

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

FILED
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CORPORATION COMMISSION
OF OKLAHOMA

<u>APPLICANT:</u>	RON DUNKIN, ACTING) DIRECTOR, OIL AND GAS) CONSERVATION DIVISION,) OKLAHOMA CORPORATION) COMMISSION)	
<u>RESPONDENTS:</u>	MONTCLAIR ENERGY, LLC)	CAUSE EN NO.) 201400049-T)
<u>RELIEF SOUGHT:</u>	CONTEMPT FOR VIOLATION OF) COMMISSION RULES &) REGULATIONS)	

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **Kathleen M. McKeown**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 18th day of June, 2014, at 8:30 a.m. in the Commission's Courtroom, Kerr Building, 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: **Connie Moore**, Assistant General Counsel, appeared on behalf of applicant, Ron Dunkin, Acting Director, Oil and Gas Conservation Division, Oklahoma Corporation Commission ("OCC" or the "Staff"); **John E. Lee, III**, attorney, appeared on behalf of Montclair Energy, LLC ("Montclair"); and **Jim Hamilton**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed her Report of the Administrative Law Judge on the 2nd day of July, 2014, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 15th day of August, 2014. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

MONTCLAIR TAKES EXCEPTION to the ALJ's recommendation that the application be granted and the \$75,000 fine be levied against Montclair with an order issuing out of the cause containing the recommendations set forth in the ALJ's Report.

Montclair spud the Cherry Hills #1-5H well without an approved intent to drill when a rig moved on site on March 25, 2014. The Montclair emergency spacing and location exception hearings set for the next day were protested and ultimately continued for hearing to March 31, 2014. After receiving a complaint about the Montclair Cherry Hills #1-5H well, a District I Commission representative visited the well site and ordered it shut down on March 28th until an approved permit to drill was received. Drilling was shut down for almost two hours and then resumed, still without an approved permit to drill. An approved permit to drill was received on April 3, 2014. The subject contempt seeks a fine of \$5,000 per day for the 10 days the well was drilling without an approved permit to drill (\$50,000); an additional fine of \$5000 per day is requested for the five days that Montclair operated the well without a permit after the Commission ordered that it be shut down (\$25,000). Montclair asserts that: 1) they were unaware of the temporary authorization of commencement for five working days available through the Commission's Technical Services Department; and 2) after conversations with Commission representatives Montclair understood that a one-time fine of \$1000 would be assessed by the Commission for drilling without an approved permit to drill and, given the rig standby fee of \$17,000 per day that would be incurred if the rig were not in use, a business decision was made to continue drilling the well without a permit.

MONTCLAIR TAKES THE POSITION:

- 1) The fine recommended by the ALJ is extraordinarily excessive and violates the provisions of Oklahoma Constitution, Article 2, Section 9.
- 2) The fine recommended by the ALJ is grossly disproportionate to any damages sustained by the Commission due to Montclair's commencement of drilling operations on its Cherry Hills #1-5H well without an approved drilling permit.
- 3) The fine recommended by the ALJ is contrary to, and violative of, OCC-OAC 165: 10- 3-1 (a)(3) and OCC-OAC 165: 10-7-9, Appendix E.

- 4) The fine recommended by the ALJ is unconstitutional under Oklahoma Constitution, Article. 9, Section 19.
- 5) The fine recommended by the ALJ is wholly inconsistent with, and is unprecedented by, all other similar contempt causes prosecuted by the Commission.
- 6) The fine recommended by the ALJ is unsupported by competent evidence and is therefore, arbitrary.
- 7) The ALJ, in determining her recommended fine, failed to consider competent evidence of Montclair's continuous communication with Commission personnel regarding its diligent quest for an approved drilling permit for the Cherry Hills #1-5H well.
- 8) Montclair requests the Report of the ALJ be reversed or modified, and that the Commission find and order that no fine is warranted herein or, in the alternative, that any fine imposed be fair and just, that it comport with the Oklahoma Constitution, that it be countenanced by Commission Rules and that it be consistent with Commission precedent.

THE ALJ FOUND:

- 1) After taking into consideration all of the facts, circumstances, evidence and testimony presented in the cause, it is the recommendation of the ALJ that the application in EN 201400049-T be granted and a \$75,000.00 fine be levied against Montclair.
- 2) The facts in this case are not at issue so much as is the question of the fine amount that should now be imposed based on the actions of Montclair. Montclair has been a bonded oil and gas operator for several years in Oklahoma and is subject to the state statutes, Commission rules and regulations. All operators are expected to be completely familiar with said regulations including the fines applicable to violations of these rules and regulations. The facts are that the Cherry Hills #1-5H well was spud the day before the emergency application hearings were scheduled; three days after the well was spud the Commission shut the drilling down due to lack of an approved drilling permit; within two hours of the shut down, drilling was recommenced pursuant to a decision by Montclair to risk a Commission fine rather than incur the \$17,000 per day standby fee for the rig. The approved permit to drill was issued on April 3rd, resulting in 10 days of unauthorized drilling by Montclair and five days of drilling that took place after the Cherry Hills #1-5H well was shut down by the Commission.
- 3) 52 O.S. Section 102 states in part:

"Punishment by the Commission in proceedings as for contempt for disobedience or violation of any provision of Section 86.1 et seq, of this title or any of its orders, rules, regulations or judgments, issued, promulgated or rendered under the provisions of Section 86.1 et seq. of this title shall be by fine not exceeding in amount Five Thousand Dollars (\$5000.00), 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."

OCC-OAC 165:10-7-7(e) states:

In shutting down a lease or facility, the district manager or field inspector shall affix at the site a red tag (directive to shut down). If the alleged violator removes or ignores a red tag, the district manager or field inspector shall refer the matter to the Office of General Counsel for prosecution and the Commission may levy a fine up to \$5,000.00."

Under the above rules, it is clear that, given the facts presented in this cause, fines may be levied in the amount sought by the Commission. While no red tag was physically attached to anything at the Cherry Hills #1-5H well site an oral "directive to shut down" was given by the Commission Field Representative to stop the drilling operations until an approved permit to drill was obtained. After less than two hours, drilling operations were continued in flagrant violation of the Commission rules and the shut down order given by the Field Representative.

4) Telephone calls and meetings occurred between Montclair representatives and Commission personnel regarding the lack of a drilling permit, delay of the emergency hearings and the continued drilling. For whatever reason, the availability of a temporary drilling authority was not explored and, in fact, the Montclair witness stated that she had no knowledge of this provision. The end result of these conversations, however, was that Montclair understood that: 1) it had been given oral permission to drill without an actual approved drilling permit; and 2) any contempt action would request a one-time total fine of \$1000.

5) While the Commission realizes that the fine amount is high, it is important to note that these violations are very serious and fly in the face of the authority given to the Commission by the state statutes. The intentional choice made by Montclair (referred to as a "business decision") after balancing the day rate for the rig with the Commission fine should not be an option for

companies deciding whether to comply with Commission rules and regulations. If anything, it would appear that Commission fines should be raised to match any rig/equipment standby rates if compliance is based on a cost analysis. Montclair's actions in this matter are not reflective of good business practice and, continuing in this manner could lead to the revocation of Montclair's plugging bond thus preventing them from conducting any further oil and gas operations in this state. The ALJ believes that the fines recommended by the Commission staff are fair and do not overstep any bounds.

6) In light of the aforementioned conclusions, it is the recommendation of the ALJ that the application in EN 201400049-T be granted and the \$75,000.00 fine be levied against Montclair. Any order issuing out of the cause should contain the recommendations set forth by the ALJ.

POSITIONS OF THE PARTIES

MONTCLAIR

1) **John E. Lee, III**, attorney, appearing on behalf of Montclair, stated Montclair drilled a series of wells in T13N, R5E, Lincoln County, Oklahoma. Horizon Energy Services, LLC ("Horizon") was contracted by Montclair to drill three wells in the area. Montclair filed an Emergency Application with the Commission on March 19, 2014, because the Horizon rig was ahead of schedule and it was ready to move to the Cherry Hills #1-5H well to begin drilling.

2) Due to the protest by Equal Energy, there were continuances and delays due to no fault of Montclair's, and the emergency hearing was not held until March 31, 2014 and the permit was not granted until April 3, 2014. The well spud March 25, 2014, the day before the originally scheduled hearing for the Emergency Application. Spud notice was also given to the Commission prior to the date of spud.

3) On March 28, 2014, the Commission Supervisor for District I got a call complaining that Montclair had started a well without a drilling permit. Phil Jones, a Commission employee, went to the Cherry Hills #1-5H wellsite and found no valid drilling permit on the rig and told them to shut the well down. They stopped drilling at that point. Montclair had given a spud notice to the Commission prior to the spud date. There was conversation with the Commission and Montclair thought the fine would be \$1,000. Since Montclair had \$17,000 a day stand by rig rate, Montclair resumed drilling after a few hours.

- 4) Relevant evidence of diligent communications between Montclair and the Commission, in regards to an application for a temporary permit should be given consideration.
- 5) The fine recommended by the ALJ is in violation of the Oklahoma Constitution, Article 2, Section 9, prohibiting excessive fines, as well as, Article 9, Section 19, for failing to give notice of violation and failing to allow time to come in compliance.
- 6) Drilling a well without a permit is governed by OCC-OAC 165:10-3-1, stating that an operator may be fined up to \$1,000. Therefore, the statutory language contemplating fine amounts should be followed as intended by the legislature.
- 7) According to OCC-OAC 165:10-7-7 (b), when a complaint or citation is issued, a Form 1036 or phone call is required to inform the violator of the alleged violation and a time to come in compliance, prior to a shut-down order. No notification or time was given to bring the Cherry Hills #1-5H well into compliance before a Commission representative ordered it shut down.
- 8) A \$5,000 fine was handed down against GAW Oil Company, LLC, in Order No. 615127, and they had two wells without intents and a variety of other violations. Montclair had failed to get an intent for one well and had no other violations. The fine Montclair is facing is out of proportion to similar circumstance from the Commission.
- 9) A fine of \$75,000 is unsupported by precedent from similar contempt cases heard by the Commission and amounts to an abuse of discretion by the ALJ. A \$1,000 a day fine is appropriate because that is what is set forth in the statute. The ALJ's suggestion that the Commission's fines should be raised to match any rig equipment's standby rates if compliance is based on cost analysis is beyond the purview of any judge and very improper.
- 10) Montclair requests an appropriate fine of \$1,000 a day for failure to obtain a drilling permit.

OCC

- 1) **Connie Moore**, Assistant General Counsel, appearing on behalf of the Commission, stated that the previous well site the Horizon rig was on, Beth Page Black well in Section 4, T13N, R5E, Lincoln County, finished early, between March 12, 2014 and March 18, 2014. Montclair noticed early on that the Beth Page Black well drilled faster than anticipated. However, Montclair

failed to file their location exception for Cherry Hill #1-5H until March 19, 2014, and had the hearing set for March 26, 2014, twenty-four hours after they spud the well. It was Montclair's intention to file the application when it did to allow as little notice as possible to Equal Energy, given their previous protest to location exception applications.

2) Once drilling commenced on the Cherry Hills #1-5H well the Commission had no official record of what the well was, where it was located or anything. If Equal Energy hadn't notified the Commission about the well, Montclair would have gone ahead with their hearing as if nothing had happened.

3) Upon notification to the Commission, Mr. Jones, the field inspector, visited the well and without an intent to drill permit, the well was shut down while Mr. Jones was on site. Drilling was stopped for less than two hours before it continued again, still without an approved permit.

4) Montclair was under the impression that the rules called for a thousand dollar fine for drilling without intent. Under this belief Montclair continued to drill after being instructed to shut down based on a cost analysis of the \$17,000 standby charge for the Horizon rig.

5) The cases offered by Montclair are distinguishable from the circumstance at hand because the cases offered had already been drilled and had API numbers. Specifically in the GAW Oil Company, LLC ("GAW") case, EN 201300055, GAW had drilled the wells and when they filled in the completion reports there were additional zones that weren't on the report. If Montclair went further back in the Commission records he would have found cases that had \$5,000 a day fine when facilities were operating without a permit in contempt.

6) Phil Jones, field inspector, and Jim Waite, field inspector supervisor, both tried to call Montclair, in compliance with OCC-OAC 165:10-7-7 (b), before they shut in the well but no one answered the phone.

7) Neither Jim Waite nor Phil Jones could have approved a temporary permit because only Ron Dunkin, the Oil and Gas Conservation Division director can issue a temporary permit according to the Commission rules.

8) Montclair knew by February 24th that they needed a location exception for the Cherry Hills #1-5H well. They waited to file for the location exception until March 19th because it was a business decision to not let Equal Energy know because Montclair had so many problems with Equal Energy.

9) There is no constitutional issue in this case. The Oklahoma Constitution applies to crimes. Drilling permit violations are not crimes.

10) A \$5,000 a day fine is justified because the violation was intentional and egregious. Deciding to follow regulations should not hinge on a business decision.

11) *CPC International, Inc. v. Illinois Pollution Control Board*, 321 N.E.2d 58 (Ill. App. 3d 1974), cited by Montclair is distinguishable from the case at hand. The present controversy consisted of a deliberate act on the part of Montclair while in the *CPC International, Inc. v. Illinois Pollution Control Board* case, *supra*, it wasn't a deliberate act on the part of the Plaintiff.

12) Montclair also cited *U.S. v. Bajakajian*, 524 U.S. 321, 1185 S.Ct. 2028, 141 L.Ed.2d 314, (1998), as case law representing excessive fines. However, the cited case dealt with forfeiture and this controversy does not. The fine imposed on Montclair is allowed by statute and was approved by the legislature for these kinds of circumstances. The Supreme Court agreed that 52 O.S. Section 102 applies when the Commission chooses to use its discretion for unusual circumstances. *Stamford Energy Companies, Inc. v. The Corporation Commission*, 764 P.2d 880 (Okl. 1988).

RESPONSE OF MONTCLAIR

1) Montclair was in constant communication with the Commission while they were trying to get the permit approval.

2) Failing to have a drilling permit is a \$1,000 fine as stated by the Oklahoma Constitution, Article 9, Section 19 and OCC-OAC 165:10-3-1. The Commission should follow the rules as the legislature intended.

3) The Commission should make the approval date April 3, 2014, relate back to when it should have been approved on March 26, 2014. Equal Energy intentionally delayed the hearing and then suddenly withdrew their protest on the day it was to come on for trial.

4) While the well was being drilled there were no emergencies. There was enough surface pipe, surface pipe cement and the operations were below the base of the treatable water. This does not make for an extraordinary circumstance. Further, Montclair has a history of no violations with the Commission and Altex Energy Corporation, the predecessor to Montclair, has a history of no violations.

5) There are three cases that speak to commencing a well or commencing operations without intent. All three cases are considered serious violations according to the Oil and Gas Conservation Division. The first fine was \$5,000

to GAW Oil Company, LLC from Order No. 615127, the second fine was \$1,250 to Stephens and Johnson Operating Co. from Order No. 608896, and third, a fine of \$1,250 to Devon Energy Production Company, LP from Order No. 622996. Therefore, the recommended fine of \$75,000 is disproportionate, unsupported, and unfair.

CONCLUSIONS

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

1) The Oklahoma Corporation Commission has the 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).

2) 52 O.S. Section 102 provides:

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

Section 719 et seq. of Title 12 of the Oklahoma Statutes provided that such procedure shall be followed regardless of whether the offender is a resident or nonresident of Oklahoma. Such fine or penalty shall constitute and be a lien upon all the property of the offender within the state, except the homestead of such offender, provided that a copy of the order imposing the fine or penalty, certified by the Secretary of the Commission, is filed in accordance with Section 706 of Title 12 of the Oklahoma Statutes. All monies collected as fines or penalties under the provisions of Section 86.1 et seq. of this title shall, when paid into or received by the Commission, be by it paid to the State Treasurer of the state for the credit of the Corporation Commission Revolving Fund.

3) The Referee notes that one must recognize a Commission contempt proceeding is characterized as *sui generis* in Oklahoma. *Vogel v. Corporation Commission of Oklahoma*, 121 P.2d 586 (Okl. 1942); *Stamford Energy Companies, Inc. v. Corporation Commission of State*, 764 P.2d 880 (Okl. 1988). It is neither a civil nor a criminal proceeding. *State ex rel. Short v. Owens*, 256 P. 704 (Okl. 1927). The Commission's contempt power is derived from both the Oklahoma Constitution and statute. See, Article 9, Section 19, Oklahoma Constitution; 52 O.S. Section 102. Thus it is unique. "It is neither civil nor criminal, but may partake of either in its nature."

4) The Oklahoma Supreme Court states in *Stamford Energy Companies, Inc. v. Corporation Commission of State*, supra, at 882:

Oklahoma's characterization of a contempt proceeding as *sui generis* is beyond dispute. *State ex rel Young v. Woodson*, 522 P.2d 1035, 1039 (Okla. 1974); *Vogel v. Corporation Commission of Oklahoma*, 190 Okl. 156, 121 P.2d 586, 588 (1942). This Court has long held that the violation of a Commission order punishable as contempt does not constitute a crime and a contempt proceeding is not a criminal prosecution. Based on these principles, this Court in *Vogel*, supra, held that although the Commission acts as a quasi-judicial body it is an administrative agency, not a trial court, and as such is not subject to the constitutional and statutory provisions concerning contempts of court which mandate trial by jury in particular proceedings for contempt.

5) Thus, the Commission's contempt power is what it wishes to be so long as the Commission stays within the express and implied jurisdictional limits placed on it by the Oklahoma Constitution and 52 O.S. Section 102. *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okl. 1984); *Burmah Oil & Gas Company v. Corporation Commission*, 541 P.2d 834 (Okl. 1975); and *Kingwood Oil Company v. Hall-Jones Oil Corporation*, 396 P.2d 510 (Okl. 1964).

6) The Oklahoma Constitution, Article 9, Section 19, provides:

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

(proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the Commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense: Provided, That should the operation of such order or requirement be suspended, pending any appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

7) 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.

8) Montclair entered into a drilling contract with Horizon Energy Services, LLC on January 18, 2014 for a three-well package covering the Cherry Hills #1-5H well and providing for a \$17,000 per day standby rate. On March 12, 2014, Montclair filed a location exception application for the Cherry Hills #1-5H well with emergency applications being filed in the spacing and location exception cases on March 19, 2014 and emergency hearings were specially set for March 26, 2014. The Horizon rig spudded the Cherry Hills #1-5H well on March 25, 2014. Due to a notice issue on March 26, 2014, the emergency hearings were continued to March 28, 2014. On March 28, 2014, a Motion to Continue was argued and denied with the denial being upheld on appeal and the emergency hearings were continued to March 31, 2014 with a contested emergency hearing commencing but not concluded until April 1, 2014. On March 28, 2014 the District I Commission field inspector after receiving a complaint about the Cherry Hills #1-5H well being operated by Montclair without a permit, visited the well site, ordered the Cherry Hills #1-5H well shut down until an approved permit to drill was received. Drilling was shut down for approximately two hours. Faced with putting the well on standby and incurring the standby day rate of \$17,000, Montclair made the "business decision" to risk a Commission fine rather than incur the \$17,000 per day standby fee for the rig and drilling operations were continued without an approved permit. Montclair was unaware of the temporary authorization for well commencement (OCC-OAC 165:10-3-1(a)) available from the Commission Technical Services department. On April 2, 2014 Equal Energy withdrew its protest and the drilling permit was approved on April 3, 2014. The current complaint for contempt of rules and regulations was filed by the Commission in the present contempt case on April 10, 2014.

9) Montclair takes exceptions to the fine recommended by the ALJ as being extraordinarily excessive and violates the provisions of Okla. Const. Article 2, Section 9, which provides:

Section 9. Excessive bail or fines - Cruel or unusual punishment. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Skinner v. State, ex rel Williamson, 115 P.2d 123 (Okla. 1941), reversed on other grounds, 316 U.S. 35, 62 S.Ct. 1110, 86 L.Ed. 1655, conformed to 155 P.2d 713 (1945) held that Article II, Section 9 of the Oklahoma Constitution applies to punishment for a crime. Therefore, penalties for contempt of Commission rules pertaining to violations of 52 O.S. Section 86.1 et seq., and concerning failure to obtain a permit to drill in violation of OCC-OAC 165:10-3-1(a) and failure to follow directive to shut down lease in violation of OCC-OAC 165:10-7-7(e) does not constitute "excessive fines" under Article 2, Section 9 of the Oklahoma Constitution. In addition, under the Constitution of the State of Oklahoma there are no provisions where penalties are unconstitutional per se. In addition, as stated previously "a contempt proceeding is *sui generis*, it is neither civil nor criminal, but may partake of either in its nature". *State ex rel Short v. Owens*, supra; *Eilenbecker v. District Court*, 134 U.S. 31, 10 S.Ct. 424, 33 L.Ed. 801.

10) Montclair also asserts that the ALJ ignored OCC-OAC 165:10-3-1(a)(3) and OCC-OAC 165:10-7-9, Appendix E which both provide for fines up to \$1,000 for failure of the operator to obtain a permit to drill. However, this is a contempt case and is reviewed independently with the fine being decided based upon the facts. Clearly 52 O.S. Section 102 provides that the orders, rules, regulations and judgments of the Commission must be followed or an operator will be found in contempt thereof. Said statute provides that violations can be up to \$5,000 per day. Consequently, 52 O.S. Section 102 supersedes the rule provision OCC-OAC 165:10-3-1(a)(3) and the OCC-OAC 165:10-7-9, Appendix E provision. It also should be pointed out that OCC-OAC 165:10-3-1(a)(3) states that an operator "may" be fined up to \$1,000. 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.

11) Montclair further asserts that Oklahoma Constitution Article 9, Section 19 prohibits the fine recommended by the ALJ. However, Oklahoma Constitution Article 9, Section 19 provides:

Any corporation failing or refusing to obey any valid order or requirement of the Commission, within reasonable time, not less than ten days, as shall be

fixed in the order, may be fined by the Commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the Commission may be deem proper, or such sum, in excess of five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense....(emphasis added)

Clearly the factual evidence presented by the Commission reflects that Montclair has shown contempt of the Commission rules and orders by its continued drilling of the Cherry Hills #1-5H well despite having no drilling permit and despite being shut down by the District I Commission field office.

12) OCC-OGR 165:10-7-7(e) states:

In shutting down a lease or facility, the district manager or field inspector shall affix at the site a red tag (directive to shut down). If the alleged violator removes or ignores a red tag, the district manager or field inspector shall refer the matter to the Office of General Counsel for prosecution, and the Commission may levy a fine up to \$5,000.00.

While it is clear that no red tag was physically attached to anything at the Cherry Hills #1-5H well site an oral "directive to shut down" was given by the Commission field representative to stop the drilling operations until an approved permit to drill was obtained. After less than two hours drilling operations were continued by Montclair in violation of the Commission rules and the shutdown order given by the field representative. The Supreme Court in the case of *Ashland Oil Inc. v. Corporation*, 595 P.2d 423 (Okl. 1979) stated:

It is further urged by Ashland that because Commission inspectors were on site and approved the original plugging of the well, it is both unreasonable to assume that the wells are improperly plugged, and that the Commission is estopped to raise the question of insufficient surface casing after the passage of so many years.

* * *

Even had the Commission's inspectors purported to give implied permission to Ashland to forego the requirements of Rule 206(a), such permission would

not be binding. The Rule had the force and effect of law and an agent of the Commission was powerless to waive the requirements of the Rule. Additionally, persons dealing with public officials are charged with notice of the limitations upon their powers. *Gammill v. Shackelford*, Okl., 480 P.2d 920 (1970).

Thus, Montclair is clearly responsible for being aware of the rules of the Oklahoma Corporation Commission and may not rely upon the possible shortcomings of others to evade their own obligation.

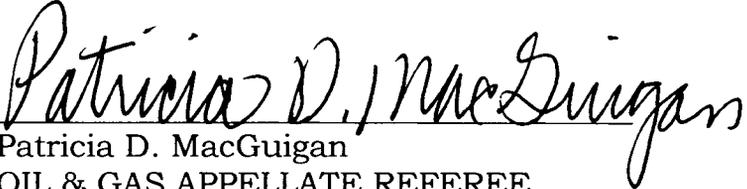
13) The ALJ in her Report states in paragraph 5, page 6:

While the Commission realizes that the fine amount is high, it is important to note that these violations are very serious and fly in the face of the authority given to the Commission by the State statutes. The intentional choice made by Montclair (referred to as a "business decision") after balancing the day rate for the rig with the Commission fine should not be an option for companies deciding whether to comply with Commission rules and regulations. If anything, it would appear that Commission fines should be raised to match any rig/equipment standby rates if compliance is based on a cost analysis. Montclair's actions in this matter are not reflective of good business practice, and continuing in this manner could lead to the revocation of Montclair's plugging bond thus preventing them from conducting any further oil and gas operations in this state. The ALJ believes that the fines recommended by the Commission Staff are fair and do not overstep any bounds.

The Referee agrees with the ALJ's recommendation and conclusions. For the above stated reasons and circumstances, the Referee would affirm the ALJ's recommendation that the application be granted and the \$75,000 fine be levied

against Montclair with an order issuing out of the cause containing the recommendations set forth in the ALJ's Report.

RESPECTFULLY SUBMITTED THIS 17th day of September, 2014.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Douglas
Commissioner Murphy
Jim Hamilton
ALJ Kathleen M. McKeown
Connie Moore
John E. Lee, III
Office of General Counsel
Michael L. Decker, OAP Director
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