to EPS dated October 11, 2012, listing several required items that were missing from the application. As of March 1, 2013, UIC had not issued a permit for a disposal well on this site.

6) The ALJ Report filed December 20, 2012 indicated that EPS had not produced, plugged or submitted a complete application to the Commission to convert the well to a disposal well as of September 26, 2012. The ALJ recommended that EPS either produce or plug the well, or in the alternative, obtain a permit from the Commission to convert the well into a disposal well within 30 days. The ALJ December 20, 2012 Report established consequences for EPS's failure to comply as a \$2,000 fine and forfeiture of a \$75,000 surety bond to be used to plug the well. The ALJ further stated that in the event of a forfeiture of the surety bond, all other wells owned or operated by EPS should be shut-in until a new surety bond is filed with the Commission.

7) The Interim Order No. 606924 followed the ALJ recommendations, and the 30 day time frame lapsed on February 23, 2013. A hearing was held on March 1, 2013 to determine if EPS had complied. The field inspector for the Commission testified that the site conditions were the same as he had observed in April 2012. The ALJ recommended that EPS pay the \$2,000 fine and surrender the surety bond at that time for failing to comply with the interim order.

8) As of the March 1, 2013 hearing the disposal well application was still deficient. EPS had not complied with the required analysis of freshwater wells within one mile of the proposed disposal well. In addition, several other required items were still outstanding. EPS filed amended form 1015 application on January 30, 2013 and again on February 26, 2013, both were not complete. The required plat of oil and gas wells was not received by UIC until February 25, 2013, five months after the original filed application, and after the deadline specified by the interim order had passed. The required log copies were not received until February 26, 2013, and the publication notices were incorrect and incomplete.

9) EPS has, for several months, failed to produce, plug or convert the well into a disposal well, as required by the interim order. EPS has not been diligent in their actions for converting the well into a disposal well, or in complying with the interim order.

10) EPS, knowledgeable about the oil industry, has testified that this well will no longer produce. EPS has had ample time to convert this well to a disposal well, obtain the appropriate permit or facilitate a transfer to someone willing to use the well for that purpose.

**RESPONSE OF EPS**

1) There are 10,000 wells in Oklahoma that are unplugged. Many of the unplugged wells in Oklahoma have environmental concerns, but this well is not one of those concerns. There is no risk of environmental damage with this well and there has not been any environmental damage caused by this well in the 12 years since it stopped producing.

2) The main argument to prevent the plugging of this well, as requested quite rightly by the State, is to make some economic use of it to the oil industry. Co-incidental to that goal, is the protection of EPS's \$75,000 surety bond.

**POSITIONS OF THE PARTIES REGARDING THE ORAL  
REPORT OF THE ALJ DENYING EPS'S MOTION TO REOPEN  
CAUSE FOR ADDITIONAL TESTIMONY AND REGARDING  
THE ORAL REPORT OF THE ALJ GRANTING COMMISSION'S  
MOTION TO EXPEDITE HEARINGS REGARDING  
EXCEPTIONS AND FOR EXPEDITED REPORT OF THE  
OIL AND GAS APPELLATE REFEREE**

**EPS**

1) **Michael Rogalin**, attorney, appearing on behalf of EPS, stated the water that was shown in pictures surrounding the Emmons #1-19 well by Mr. Howard occurred during a period of a very heavy rain storm and no other pictures of water surrounding the well were presented other than those.

2) There were testing problems concerning the fluids of the total soluble salts and the chloride content. There was no evidence that the water was in fact coming from the wellbore or coming from the tank battery or any holding facilities associated with that well. Therefore the salt water problem and the testing content are highly questionable. Mr. Agrawal has obtained independent samples showing that the chloride content of the total soluble salts are not consistent with the samples being presented by Mr. Howard.

3) The efforts by EPS to reclassify the well as a gas well or to reclassify the well as a SWD well have been blocked by the legal division of the Commission.

- 4) With regard to EPS's counsel, Mr. Walker's assertion that there is parted tubing in the well and other junk in the well, such testimony was not made by Mr. Walker's personal knowledge. Other testimony reflects that the well is actually in pretty good shape and they were trying to reclassify it as a gas well and the evidence regarding Mr. Walker's testimony was improperly considered by the court.
- 5) Regarding the notification issues, Mr. Howard testified that there was a requirement by EPS to notify him when EPS planned to investigate, ascertain the source of fluids and take remedial action regarding the well. The Corporation Commission didn't notify EPS of the testing procedures, observations of the well and pulling sample results of the chloride content and soluble salt content. The evidence that was acquired by Mr. Agrawal was not allowed by the Commission which is the subject of a new application to reopen which is not in the purview of this proceeding.
- 6) The water that was seen around the well was only seen on one occasion and had not been seen on other occasions. Therefore the pollution issues concerning the surface are not being properly considered by the Commission, as there is no evidence of other surface pollution other than this one incident when there was a huge amount of rain. There was a failure by the Commission to draw water from the well to verify that the total soluble salt and chloride content were consistent with the surface sampling or whether it was an intentional contamination by some third party with the motivation to have the well shut down.
- 7) EPS was denied permission to introduce evidence at the motion to reopen hearing concerning the salt water content of the water surrounding the well and chloride content which would have conflicted with that of Mr. Howard's testimony concerning same.
- 8) The basis for EPS's objection to the Motion To Expedite is that the well has been improperly classified as an oil well and has been attempted to be reclassified as a SWD well and a natural gas well. Both of those applications for reclassification have been blocked or denied by the Commission and EPS's position is that the motion to expedite was imprudently granted as a result of those applications being denied. Part of the problem is that the cases are being heard before the timeframe allowed for obtaining reclassification as a SWD well and a natural gas well has elapsed, so it creates a situation where you could cure a lot of the issues relative to the well. The hearings are being expedited so that they occur before the licensing process can be completed creating a contempt before the curative action is allowed to take place.

**OIL AND GAS CONSERVATION DIVISION/COMMISSION**

1) **Susan D. Conrad**, Deputy General Counsel, appearing for the Pollution Abatement department of the Oil and Gas Division of the Commission, stated that this well has had a hearing on the merits before ALJ Leavitt. ALJ Leavitt has written two reports in this matter. There has been a hearing before ALJ Norris regarding the Motion To Reopen and two hearings before ALJ Leavitt regarding the Motion To Expedite. The Appellate Referee has heard two hearings regarding exceptions and written one report. The Emmons #1-19 well was transferred to EPS in April of 2012. In April of 2012 Mr. Howard contacted EPS that the well needed remedial action as the landowner had lodged a complaint about this well. Mr. Howard contacted Mr. Agrawal with EPS during April of 2012 about the need to plug, produce and obtain compliance of this well with Commission rules. A contempt action was therefore filed on July 31, 2012 because EPS took no action 18 months ago. The Interim Order No. 606924 was issued in this cause on January 24, 2013. EPS did not comply with this interim order.

2) There is evidence in the record that this well has not produced since 2001 and the completion report classifies this well as an oil well.

3) EPS wanted to convert this well to a SWD well but failed to convert this well four months before the Commission issued its interim order or to obtain a permit by the UIC staff more than three months before the order issued and more than four months before the deadline set in the interim order. ALJ Leavitt found that the application to convert the well was still incomplete. ALJ Leavitt found that EPS's application was still deficient on the date of the hearing on March 1, 2013. EPS's statement that there was only one water well located within a mile radius of the Emmons #1-19 well was false. The ALJ expressed concern that EPS had not been diligent about giving proper notice to all the offset operators that the proposed injection well would be into zones that had been producing in other wells. EPS has consistently and persistently failed to comply with the Commission orders or rules.

4) EPS was represented by counsel Russell James Walker at the Motion To Reopen hearing before ALJ Norris. Mr. Walker has practiced at the Commission for many years and certainly had the opportunity to submit evidence concerning why the motion to reopen should be granted. ALJ Norris found that any evidence that Mr. Walker presented was not new or relevant evidence which is required by OCC-OAC 165:5-13-(p). ALJ Norris found that the evidence presented by Mr. Walker for EPS was not any new evidence that could not have been considered or presented at the time of all of these other hearings. The Commission staff wholeheartedly agrees with ALJ Norris's recommendation.

5) Concerning Form 1073 and OCC-OAC Rule 165:10-1-15(c), the rule provides that the transferor of the wells listed on the form 1073 remains responsible for the wells until any transfer is approved by the Commission. There is nothing in that rule that requires that a 1073 transfer be approved immediately. Also an interim order had previously issued in this case giving EPS one of three options which had to be completed by the February 27, 2013 deadline: plug the well, produce the well or get a permit to change it to a SWD well. To transfer the well to another operator was not an option approved by the Commissioners in that Interim Order 606924. As previously stated EPS failed to comply with any of those three directives and interim order.

6) As reflected in Exhibit "A" in the proceeding before ALJ Leavitt on December 23, 2013 concerning the Motion To Expedite, photographs were taken by Mr. Howard on November 18, 2013 regarding the fluids around the wellhead and e-mailed by me on that day to Russ Walker, Mr. Agrawal's attorney. The fluid test conducted by him around the wellhead yielded soluble salts of 40,000 ppm. EPS was advised that it needed to investigate and ascertain the source of the fluids and take remedial action regarding the well which remedial action can include but not be limited to plugging the subject well. EPS representatives were informed they needed to notify Mr. Howard of the date and time such representatives are to be at the site to investigate the source of the fluids and take remedial action regarding the well. Mr. Walker's response was that he would forward those instructions to Mr. Agrawal immediately. Also an Exhibit "B" that was presented at the December 31, 2013 hearing before ALJ Leavitt there is an e-mail from Mr. Agrawal to Mr. Walker acknowledging receipt of that e-mail. At the December 23, 2013 hearing the sample of the fluids around the wellhead was submitted before ALJ Leavitt which reflected 195,000 ppm of chloride. EPS gave the opinion that cow manure was the reason for those chloride figures but any cow manure that had that much parts per million of chloride would be a dead cow. Despite EPS being required to notify Mr. Howard when remediation would be followed by EPS, when Mr. Howard was at the site on December 12, 2013, Mr. Howard advised that work had appeared to be done at the site but no notification was given to Mr. Howard. An e-mail was sent December 12, 2013 by the Commission Staff to Mr. Walker which advised him that Mr. Howard had received no notification of any remediation work done at the site. The Commission staff requested information as to what was done on the well and by whom, but they have still not received a response to that request from EPS. Mr. Walker informed the Commission staff on December 13, 2013 that there was parted tubing and other junk in the hole of the well. Mr. Howard testified at the hearing before ALJ Leavitt regarding the Motion To Expedite that he is concerned that the well's current condition poses a threat to the environment. Mr. Walker on December 16, 2013 filed his Motion To Withdraw as counsel. Mr. Agrawal was not accompanied by counsel at the December 23, 2013 for the motion to expedite. ALJ Leavitt encouraged Mr. Agrawal to acquire counsel at the December 31, 2013 hearing. The present hearing is the first time that Mr.

Agrawal has been represented by counsel since December 23, 2013. OCC-OAC 165:5-13-3(c) provides that a "corporation may appear only by its attorney, provided, that a representative other than an attorney may appear on behalf of the corporation for the sole purpose of making a statement or indicating corporate policy." Such a representative may not assume an advocate's role or introduce evidence or examine witnesses in a proceeding. EPS had ample time to obtain an attorney, as Mr. Walker filed his motion to withdraw well over a month ago..

7) With respect to EPS's present attorney Michael Rogalin's statement that the water around the wellhead was due to heavy rainfall is not plausible as how could such water contain chloride content of 195,000 ppm. Also Mr. Rogalin questioned Mr. Walker's statement in the e-mail contained in Exhibit "A" in the November 23, 2013 hearing before ALJ Leavitt that tubing and junk was in the hole of the Emmons #1-19 well. Water with chloride content of a 195,000 ppm is certainly evidence of pollution. The only evidence in the record is that the Emmons #1-19 well is an oil well and quit producing in May of 2001.

### **RESPONSE OF EPS**

1) One of the things that the Commission has brought up is concerning the exhibits filed February 25, 2013 by EPS which should be included and considered in the Motion To Reopen. They reference the applications for changing the well to a SWD well and publication efforts. To exclude those would subvert justice. They should be and are a part of the record.

2) One of the issues you have to look at is the change of operator. The Corporation Commission rules are very clear. They say you can't change operators if you are changing to an operator that has disciplinary proceedings against them and in this case we are trying to transfer to an operator who has no disciplinary proceedings against it. Attempts to get the well transferred to another operator are being blocked by the Commission. The attempt to transfer a well to an operator with no problems keeps getting blocked. The well does not pose an immediate threat.

3) Concerning the water around the well, there is no evidence what kind of weight to be given this evidence. Where did the water come from? Was it placed there? There is no evidence dealing with the quality of the evidence. What kind of weight do we give this evidence? In this case we have some bare water samples. There was no testimony reflecting whether the soil under the water is polluted, whether it was runoff water or whether there was any association with the well water.

4) The order says EPS has to plug, produce or convert. The reason for not allowing the transfer was because that wasn't part of the court's order. The court never stated in their order that the well could not be transferred to another operator. The order does not relate to the transfer. It is a separate issue and it is not conclusive that that order should block the transfer. It has just been held up and not permitted and is contrary to what the Corporation Commission is about. The Corporation Commission is concerned with the prevention of pollution and they should allow the transfer which would have dealt with all the issues. The Corporation Commission wants to prevent pollution and have oil and gas produced in the state of Oklahoma. Those issues can be addressed by properly addressing the issue of the well classification to a SWD well or transfer of operatorship. Those issues are not being addressed. This matter should therefore be reopened and set for hearing so all these issues can be fully developed. What we need to do is look at the evidence that has been filed of record and look at the application for converting this well to a SWD well and for transfer of operatorship.

## **CONCLUSIONS**

### **I.**

#### **THE REFEREE FINDS THE AMENDED REPORT OF THE ALJ FILED SEPTEMBER 24, 2013 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 the state. See 52 O.S. Section 139 et seq.; 52 O.S. Section 310; *Meinders v. Johnson*, 134 P.3d 858 (Okl.App. 2005); *State ex rel Pollution Control Coordinating Board v. Oklahoma Corporation Commission and Enserch Exploration, Inc.*, 660 P.2d 1042 (Okl. 1983). To employ the power of the Commission exclusive jurisdiction over oil field activities to prevent pollution of the surface and subsurface waters of the state, 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 (Okl. 1979); *Brumark Corporation v. Corporation Commission*, 864 P.2d 1287 (Okl.App. 1993). 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).

2) The Commission also has authority to pursue contempt against any entity that violates the rules, regulations and orders of the Commission. *Union Texas Petroleum Corporation v. Jackson*, 909 P.2d 131 (Okl.App. 1995).

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

Punishment for contempt by the Commission of any person, guilty of any disrespectful or disorderly conduct in the presence of the Commission while in session, or for disobedience of its subpoena, summons or other process, may be by fine not exceeding One Thousand Dollars (\$1,000.00) or by confinement in the county jail of Oklahoma County not exceeding one (1) year, or by both. Any person who shall disobey or violate any of the provisions of Section 86.1 et seq. of this title or any of the orders, rules, regulations or judgments of the Commission issued, promulgated or rendered by it, shall be punished as for contempt. Punishment by the Commission in proceedings as for contempt for disobedience or violation of any provision of Section 86.1 et seq. of this title or any of its orders, rules, regulations or judgments, issued, promulgated or rendered under the provisions of Section 81.1 et seq. of this title shall be by fine not exceeding in amount Five Thousand Dollars (\$5,000.00), and each day such disobedience or violation shall continue shall constitute a separate and additional contempt, and shall be punished by separate and additional fines each in amount not in excess of aforesaid amount.

4) The evidence provided at the merit hearing by the applicant/Commission reflects that EPS has shown contempt of the Commission rules and orders by not complying and preventing the eminent threat to the environment, to the public health and safety and to the surface and subsurface waters of the state of Oklahoma. EPS was given more than ample time to comply with Interim Order 606924 issued on January 17, 2013 and has failed to do so.

5) The Applicant/Commission, presented testimony by the Oil and Gas Field Inspector Supervisor, Field Operations Department, Oil and Gas Conservation Division of the Oklahoma Corporation Commission that he had observed fluids surrounding the wellhead, and the identified sample results reflected that the chloride content of the fluids was 195,517 ppm and 325,514 ppm total soluble salts. There was also testimony by counsel for EPS that there was parted tubing in the well and other junk in the well. There was also testimony by the Oil and Gas Field Inspector Supervisor that even though EPS

was required to notify the Oil and Gas Field Inspector Supervisor of the date and time EPS representatives were to be at the site to investigate the source of fluids and take remedial action regarding the well, work has apparently already been done on the well without EPS representatives notifying the Oil and Gas Field Inspector Supervisor and he has not been advised as to what work was done on the well, by whom and when.

6) The evidence also reflected that EPS had not submitted a complete application for the Commission to convert the well to a disposal well. EPS had started work to obtain a permit to convert the Emmons #1-19 well into a SWD well more than four months before the Commission issued Interim Order No. 606924 and has had more than three months from the filing of the Amended Report of the ALJ on September 24, 2013 to complete the work to obtain the required permit to convert the Emmons #1-19 well into a SWD well. Thus, the record and testimony shows that EPS had reasonable and sufficient time to either plug, produce or obtain a permit to convert the Emmons #1-19 well into a SWD disposal well.

7) The Referee therefore finds that the actions of EPS justified the ALJ's recommendation for EPS to pay immediately a fine to the Commission in the amount of \$2,000 and EPS's \$75,000 letter of credit surety bond forfeited with the proceeds of the bond immediately surrendered to the Commission and used to plug the well and restore the site in accordance with Commission rules.

8) The Referee also finds the ALJ's recommendation that all other wells operated by EPS in the state of Oklahoma be ordered shut-in until EPS files a new letter of credit surety bond with the Commission in the amount of \$75,000 is justified. The Referee finds no reason on review to reverse the recommendation of the ALJ in his Amended Report filed September 24, 2013.

## II.

### **THE REFEREE FINDS THE ORAL REPORT OF THE ALJ ON NOVEMBER 22, 2013 CONCERNING THE MOTION TO REOPEN CAUSE FOR ADDITIONAL TESTIMONY SHOULD BE AFFIRMED:**

1) The Referee notes the granting of a motion to reopen is discretionary on the part of the Commission. OCC-OAC 165:5-13-3(p) states in relevant part:

(p) **Reopening the record.** Any person may file and serve, by regular mail, on all parties of record a

motion to reopen the record for further hearing or to offer additional evidence. The Commission, at any time prior to final order in the cause, may, upon such motion or upon the motion of the Commission, order the record to be reopened for the purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits or for the purpose of the examining its jurisdiction....

One can see by the use of the word "may" that a motion to reopen is "permissive" only and not "mandatory". It doesn't require the Commission to reopen a hearing.

2) The reopening of a cause as explained above is discretionary upon the part of the Commission. The Referee sees no abuse of discretion on the part of the ALJ in refusing to reopen the record and entertain additional evidence at this time. EPS filed this application to convert this well to a disposal well, well over a year ago, on September 25, 2012. The UIC department of the Commission sent a letter to EPS dated October 11, 2012 listing several required items that were not submitted with the application to convert the well to a disposal well which made the application incomplete. As of the March 1, 2013 hearing, the field inspector supervisor Mr. Howard testified at the hearing that conditions at the Emmons #1-19 site were the same as he had observed during April of 2012. On March 1, 2013 EPS's application to convert the well into a disposal well was still deficient. The Commission rules require analysis of fresh water from two or more fresh water wells within one mile of a proposed disposal well, listing the location and the date the samples were taken to be submitted along with the Form 1015 application to convert a well into a SWD well. EPS asserted that just one water well was in existence in this Section 19, but numerous documents were admitted into the record showing water wells within one mile radius of the Emmons #1-19 well. The Commission didn't receive a plat of the oil and gas wells within a mile radius of the well until February 25, 2013 which is more than five months after EPS had filed this application to convert this well to a noncommercial disposal well, and over four months after the Commission had sent the letter to EPS detailing the deficiencies of the application. It was also after the February 23, 2013 deadline set forth in Interim Order No. 606924 for EPS to obtain the permit. The Commission didn't receive copies of the required logs until February 26, 2013, ten months after the deficiency letter was sent and after the deadline in Interim Order No. 606924. There was also testimony that the publication notices were incorrect. There was also testimony that there were wells in the section surrounding Section 19 that are producing hydrocarbons from the same formation that EPS proposed to dispose of in the SWD well. The ALJ found that EPS had not complied with the interim order by the February 23, 2013 deadline or even by the time of the March 1, 2013 deadline. EPS was told they

needed to obtain a permit by the Commission to convert this well to a disposal well more than three months before the order issued and more than four months before the deadline set forth in the order and the ALJ found that EPS's application was still incomplete and deficient by the date of the hearing on March 1, 2013.

3) As stated in the above quoted rule, a cause may be opened upon a motion to reopen for the "purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits". EPS failed to provide the information required by the Form 1015 which could have been available at the time of the March 1, 2013 hearing.

4) With regard to issues concerning a change of operator, there was another operator who testified at the March 1, 2013 hearing before ALJ Leavitt that it wanted to take over operations of this well and convert it into a disposal well. A Form 1073 was presented at that hearing before ALJ Leavitt as an exhibit but that Form 1073 had not been approved by the Commission. The proposed operator testified at the March 1, 2013 hearing before ALJ Leavitt and was questioned as to what his intentions were regarding this well and what plans he had for the well. Both proposed operators apparently didn't have any definitive plans for the Emmons #1-19 well or timeframes. There was testimony by Mr. Agrawal with EPS that he decided against producing the well, because the well would not produce. The proposed operators' Form 1073 had not been approved by the Commission and therefore according to OCC-OAC 165:10-1-15(c) the "transferor of the well(s) listed on the form 1073 remains responsible for the well(s) until any transfer is approved by the Commission." The Form 1073 contains the same language which states: "Form is not approved until approved by Well Records." Also there is nothing in OCC-OAC 165:10-1-15 that requires the Commission to approve a Form 1073 immediately or automatically upon its submission to the Commission.

5) For the reasons stated above and because the well is the subject of an enforcement action and is the subject of an order signed by all three Commissioners giving specific directives to EPS to either produce, plug or obtain a permit to convert the well into a noncommercial SWD well which have not been complied with by EPS, and this matter has been pending for 19 months with several hearings and ALJ Reports, the Appellate Referee agrees with the ALJ that the Motion to Reopen should be denied.

**III.**

**THE REFEREE FINDS THE ORAL REPORT OF THE ALJ GRANTING THE MOTION TO EXPEDITE HEARINGS REGARDING EXCEPTIONS AND FOR EXPEDITED REPORT OF THE OIL AND GAS APPELLATE REFEREE SHOULD BE AFFIRMED:**

1) David Howard, Oil and Gas Field Inspector Supervisor, Field Operations Department, Oil and Gas Conservation Division, Oklahoma Corporation Commission, testified that he had observed fluids surrounding the wellhead of the Emmons #1-19 well, and he identified sample results reflecting that the fluoride content of the fluids was 195,517 ppm and 325,514 ppm total soluble salts. There were also photographs identified by him of the subject site. Mr. Howard also testified to the fact that counsel for EPS advised the Commission prior to filing his motion to withdraw that there was parted tubing in the well and other junk in the well.

2) On November 18, 2013 the Commission's counsel, Susan Conrad, informed counsel for EPS by e-mail the following:

The Commission's District II officer advises that EPS representatives, need, as soon as possible, to investigate and ascertain the source of the fluids and take remedial action regarding the well, which remedial action can include, but not be limited to, plugging the subject well. EPS representatives need to notify Mr. Howard (405) 514-8947 and/or at [d.howard@occcemail.com](mailto:d.howard@occcemail.com) of the date and time such representatives are to be at the site to investigate the source of the fluids and take remedial action regarding the well. Written plugging instructions must be obtained from Mr. Howard prior to the well being plugged. EPS representatives would be required to file a form 1001 Notification of Intention to Plug the Well with the Commission's District I office in Kingfisher, Oklahoma, prior to the well being plugged, and a Commission representative needs to be present during the plugging of the well. You can contact me if you have any questions regarding this matter.

However, Mr. Howard testified that EPS representatives did not notify him of the date and time such EPS representatives were to be at the site to investigate the source of the fluids and take remedial action regarding the well. Testimony

reflected that work has apparently been done on the well without EPS representatives notifying Mr. Howard and that Mr. Howard has not been advised as to what work was done on the well, by whom and when. Mr. Howard also testified that although fluids in the amount he had previously observed around the wellhead were not apparent during the more recent site inspections he was still concerned that the Emmons #1-19 well in its current condition could pose a threat to the environment. Therefore, Mr. Howard and the Commission requested that the Motion to Expedite filed in this cause by Commission be granted.

3) At the hearing before ALJ Leavitt, EPS's testimony was that EPS needed more time to obtain an attorney and they requested the hearings regarding exceptions should be continued. The original hearing date was January 21, 2014 with the request by Commission to expedite the hearing on exceptions to the motion to reopen to be moved to January 7, 2014. ALJ Leavitt found that the potential risk to the state was not an emergency and therefore one week could be provided to EPS from the hearing on January 7, 2014 to the hearing set on January 14, 2014 in order for EPS to obtain an attorney and to prepare his case. The Referee sees no reason to vary the determination of ALJ Leavitt and therefore the Referee finds that the ALJ's Oral Decision/Report should be affirmed concerning the Commission's Motion to Expedite.

**RESPECTFULLY SUBMITTED THIS 24<sup>TH</sup> day of January, 2014.**



Patricia D. MacGuigan  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas  
Commissioner Anthony  
Commissioner Murphy  
Jim Hamilton  
ALJ David Leavitt  
Larry Stewart  
Russell Walker  
Michael Rogalin  
Ms. Doneen Douglas Jones  
Susan Conrad  
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