

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

FILED
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APPLICANT:	TIM BAKER, DIRECTOR, OIL AND GAS CONSERVATION DIVISION, OKLAHOMA CORPORATION COMMISSION)	
)	COURT CLERK'S OFFICE - OKC CORPORATION COMMISSION OF OKLAHOMA
)	
RESPONDENT:	BLAKE PRODUCTION CO., INC.)	CAUSE EN NO.
)	201400096
RELIEF REQUESTED:	CONTEMPT, FINES, COMPLIANCE WITH COMMISSION RULES)	
)	
)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
REPORT OF THE ADMINISTRATIVE LAW JUDGE IN RESPONSE
TO MOTIONS TO DISMISS OF CASCADE INTEGRATED
SERVICES, L.L.C. AND TEXOMA MANUFACTURING, LTD.**

The Motions To Dismiss Texoma Manufacturing, Ltd. and Cascade Integrated Services, L.L.C. came on for hearing before **Michael L. Decker**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 11th, 18th, and 26th day of May, 2015, at 9:00 a.m. in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **Evan A. McCormick**, attorney, appeared on behalf of Texoma Manufacturing, Ltd. ("Texoma"); **Christopher D. Wolek**, attorney, appeared on behalf of Cascade Integrated Services, L.L.C. ("Cascade"); **Russell J. Walker**, attorney, appeared on behalf of Blake Production Company, Inc. ("Blake"); **Timothy L. Martin**, attorney, appeared on behalf of Southern Frac Tank L.L.C. ("Southern Frac"); **Susan Dennehy Conrad**, Deputy General Counsel, and **Travis Weedn**, Assistant General Counsel, appeared on behalf of the applicant, Tim Baker, Director, Oil and Gas Conservation Division, Oklahoma Corporation Commission ("Staff" or "Applicant"); and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed his Report of the Administrative Law Judge on the 4th day of June, 2015, 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 27th day of July, 2015. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

BLAKE TAKES EXCEPTION to the recommendation of the Administrative Law Judge ("ALJ") that the Motions to Dismiss the Respondents Texoma and Cascade should be granted.

On May 11 and 18, 2015, Texoma and Cascade presented Motions to Dismiss the contempt proceedings in EN 201400096 as to Cascade and Texoma. On May 11, 2015, arguments were presented on behalf of Texoma by Evan McCormick. Attorney Christopher Wolek supported the Texoma Motion on behalf of Cascade.

Texoma and Cascade argued that the present Motions were similar to a previous Motion to Dismiss successfully presented by Southern Frac, which had resulted in an agreement with Respondent Blake to dismiss Southern Frac, a tank manufacturer, from the contempt action pertaining to the Hennessey Unit #1-3H OS well, NE/4 SW/4 SE/4 SW/4 of Section 3, T18N, R7W, Kingfisher County, Oklahoma. Texoma had been added as a respondent to EN 201400096 for the purpose of establishing indemnification between Texoma and Cascade and Respondent Blake. The indemnification and liability issues would be addressed in the lawsuit filed by Blake in Kingfisher County District Court.

Blake argued that statutory provisions, such as 52 O.S. Section 139, indicated the Commission maintains exclusive jurisdiction over disposal and storage of oil and gas substances and refuse. Pursuant to the statutory language, Blake contended the Commission's rules and orders pertaining to storage of deleterious substances would provide the agency with power over all equipment and commercial activities related thereto on oil and gas sites under its statutory jurisdiction. Blake cited 52 O.S. Section 141 for the position that the Commission is granted "all powers" needed to enforce its exclusive jurisdiction over oil and gas exploration and production well sites.

Blake also cited 17 O.S., Section 52 in support of the exclusive jurisdiction argument. Blake argued that pursuant to the statutes, it was clear the parties who provided tanks and equipment should be subject to the Commission's contempt authority.

Texoma stated that neither Texoma nor Cascade had exercised direct contact with the well site in Kingfisher County, Oklahoma. Blake had not objected to the dismissal of Southern Frac because discovery resulted in a factual determination that it had not supplied any tanks to the Hennessey Unit well site. Blake contended the Commission could make the legal determination that it possessed exclusive jurisdiction over the supplier of equipment to a well site. The suppliers in the instant situation should be held accountable for the cause of the tank leaks, which resulted in saltwater contamination. An offer to rent defective tanks and equipment should render a supplier liable before the Commission for contempt, fines, and penalties.

BLAKE TAKES THE POSITION:

- 1) The ALJ Report is contrary to the evidence, contrary to law, and if adopted, will result in injustice.
- 2) The ALJ Report ignores controlling statutes and rules.
- 3) The ALJ Report completely misinterprets case law claimed to be applicable.
- 4) The ALJ Report ignores the consequences of its recommendation, if adopted as a Commission order.
- 5) The requests in the third-party Respondents' Motions should be denied.

THE ALJ FOUND:

After consideration of the Motions, briefs, case authority, and arguments of counsel, the ALJ recommends as follows:

1). The ALJ recommends that the Motions to Dismiss the Respondents Texoma and Cascade should be granted; however, Blake should be provided the opportunity to present evidence regarding the facts about how the pollution incident occurred and its compliance with commission rules, if such occurred.

2) As an initial, unprotested motion to join parties, it was reasonable to add Texoma, Cascade, and Southern Frac according to the provisions of OCC-OAC 165:10-7-5(a). Texoma, Cascade, and Southern Frac were added to the contempt action pursuant to the motion of Blake to join third party respondents. Order No. 633973 was issued on December 9, 2014, based upon Blake's presentation of an unprotested motion to add parties. A Motion to Join Party as Respondent is a step sometimes employed by operators that are named as respondent to a contempt action. See OCC-OAC 165:5-9-5(e). Upon the further development of the cause, it was appropriate for additional consideration to be given to the circumstances.

3) Upon the filing and presentations of Motions to Dismiss by Southern Frac, Cascade, and Texoma, the roles of the three added respondents in the situation involved in the contempt action were defined more completely. Southern Frac was dismissed by agreement with Blake, because it had no connection with any frac tanks used on the site of the pollution incident. Cascade and Texoma requested dismissal from the action, because, although tanks used on the site had come from the companies' inventories, neither entity had actually performed work on the site.

4) After review of the briefs and arguments of the parties, it is recommendation of the ALJ that the Cascade and Texoma Motions to Dismiss should be granted. Neither entity performed any direct work on the well site, the Hennessey Unit #1-3H OS well, NE/4 SW/4 SE/4 SW/4 of Section 3, T18N, R7W, Kingfisher County, Oklahoma, which is the location of the pollution incident. The Oklahoma Supreme Court's decision in *Stamford Energy Companies, Inc. v. Corporation Commission of State of Oklahoma*, 764 P.2d 880 (Okla. 1988), is the controlling precedent. The *Stamford* court imposed a nondelegable duty to comply with the Commission rules upon the operator/respondent in a pollution-related contempt action. The court held at 1988 OK 25, ¶19:

It is well settled that when a party owes a legal or contractual duty to another he may not escape liability for failure to perform that duty by delegating that responsibility to an independent contractor. *Timmons v. Royal Globe Ins. Co.*, 653 P.2d 907, 914 (Okla. 1982); *Jack Cooper Transport Co. v. Griffin*, 356 P.2d 748, 754 (Okla. 1959); *Shell Pipeline Corporation v. Curtis*, 287 P.2d 681, 685 (Okla. 1955). Appellant relies primarily on the argument that the Commission contempt proceeding is criminal in nature therefore this rule of law has no application. We reject this argument for two reasons. First, as we have determined above, a contempt proceeding is not a criminal proceeding and the contemptuous conduct is not a crime. *Vogel*, supra. **Second, under the explicit terms of § 318.1 appellant operator has a statutory nondelegable duty to comply with the Commission rules and regulations and statutes of this State in the operation of a well. It is apparent the Legislature intended to hold an operator responsible for the enforcement of the conservation laws and regulations, including rules with regard to pollution as in the present case.**

Appellant was subject to the prescriptions of Rule 3-110.1 and as such was required to operate the well in a manner that would prevent pollution. Statutory and constitutional provisions empower the Commission to punish as for contempt an operator for violation of any provision under the oil and gas conservation laws of the State or any order, rule or regulation of the Commission made thereunder. Failure to abide by Rule 3-110.1 imposes contempt liability. We hold the Commission did not err in finding appellant liable for contempt for noncompliance with Rule 3-110.1. (Emphasis added.)

5) Texoma and Cascade should be dismissed as respondents because, according to *Stamford*, subcontractors (or as is the case with the instant application, subcontractors of subcontractors) cannot be held liable as respondents subject to fines and commission contempt orders.

6) The controlling nature of *Stamford* is underscored by the fact that the Commission's oil and gas conservation rule analyzed by the court in *Stamford* (cited in 1988 as Oklahoma Corporation Commission rule 3-101) is the exact same rule cited in the instant cause by the agency's Oil and Gas Conservation Division as the basis of the alleged violations in EN 201400096: OCC-OAC 165:10-7-5(a). The argument that the phrase "any person," as provided in the rule, should be interpreted to include entities such as Texoma and Cascade was clearly rejected by the *Stamford* court's construction of the Commission's contempt authority pursuant to OCC-OAC 165:10-7-5(a). If a subcontractor directly performs work on a well site and causes pollution that is the reason for the action, the validity of the "any person" interpretation of OCC-OAC 165:10-7-5(a) might justify joining such an entity as a respondent to a contempt action. The status of Texoma and Cascade, however, in the instant contempt proceeding is too remote to justify their inclusion as respondents subject to Commission fines and contempt orders.

7) *Stamford* is the controlling precedent; therefore, Texoma and Cascade should be dismissed as respondents to the contempt action, but the companies are subject to district court jurisdiction in the pending action for indemnification and contribution. See *Stamford*, 1988 OK 25 at ¶8, where the court stated:

An operator is not released from liability imposed in a contempt proceeding merely because other persons are also subject to liability under Rule 3-101. **We note, however, that an operator may be entitled to indemnity from its independent contractor in the**

amount of the contempt fine and, if it so desires, could maintain an indemnity action in district court against its contractor. 12 O.S. 1981 § 832 (F); *Braden v. Hendricks*, 695 P.2d 1343, 1349 (Okla. 1985); *Porter v. Norton-Stuart Pontiac-Cadillac of Enid*, 405 P.2d 109, 113 (Okla. 1965). (emphasis added.)

8) Regardless of the necessity for dismissal of Cascade and Texoma as respondents required by *Stamford Energy Companies v. Corporation Commission*, supra, the Oklahoma Court of Civil Appeals decision in *Morgan v. Corporation Commission and Chevron USA Inc.*, 274 P.3d 832 (Okla. Civ. App. 2012) provides precedent to permit Blake to present evidence in the contempt action demonstrating the facts concerning the leaks, which caused the pollution incident and its compliance with Commission rules. In *Morgan*, 2012 OK CIV APP 31 at ¶15, the court held the commission has jurisdiction to consider in its proceedings whether an operator has complied with the agency's rules and regulations:

The OCC clearly has "exclusive jurisdiction over the operation, maintenance, site remediation, closure and abandonment of facilities used in the drilling, development, production and processing" of oil and gas on a lease and it is charged with the duty to promulgate and enforce rules and issue and enforce orders governing and regulating the oil and gas industry. See e.g., 27A O.S.2001 and Supp. 2009, § 1-3-101(E)(1) and (2); 52 O.S.2001 and Supp. 2009, § 139; and 17 O.S.2001 and Supp. 2009, §§ 52, 53. 1, and 53.2. **As part of this duty, the OCC may properly determine whether an operator has complied with applicable statutes, rules, and regulations. For example, the OCC may determine whether an operator has removed surface trash and debris from facilities, maintained their facilities in a neat and orderly manner, maintained lease roads in a passable condition, and whether a well should be temporarily or permanently plugged.** See e.g., 17 O.S.2001, § 53; 17 O.S.2001, § 53.1; OAC 165:10-3-17; and OAC 165-10-11-9. However, claims regarding "the relationship of the parties; their duties; their rights and obligations; and the existence of liability for the breach of such duties," may not be considered by the OCC and are exclusively within the district court's jurisdiction. *Samson Res. Co.*, 1985 OK 31, at ¶ 15,

702 P.2d at 23; see also *Tenneco*, 1984 OK 52, 687 P.2d 1049. (Emphasis added.)

9) Therefore, according to the *Morgan* decision, Blake should be provided the opportunity to present evidence regarding the facts about how the pollution incident occurred and its compliance with commission rules, if such occurred.

POSITIONS OF THE PARTIES

BLAKE

1) **Russell J. Walker**, attorney, appearing on behalf of Blake, contends that all the parties involved in this matter were involved in the pollution of the lease site: Blake (as the operator) and Texoma and Cascade (as subcontractors or service companies). Therefore the Commission has exclusive jurisdiction, power, and authority to hear the matter and furthermore all three parties may be found responsible and fined by the Commission.

2) Blake maintains that the precedent set out in *Stamford Energy Companies, Inc. v. Corporation Commission*, 764 P.2d 880 (Okl. 1988) does state that the operator is liable and cannot delegate its liability. However, it does not state that the subcontractor cannot be made equally liable by the Commission. Blake argues, the reason Texoma and Cascade were made parties to the suit is so they can be found equally liable.

3) Blake contends that this matter involves neither public nor private rights. It involves oilfield pollution, over which the Commission has exclusive jurisdiction, power, and authority. In addition, Texoma and Cascade may be made and should remain parties to the action and they should be required to pay a fine for the pollution.

TEXOMA

1) **Evan A. McCormik**, attorney, appearing on behalf of Texoma, states that the relationship stated by Blake is a gross misstatement. Texoma at no time performed any services on the well site or provided any equipment. These facts were set forth in Texoma's Motion to Dismiss and Blake made no objections to these facts.

2) Texoma maintains that they had no involvement. Texoma was not responsible for maintaining the tank and had no private contract or legal obligation to provide services to Blake. Furthermore the Commission has no authority to determine facts or make rulings on private contracts. Also it is improper for Blake and not the Commission to add Texoma, for the sole purpose of indemnification. Therefore Texoma is contending that they have no liability in this matter and dismissal is proper.

CASCADE

1) **Christopher D. Wolek**, attorney, appearing on behalf of Cascade, contends that they are similarly situated as Texoma regarding participation in the well site. Cascade further adopts the arguments of Texoma.

2) Cascade additionally contends that *Stamford* provides the proper course for Blake, and that is to seek indemnity from its contractors in district court for what may amount to a private contract. *Stamford* further states that the operator cannot seek a private remedy from the Corporation Commission. Cascade maintains that they do not have a contract with Blake but if they did the Corporation Commission does not have the jurisdiction to hear the matter.

RESPONSE OF BLAKE

1) Blake argues that the complaint filed by the Commission doesn't include Texoma and Cascade as parties because the Commission doesn't know the background facts. The complaint is filed first and then evidence is presented. Blake states this is why it added Texoma and Cascade and the Commission didn't because they had no evidence.

2) The distinction between the authority of the Commission and the district court authority has nothing to do with the act that is being used in this matter. The act that is being used is 52 O.S. Section 139 to Section 146 and that gives the Commission exclusive jurisdiction, power, and authority to enforce the rules against pollution and against a wide range of people who operate in the oil field.

3) Finally, Blake states that evidence is put forth at trial and they have evidence that will demonstrate Cascade's responsibility. Blake states that they are willing to have an evidentiary hearing on the matter. Blake also reiterates that the Commission has the exclusive jurisdiction, power, and authority to hear this matter.

CONCLUSIONS

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

1) The Referee finds the ALJ's recommendation that the Motions to Dismiss the respondents Texoma and Cascade should be affirmed as it is supported by the weight of the evidence, by law and free of reversible error. 52 O.S. Section 87.1.

2) Blake has a non-delegable duty as the operator of the Hennessey Unit #1-3H OS well where the alleged pollution event occurred which supports dismissal of Cascade and Texoma. The Oklahoma Supreme Court in *Stamford Energy Companies, Inc. v. Corporation Commission of State of Oklahoma*, 764 P.2d 880 (Okl. 1988) held that an operator bonded and licensed under 52 O.S. Section 318.1 has a statutory nondelegable duty to "drill, operate and plug wells in compliance with the rules and regulations of the Commission and the laws of the state". Supra at page 882. The Supreme Court also noted that "[i]t is the operator's responsibility to see that all operations are in compliance with the law, regardless if a particular operation is conducted by the operator personally or by its independent contractor." Supra at page 882. Thus, the Oklahoma Supreme Court confirmed that the Corporation Commission has jurisdiction to impose contempt fines against an operator even if a particular operation causing pollution is conducted by an independent contractor.

3) In the present case Cascade and Texoma's connection to the alleged pollution event is even more remote than that presented in the *Stamford Energy* case. Neither Cascade nor Texoma performed any operations at the Blake Hennessey Unit #1-3H OS well. The tanks used on the well site had come from Cascade and/or Texoma's inventory.

4) Blake however has other options as noted by the Supreme Court in the *Stamford Energy* case, supra, at 883 where it states "we note, however, that an operator may be entitled to indemnity from its independent contractor in the amount of the contempt fine and, if it so desires, could maintain an indemnity action in district court against its contractor." Blake has pursued its claims for indemnity and contribution in a district court proceeding involving the same location entitled *Hawk v. Blake Production Company Inc. v. Cascade Integrated Services, LLC, and Texoma MFG. LLC*, Case Number CJ-2014-79, Kingfisher County, Oklahoma (and Texoma).

5) *Morgan v. Oklahoma Corporation Commission*, 274 P.3d 832, 836 (Okl.Civ.App. 2012) states that with respect to private rights disputes "[s]ubject matter jurisdiction rests solely with the district court to determine private

rights in mineral interests and oil and gas leaseholds." Disputes between two or more private persons or entities in which the public interest is not involved, the district courts, not the Oklahoma Corporation Commission, have jurisdiction. *Grayhorse Energy LLC v. Crawley Petroleum Corporation*, 245 P.3d 1249 (Okl.Civ.App. 2010). *Rogers v. Quiktrip Corporation*, 230 P.3d 853 (Okl. 2010); *Samson Resources Company v. Corporation Commission*, 702 P.2d 19 (Okl. 1985). Cascade and Texoma have been joined in this matter for the sole purpose of determining whether Blake has a private contractual right of indemnity against Texoma and Cascade. This is the essence of a private dispute over which the Corporation Commission does not have jurisdiction. Texoma apparently manufactured the storage tank which was moved to the subject well site by Cascade at the request of Blake. As the ALJ stated, the status of Texoma and Cascade in the present contempt proceeding is too remote to justify their inclusion as respondents subject to Commission's fines and contempt orders.

6) For the above stated reasons, the Referee would recommend that the Report of the ALJ should be affirmed.

RESPECTFULLY SUBMITTED THIS 12th day of November, 2015.


 Patricia D. MacGuigan
 OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
 Commissioner Murphy
 Commissioner Hiatt
 James L. Myles
 Evan A. McCormick
 Christopher D. Wolek
 Russell J. Walker
 Timothy L. Martin
 Susan Dennehy Conrad
 Travis Weedn
 Michael L. Decker, ALJ/OAP Director
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