

BEFORE THE OIL & GAS COMMISSION

M-I L.L.C. <i>dba</i> M-I SWACO,	:	Appeal No. 927
	:	
Appellant,	:	Review of Chief's Order 2016-158
	:	(modifying Chief's Order 2016-121);
-vs-	:	M-I SWACO Facility
	:	
DIVISION OF OIL & GAS RESOURCES	:	<u>ORDER OF THE</u>
MANAGEMENT,	:	<u>COMMISSION GRANTING</u>
	:	<u>MOTION TO DISMISS</u>
Appellee.	:	<u>APPEAL #927</u>

Appearances: Kenneth S. Komoroski, Daniel Carmeli, Counsel for Appellant M-I L.L.C. *dba* M-I SWACO; Brian Becker, Brian Ball, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

BACKGROUND

On May 27, 2016, Appellant M-I L.L.C. *dba* M-I SWACO ["M-I SWACO"] filed with the Oil & Gas Commission a *Notice of Appeal* from Chief's Order 2016-158. Chief's Order 2016-158 incorporates, and modifies, Chief's Order 2016-121. These Chief's Orders required the cessation of operations at a facility operated by M-I SWACO in Strasburg, Ohio ["the Strasburg Facility"].

M-I SWACO's Strasburg Facility leases synthetic drilling fluids, which are utilized in the exploration and production of oil & gas resources.

The Chief's Cessation Orders (#2016-121 and #2016-158) found that M-I SWACO's Strasburg Facility is an operation that "stores, recycles, treats and processes brine and other oilfield waste substances." As such, the Division ordered operations at the Strasburg Facility to cease until MI-SWACO applied for and obtained authorization to operate this facility pursuant to O.R.C. §1509.22.

Included in M-I SWACO's *Notice of Appeal* was a *Motion to Stay or Suspend Execution of Order*. On July 22, 2016, the Commission **granted** a limited stay of the Cessation Orders.¹

After receiving the Cessation Orders, and in order to resume facility operations, MI-SWACO applied for a temporary authorization to operate its Strasburg Facility pursuant to O.R.C. §1509.22. MI-SWACO asserts that it applied for this authorization under protest, as MI-SWACO maintains that the drilling fluids handled at its Strasburg Facility are a unique "product" and do not constitute "brine or other waste substances." For these reasons, MI-SWACO argues that the Strasburg Facility is exempt from regulation under O.R.C. §1509.22.

O.R.C. §1509.22 (B)(2)(a) provides in pertinent part:

On and after January 1, 2014, no person shall store, recycle, treat, process, or dispose of in this state **brine or other waste substances associated with the exploration, development, well stimulation, production operations, or plugging of oil and gas resources** without an order or a permit issued under this section or section 1509.06 or 1509.21 of the Revised Code or rules adopted under any of those sections.

(Emphasis added.)

Chief's Order 2016-121 was issued on April 25, 2016. Order 2016-121 required operations at the facility to cease until a permit under O.R.C. §1509.22 was obtained. Chief's Order 2016-158 was issued on May 9, 2016 and **modified** Order 2016-121, by expanding the abatement deadline for obtaining an authorization under O.R.C. §1509.22.

¹ The Commission's stay allowed MI-SWACO to resume operations at the Strasburg Facility in a safe and environmentally-sound manner. The Commission's stay was "limited" in that it required that: (1) if requested, MI-SWACO would provide the Division with transportation documentation relative to materials taken from the facility site, and (2) if the Division were to determine that contamination occurred at the facility site, MI-SWACO would immediately remediate and restore the site per the Division's directives.

In order to resume operations, on April 19, 2016, MI-SWACO applied for a permit under O.R.C. §1509.22. On July 22, 2016, the Division issued Chief's Order 2016-267. Chief's Order 2016-267 temporarily authorizes MI-SWACO to operate the Strasburg Facility. This Temporary Authorization serves as a "permit" for this facility under O.R.C. §1509.22.

MI-SWACO has appealed Temporary Authorization 2016-267 to this Commission, which appeal is designated as case #930.² Appeal #930 is currently scheduled for merit hearing on June 7, 2017.

In its appeal of Temporary Authorization 2016-267, MI-SWACO continues to argue that the materials handled at the Strasburg Facility do not constitute "brine or other waste substances," and that these materials should not be regulated under O.R.C. §1509.22

THE DIVISION'S MOTION TO DISMISS APPEAL #927

On February 1, 2017, the Appellee Division filed a *Motion to Dismiss* MI-SWACO's appeal of the initial Cessation Orders (appeal #927). The Division argued that its termination of the Cessation Orders (by virtue of MI-SWACO's application for, and the Division's granting of Temporary Authorization 2016-267), rendered appeal #927 moot.

On February 15, 2017, MI-SWACO filed a *Memorandum in Opposition* to the Division's motion. The Division *replied* on February 22, 2017.

² When the Division issued Temporary Authorization 2016-267, it also sent a letter to MI-SWACO informing the company that Cessation Orders 2016-121 and 2016-158 would be terminated. MI-SWACO also appealed this termination letter (appeal # 931). On February 15, 2017, MI-SWACO voluntarily withdrew its appeal of the July 22, 2016 termination letter. Appeal #931 was closed by the Commission on March 8, 2017.

JURISDICTION OF THE COMMISSION

The Oil & Gas Commission is created pursuant to O.R.C. §1509.35 to provide an administrative forum for the review of orders issued by the Chief of the Division of Oil & Gas Resources Management. The jurisdiction and authorities of the Oil & Gas Commission are both defined, and limited, by statute.

In accordance with O.R.C. §1509.36:

If upon completion of the hearing the commission finds that the order appealed from was lawful and reasonable, it shall make a written order affirming the order appealed from; if the commission finds that the order was unreasonable or unlawful, it shall make a written order vacating the order appealed from and making the order that it finds the chief should have made.

Where an order has been terminated, the Commission's ability to effectively affirm, vacate or modify that order is impeded. This is particularly true where other enforcement orders (addressing the same, or similar, issues) have been issued, which specifically supersede or replace the terminated order.

The Commission is aware that the "termination" of an order is distinct from the revocation, voiding or rescission of an order, and that a termination may carry with it different legal consequences than would revocation, avoidance or rescission. However, given that Cessation Orders 2016-121 and 2016-158 have been terminated, and that Temporary Authorization 2016-267 has been issued and appealed by MI-SWACO to this Commission, the Commission can see no just cause to maintain a separate appeal of the terminated Cessation Orders.

The issues raised in appeal #927 may be argued in MI-SWACO's pending appeal #930. Likewise, the parties are free to present factual background information at the hearing that may include evidence relating to Cessation Orders 2016-121 and 2016-158, as well as evidence relating to MI-SWACO's appeal of those Cessation Orders. Accordingly, MI-SWACO should not be prejudiced in any way by the dismissal of appeal #927.

Moreover, while appeal #930 is taken from a Temporary Authorization issued upon MI-SWACO's application, the Commission recognizes that it is MI-SWACO's position that the materials handled at its Strasburg Facility should not be characterized as "brine or other waste substances" and should not be subject to regulation under O.R.C. §1509.22. Therefore, at the hearing in appeal #930, the Commission would expect to hear evidence relative to the ultimate question of whether the materials handled at MI-SWACO's Strasburg Facility qualify for regulation as "brine or other waste substances" pursuant to O.R.C. §1509.22.

ORDER

Having considered the arguments of the parties, the Commission **GRANTS** the Division's *Motion to Dismiss* appeal #927. The dismissal of appeal #927 should not be viewed as restricting in any way the evidence that MI-SWACO may present in its pending appeal #930 relative to the issue of whether the materials handled at its Strasburg Facility qualify as "brine or other waste substances," and/or whether these materials are required to be permitted and/or regulated under O.R.C. §1509.22.

Date Issued: March 21, 2017

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