

BEFORE THE OIL & GAS COMMISSION

D & L ENERGY, INC., : Appeal No. 847
: :
Appellant, : :
: : Review of Chief's Order 2013-03
-vs- : :
: :
DIVISION OF OIL & GAS RESOURCES : FINDINGS, CONCLUSIONS
MANAGEMENT, : AND ORDER OF THE
: COMMISSION
Appellee. :

Appearances: Michael A. Cyphert, Bozana L. Lundberg, Counsel for Appellant D & L Energy, Inc.; Brian Ball, Assistant Attorney General, Counsel for Appellee Division of Oil & Gas Resources Management.

Date Issued: June 21, 2013

BACKGROUND

This matter comes before the Oil & Gas Commission upon appeal by D & L Energy, Inc. ["D & L Energy" or "D & L"] from Chief's Order 2013-03. Order 2013-03 was issued by the Chief of the Division of Oil & Gas Resources Management ["the Division"] on February 6, 2013. This order: (1) revoked six saltwater injection permits held by D & L Energy, (2) denied three applications for new injection well permits sought by D & L Energy, (3) ordered the cessation of temporary storage operations at a facility located on Salt Springs Road in Youngstown, Ohio, and (4) required D & L to dispose of all oilfield waste stored at the Salt Springs Road facility within a specified period.

On March 4, 2013, D & L Energy appealed Chief's Order 2013-03 to the Oil & Gas Commission. Accompanying D & L's Notice of Appeal was a Request for Stay. On April 22, 2013, the Commission conducted a hearing upon D & L's stay request. On April 25, 2013, the Commission denied D & L Energy's Request for Stay.

On May 22 & 23, 2013, this cause came on for hearing before three members of the Oil & Gas Commission. Commission member Robert Frost recused himself from this matter, and did not participate. Douglas Gonzalez participated as a temporary Commission member, pursuant to the provisions of O.R.C. §1509.35(C).¹ At hearing, the parties presented evidence and examined witnesses appearing for and against them.

ISSUES

The primary issue in this appeal is: **Whether the Division Chief acted lawfully and reasonably in issuing Chief's Order 2013-03, which order effectively terminated D & L Energy's oilfield waste disposal operations in the State of Ohio.**

In order to decide this primary issue, the Commission must consider: **(1) whether D & L Energy, Inc. bears any responsibility for an illegal dumping incident that occurred on January 31, 2013, (2) whether the Division Chief has authority to revoke injection well permits, and (3) whether the mandates of Chief's Order 2013-03 (*i.e.*, the revocation of six injection well permits, the denial of three injection well applications, and the cessation of D & L's oilfield waste storage and disposal business) are appropriate under the facts of this case.**

¹ The Oil & Gas Commission is created pursuant to O.R.C. §1509.35. O.R.C. §1509.35(B) provides in part:

Three members constitute a quorum and no action of the commission is valid unless it has the concurrence of at least a majority of the members voting on that action.

As a result of two vacancies and one recusal, the Commission was unable to seat a quorum of three appointed members to hear the D & L Energy matter. Where a quorum of regularly-appointed Commission members cannot be achieved, O.R.C. §1509.35(C) provides:

If the chairperson of the commission determines that a quorum cannot be obtained for the purpose of considering a matter that will be before the commission because of vacancies or recusal of its members, the chairperson may contact the technical advisory council on oil and gas created in section 1509.38 of the Revised Code and . . . may appoint temporary members to the commission. . . . A temporary member of the commission has the same authority, rights, and obligations as a member of the commission,

Commission Chairperson Dr. Karen Fryer followed the procedures of O.R.C. §1509.35(C), and appointed Technical Advisory Council member Douglas Gonzalez as a temporary member of the Oil & Gas Commission for the purpose of hearing and deciding the D & L Energy appeal.

THE LAW

1. O.R.C. §1509.36 provides that any person adversely affected by a Chief's order may appeal to the Oil & Gas Commission. O.R.C. §1509.36 addresses the standard of review applied in Commission appeals, and provides *inter alia*:

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.

Hearings before the Commission are *de novo* in nature, meaning that the Commission takes a "fresh look" at the evidence presented at hearing. The Commission is not restricted to a record developed before the Division Chief. Rather, the Commission may consider any evidence that either supports or refutes the Chief's decision under appeal.² In this appeal, Appellant D & L Energy shoulders the burden of proving, by a preponderance of the evidence, that Chief's Order 2013-03 was unlawful or unreasonable.

2. O.R.C. §1509.03(A) generally sets forth the Division Chief's rule-making authority, and specifically provides that:

No person shall violate any rule of the chief adopted under ...
chapter [1509].

² D & L Energy argues that the Commission cannot rely upon *post hoc* explanations when considering whether Chief's Order 2013-03 was properly issued. However, the Commission's *de novo* jurisdiction allows the Commission to consider evidence, perhaps not considered by the Division Chief, which either supports or refutes the ultimate action taken by the Chief. Cases cited by D & L for the proposition that the Commission's review of Chief's Order 2013-03 must be strictly limited to the record developed before the Division Chief, (*i.e.*, *Burlington Truck Lines v. U.S.*, 371 U.S. at 168-169 (1962), *Securities & Exchange Commission v. Chenery Corp.*, 332 U.S. 194, 196 (1947)), address limitations upon a court's review of an agency action. The Commission is an administrative review board, and operates on the agency level. The Commission's review is not restricted to a record developed before the Chief, and the Commission may freely evaluate factual issues. In fact, O.R.C. §1509.36 allows the Commission to substitute its judgment for that of the Chief (*i.e.* to modify a Chief's order under review) where appropriate. Thus, the scope of the Commission's review is not limited in same manner as an appellate court's would be. Decisions of the Oil & Gas Commission are directly appealable into the Ohio courts (*see* O.R.C. §1509.37). Judicial review of a Commission decision is limited to the record developed before the Commission.

O.R.C. §1509.03(D) further provides that:

The chief may issue orders to enforce ... chapter [1509], rules adopted thereunder, and terms or conditions of permits issued thereunder. ... No person shall violate a term or condition of a permit or registration certificate issued under this chapter.

3. O.R.C. §1509.04 addresses the Division Chief's enforcement authority, and provides in part:

(A) The chief of the division of oil and gas resources management, or the chief's authorized representatives, shall enforce this chapter and the rules, terms and conditions of permits and registration certificates, and orders adopted or issued pursuant thereto, ...

4. O.R.C. §1509.06 addresses the Division Chief's general permitting authority, and provides in part:

(E) A well shall be drilled and operated in accordance with the plans, sworn statements, and other information submitted in the approved application.

(F) The chief shall issue an order denying a permit if the chief finds that there is a substantial risk that the operation will result in violations of ... chapter [1509] or the rules adopted under it that will present an imminent danger to public health or safety or damage to the environment, provided that where the chief finds that terms or conditions to the permit can reasonably be expected to prevent such violations, the chief shall issue the permit subject to those terms or conditions, ...

5. O.R.C. §1509.22 addresses disposal of brine and other oilfield wastes, providing *inter alia*:

(A) Except when acting in accordance with section 1509.226 of the Revised Code [addressing agreements for the application of brine to government-owned highways], no person shall place or cause to be placed brine, crude oil, natural gas, or other fluids associated with the exploration or development of oil and gas resources in surface or ground water or in or on the land in such quantities or in such a manner as actually causes or could reasonably be anticipated to cause ... the following:

* * *

- (2) Damage or injury to public health or safety or the environment.

(B) No person shall store or dispose of brine in violation of a plan approved under division (A) of section 1509.222 or 1509.226 of the Revised Code, in violation of a resolution submitted under section 1509.226 of the Revised Code, or in violation of rules or orders applicable to those plans or resolutions.

(C) The chief of the division of oil and gas resources management shall adopt rules, and issue orders regarding storage and disposal of brine and other waste substances:

- (1) Brine from any well . . . shall be disposed of only by injection into an underground formation . . . , which injection shall be subject to division (D) of this section . . .

- (2) Muds, cuttings, and other waste substances shall not be disposed of in violation of any rule.

(D)(1) No person, without first having obtained a permit from the chief, shall inject brine or other waste substances resulting from, obtained from, or produced in connection with oil or gas drilling, exploration, or production into an underground formation unless a rule of the chief expressly authorizes the injection without a permit. The permit shall be in addition to any permit required by section 1509.05 of the Revised Code, . . . The chief shall adopt rules . . . regarding the injection into wells of brine and other waste substances resulting from, obtained from, or produced in connection with oil or gas drilling, exploration, or production. The rules shall include provisions regarding ... the following:

* * *

(c) The provision and maintenance of information through monitoring, record-keeping, and reporting. In addition, the rules shall require the owner of an injection well who has been issued a permit under division (D) of this section to quarterly submit electronically to the chief information concerning each shipment of brine or other waste substances received by the owner for injection into the well.

- (2) The chief may adopt rules ... that do ... the following:

* * *

(b) Establish requirements and procedures to protect public health and safety

6. O.A.C. §1501:9-3-01(I) defines an "injection well owner" as:

. . . a person with the right to inject saltwater on a subject tract.

7. Rules O.A.C. §1501:9-3-01 through §1501:9-3-13 provide permitting and regulatory information specific to disposal and injection operations. A primary purpose of these regulations is to protect surface and ground waters, and these rules expressly provide that injection wells, and storage locations, must be constructed in a manner that will "prevent pollution to surrounding surface and subsurface soils and waters" (*see* O.A.C. §1501:9-3-05(A)(6) and O.A.C. §1501:9-3-05(B)(7)). Applicants for injection well permits must demonstrate, to the Chief's satisfaction, that an injection well can be operated in a safe and environmentally-responsible manner (*see* O.A.C. §1501:9-3-06(C)). Where concerns regarding the siting of an injection well are raised, the Chief will not issue a permit unless he specifically finds that the proposed injection methods will not "jeopardize public health or safety" (*see* O.A.C. §1501:9-3-06 (H)(2)(d)(iii)).

8. O.A.C. §1501:9-3-04 specifically provides:

(A) All persons **engaged in any phase of saltwater disposal operations** shall conduct such operations in a manner which will not contaminate or pollute the surface of the land, or water on the surface or in the subsurface...

(B) All persons, . . . **engaged in any phase** of transportation and **disposal of saltwater operations** shall supply to the Division of [Oil and Gas] Resources Management by the fifteenth day of April of each year an **annual report** containing the following information:

(1) Quantities of saltwater hauled and/or disposed of during the previous calendar year according to methods of measurement used in the industry; and

(2) The location of the disposal and the quantity of saltwater disposed of at each location ...

(Emphasis added.)

9. O.R.C. §1509.22(H) requires the owner of an injection well to submit to the Division certain fees associated with the injection of oilfield waste into permitted injection wells. These fees are due to the Division on a quarterly basis.

FINDINGS OF FACT

1. The Division of Oil & Gas Resources Management received an anonymous tip that illegal dumping of oilfield waste might occur on January 31, 2013 on property located at 2761 Salt Springs Road in Youngstown, Ohio. Pursuant to this tip, on the night of January 31, 2013, the Division investigated activities occurring at that location. Division personnel encountered two individuals, traveling in a pick-up truck placarded as a Mohawk Disposal Management vehicle, at the Salt Springs Road property. Division personnel observed a hose running from the bottom drain of a 21,000 gallon storage tank (identified as a "frac tank") into a storm sewer inlet. The tank and the storm sewer inlet were both situated on property identified as 2755 Salt Springs Road (immediately adjacent to 2761 Salt Springs Road). The storm sewer catch basin contained approximately 2 feet (in depth) of what appeared to be "oil-based drilling mud and brine." Based upon the appearance of this material, and the nature of the activities, Division personnel contacted the Ohio Environmental Protection Agency ["EPA"].

2. On February 1, 2013, a representative of the Emergency Response Unit of the Ohio EPA visited the Salt Springs Road properties and commenced an investigation of the dumping incident. The Division continued its investigation of the incident. Eventually, representatives of the U.S. EPA and the Ohio EPA Special Investigations Unit also commenced investigations of this incident.

3. During investigations, Mr. Benedict ["Ben"] Lupo stated that he had directed employees of Hardrock Excavating to dump material from a "frac tank" into the storm sewer inlet at 2755 Salt Springs Road. Mr. Lupo admitted to directing previous releases of similar material six times between November 2012 and January 31, 2013. Interviews, conducted by the Ohio EPA Emergency Response Unit, indicated that such dumping incidents may have occurred as many as twenty times between November 2012 and January 31, 2013.

4. During interviews with the Ohio EPA Emergency Response Unit investigator, Mr. Lupo stated that the individuals dumping material on January 31, 2013 were employees of Hardrock Excavating, LLC. At Mr. Lupo's suggestion, documents generated by the Ohio EPA Emergency Response Unit named Hardrock Excavating, LLC as the responsible party. On February 28, 2013, an Indictment was filed in the federal court for the Northern District of Ohio (case no. 4: 13CR113). This Indictment cites Defendants Benedict W. Lupo, Michael P. Guesman and Hardrock Excavating, LLC for violations of the Clean Water Act. Investigations by the Ohio EPA Special Investigations Unit are on-going, and this unit has not yet issued any regulatory actions indentifying the responsible party for this illegal dumping incident. Following the January 31, 2013 dumping incident, the Division issued enforcement orders to D & L Energy, Inc. and to Hardrock Excavating, LLC.³

5. The storm sewer at 2755 Salt Springs Road conveys water for approximately 3,000 feet and discharges into an unnamed tributary to the Mahoning River. The length of the tributary, from the outfall of the storm sewer to its confluence with the Mahoning River, is approximately one-third mile. The Mahoning River is considered "federal navigable water."

6. On January 31, 2013, the Division collected samples of the material dumped into the storm sewer at 2755 Salt Springs Road. On February 1, 2013, additional samples were gathered by the Ohio EPA investigator. These samples were collected from: (1) a tank located at 2755 Salt Springs Road, (2) the storm sewer inlet at 2755 Salt Springs Road, and (3) the unnamed tributary to the Mahoning River. The samples were tested by a laboratory under contract with the Ohio EPA. The samples established that the material found in the inlet to the storm sewer at 2755 Salt Springs Road was "oil-based mud and brine," containing elevated levels of hydrocarbons, including benzene and toluene, as well as concentrations of chloride. Samples gathered from the unnamed tributary revealed that the tributary was heavily contaminated, and that the materials

³ On February 6, 2013, the Division issued Chief's Order 2013-02 to Hardrock Excavating, LLC. Consistent with O.R.C. §1509.224(A), this order offered Hardrock the opportunity to "show cause" why its Brine Transportation Certificate No. 25-497 should not be revoked. An informal hearing on Chief's Order 2013-02 was conducted by the Division on February 15, 2013. Thereafter, the Chief issued Order 2013-07, revoking Brine Transportation Certificate No. 25-497. Chief's Orders 2013-02 and 2013-07 were appealed by Hardrock Excavating to the Oil & Gas Commission. On June 17, 2013, Hardrock voluntarily dismissed its appeals, and these cases were closed on June 18, 2013.

found in the tributary matched the materials found in the storage tank and in the sewer intake. The materials found in the storm sewer at 2755 Salt Springs Road, and in the unnamed tributary to the Mahoning River, were consistent with oilfield waste. Oil-based material was observed in the Mahoning River. In collecting samples from the storm sewer located at 2755 Salt Springs Road, it was determined that several layers of this material existed in the sewer intake. These materials were "laminated," with some layers being as much as 4 inches thick. The "laminated" nature of the materials established that repeated dumping incidents had occurred at this location.

7. Pursuant to a consent agreement, D & L Energy assumed responsibility for the clean-up of the material dumped on January 31, 2013. According to testimony, clean-up costs - to date - exceed \$400,000. The Ohio EPA Emergency Response Team is overseeing the clean-up, and D & L Energy has hired environmental contractors to engage in the actual work required.

8. D & L Energy is a closely-held Ohio corporation. On January 31, 2013, the shareholders for D & L Energy were Ben Lupo (80.76%), Holly Serensky-Lupo (4.24%) and Susan Faith (15%). On July 7, 2008, all shareholders deposited their D & L Energy stock into the D & L Energy Voting Trust, in which their individual voting interests corresponded to their shareholder percentages. On January 31, 2013, Mr. Lupo was the President and Chief Executive Officer of the corporation, and Mr. Nicholas ["Nick"] Papadoris was the Executive Vice President. On February 15, 2013, Mr. Lupo resigned his position as President and Chief Executive Officer of D & L Energy, and assigned his interest in the voting trust to his wife, Holly Serensky-Lupo, to act as his proxy for a one-year period. On February 15, 2013, Mr. Nick Papadoris was named President and Chief Executive Officer of D & L Energy, Inc.

9. D & L Energy was incorporated in the State of Ohio on October 27, 1986, for the purpose of operating "conventional" (producing) oil & gas wells. D & L Energy operates in the following manner⁴:

⁴ This description is taken from a motion filed by D & L Energy, Inc. in a bankruptcy action currently pending before the United States Bankruptcy Court, Northern District of Ohio, Eastern Division (case no. 13-40813). This motion was admitted as an exhibit before the Commission.

. . . D & L has been involved in a number of joint ventures and limited partnerships that drill, own and operate conventional oil and gas wells throughout Northeast Ohio and Northwest Pennsylvania.⁵ Typically these joint ventures and limited partnership would hire D & L for the drilling of the well(s), which D & L performed through its wholly owned subsidiary, Petroflow, (affiliated to D & L through common ownership from 1986 - its formation - until 2008 and a wholly owned subsidiary of D & L since 2008), and in return D & L would receive a turn key price, profit would depend on cost less the turn key price. Once the well(s) were completed and operational, D & L would then be retained by the joint ventures or limited partnerships to manage and operate the wells, for which it receives a manager's fee, typically based upon a percentage of the gross revenues of the well(s). D & L manages and operates approximately 580⁶ conventional oil and gas wells throughout Northeast Ohio and Northwest Pennsylvania. Additionally, if D & L participated in the joint venture or limited partnership, it receives a percentage of the net revenues of the well(s) owned by such joint venture or limited partnership, commonly referred to as a "working interest percentage."

10. D & L Energy contracts with Complete Energy Services and J Hawk Water Services, LLC for the disposal of waste generated by D & L's production ("conventional") wells.

11. In 1997, D & L Energy expanded its business to include oil & gas waste disposal and injection. In that year, D & L converted the Koontz #1 production well into its first injection well. By January 31, 2013, D & L held six Division-issued permits for injection wells, with only two of these wells being operational. D & L Energy posted bond and proof of liability insurance in support of these six injection wells. D & L obtained the permits for these six wells, drilled five of these wells (utilizing driller Petroflow, Inc.; owner: D & L Energy, Inc.), and was involved in the day-to-day maintenance and operation of the two active injection wells. Yet, each well had separate investors.⁷ These investors are not "owners" of the wells under the provisions of Ohio Revised Code Chapter 1509.⁸

⁵ Based upon evidence presented before the Oil & Gas Commission, this business model would appear to apply to both D & L's production ("conventional") wells and injection wells.

⁶ Mr. Papadoris testified at hearing that D & L Energy, Inc. operates 472 conventional wells in Ohio and Pennsylvania.

⁷ See Finding of Fact number 9 for a description of D & L's typical business operations.

⁸ Ohio law provides a mechanism by which wells can be transferred to a new owner (*i.e.*, the filing of a Form 7 with the Division). The six injection well permits at issue were granted by the Division, with D & L Energy identified as the well owner. D & L never transferred these wells to another entity. Thus, from a regulatory standpoint, and based upon the documents on file with the Division, D & L Energy is the "owner" of these six wells. D & L's ownership of these wells is consistent with the definition of "injection well owner" found at O.A.C. §1501:9-3-01(I), as D & L Energy had the "right to inject" into these wells.

12. On November 12, 2004, D & L Energy was issued Brine Transportation Certificate 25-334. The evidence at hearing indicated that D & L Energy does not engage in brine haulage, and D & L Energy does not appear on the Division's list of approved brine haulers.

13. On January 31, 2013, the status of the six D & L Energy injection wells was as follows:

	Location	Permit issuance	Status (as of January 31, 2013)
Koontz #1	Trumbull County	May 6, 1997, converted to an injection well and permit issued	Operational, with investor Tri-County Disposal Wells, LLC (owners: Ben Lupo - 100%); Hardrock employees were hired to man the Koontz Well and its associated facilities
Parobek #2	Ashtabula County	December 20, 1982 to Park Ohio Energy; transferred to D & L Energy on October 1, 1997	Operational, with investor Disposal Wells, LLC (owners: Ben Lupo - 25%, Edward Esposito - 50% and Harold Glunt - 25%); Hardrock employees were hired to man the Parobek Well and its associated facilities
Northstar Lucky #4	Mahoning County	June 28, 2011	Drilled, facility 99% complete, with investor D & L Energy, Inc. (owning 51% of the outstanding shares)
Northstar United #2	Trumbull County	June 28, 2011	Drilled, facility 50% complete, with investor Northstar Disposal Services II, LLC (owner: D & L Energy, Inc. - 100%); subject to Division moratorium ⁹
Northstar Collins #6	Mahoning County	November 10, 2011	Drilled, no facility constructed, with investor Northstar Disposal Services VI, LLC (owner: D & L Energy, Inc - 100%); subject to Division moratorium ⁹
Mohawk #7	Mahoning County	January 7, 2013	Not drilled, no facility constructed, with investor D & L Energy, Inc. (owners: Beno Lupo - 80.76%, Holly Serensky-Lupo - 4.24% and Susan Faith - 15%)

⁹ Beginning in March 2011, the Youngstown area experienced several low-magnitude seismic events (earthquakes). These events were clustered around an injection well known as the Northstar #1 Well. Because of concerns that injections into the Northstar #1 Well were linked to the 2011 seismic events, and following the issuance of preliminary research findings, on December 30, 2011, the Northstar #1 Well was shut down and ceased to receive injections. At that time, Governor Kasich imposed an indefinite moratorium on injection activities, and on the permitting of injection wells, in an area located within a seven-mile radius of the Northstar #1 Well. The Division, in conjunction with other government agencies, investigated the seismic events associated with the Northstar #1 Well. On October 1, 2012, additional requirements were promulgated into Ohio law, addressing injection pressures and the monitoring of injection activities. Currently, a strict prohibition on permitting in the "moratorium area" is not in place. However, permitting in the "moratorium area" is subject to intense regulatory scrutiny. Two of the permits revoked by Chief's Order 2013-03, and two applications denied by Chief's Order 2013-03, address injection wells located, or proposed to be located, within the "moratorium area."

14. By January 31, 2013, D & L Energy had filed applications for three new injection wells. Two of the proposed wells were located within the "moratorium area" for injection wells.⁹ The third well was located in a residential area, and the Division had received citizen complaints regarding the siting of this well. Chief's Order 2013-03 denied these three injection well applications.

15. On April 16, 2013, D & L Energy filed a voluntary petition for relief under Chapter 11 of Title 11 of the Bankruptcy Code (*In re: D&L Energy, Inc.*, case no. 13-40813).

16. D & L Energy owns the property at 2755 Salt Springs Road, Youngstown, Ohio. A storage yard for tanks containing oilfield waste, associated with D & L Energy's disposal and injection business, is located upon this property. No contracts or leases, suggesting that this storage yard was not operated by D & L Energy, were produced at hearing. On or about February 1, 2013, approximately 58 storage tanks, each capable of holding 21,000 gallons of oilfield waste, were stored at the D & L facility at 2755 Salt Springs Road.¹⁰

17. The inlet to the storm sewer utilized during the January 31, 2013 dumping incident is located at 2755 Salt Springs Road, on property owned by D & L Energy.

18. D & L Energy's business offices are located at 2761 Salt Springs Road (immediately adjacent to 2755 Salt Springs Road). The property, and office building, located at 2761 Salt Springs Road are owned by Hoban, LLC (owners: Ben Lupo and Holly Serensky-Lupo).

19. The office building at 2761 Salt Springs Road houses several businesses, some of which have held themselves out as members of the "D & L Energy Group." The D & L Energy Group is not an incorporated entity, and appears to be a loose association of several businesses involved in oil & gas waste disposal. Members of the D & L Energy Group appear to share office space, employ some common office staff and had a collective web presence. Included within this association are D & L Energy and Mohawk Disposal Management.

¹⁰Evidence presented at hearing established that, on February 15, 2013, 184,000 gallons of waste associated with one company were being stored at the Salt Springs Road facility. Thus, during February 2013, at least 184,000 gallons of oilfield waste were stored on-site. And (based upon the number of available frac tanks), more than one million gallons of waste could have been stored at the facility.

20. Mohawk Disposal Management, LLC ["Mohawk"] is a limited liability company, registered with the State of Ohio on September 22, 2011.¹¹ Holly Serensky-Lupo is the sole shareholder of this company. Mohawk's offices are located at 2761 Salt Springs Road. Mohawk Disposal Management is in the oilfield waste disposal business. Mohawk employed one person, who acted as a dispatcher. Mohawk owned several trucks, suitable for hauling oilfield waste. Mohawk's trucks were leased to Hardrock Excavating, LLC. On January 31, 2013, approximately 6 - 7 Mohawk trucks were being operated by Hardrock drivers on a daily basis. Mohawk's business name was prominently displayed on its trucks. Mohawk did not hold a Division-issued transporter's certificate. However, manifests for transported brine appear to routinely identify Mohawk as the transporter. Mohawk advertised rental services for frac tanks, but did not own any such tanks.¹² As of February 6, 2013, there were no outstanding Division enforcement notices pending against Mohawk.

21. Hardrock Excavating, LLC ["Hardrock Excavating" or "Hardrock"] is a closely-held Ohio limited liability company, registered with the State of Ohio on May 1, 2002. Shareholders in Hardrock are Ben Lupo (49%) and Susan Faith (51%). Pursuant to a Judgment Entry, dated May 1, 2012 (case no. 11 CV 3624), Ben Lupo is currently the sole manager of Hardrock. Hardrock Excavating provides several services, including construction of oil & gas well sites, installation of oil & gas pipelines, and brine transportation. Hardrock's business offices are located at 2761 Salt Springs Road. Hardrock held a Division-issued certificate to engage in the transportation of oilfield waste (certificate no. 25-497). Both of D & L Energy's active injection wells (the Parobek and the Koontz) were listed on Hardrock's disposal plan filed with the Division. As recently as February 5, 2013, Hardrock appeared on the Division's list of approved registered brine transporters. Hardrock Excavating employed drivers, but owned no vehicles.¹³ Hardrock leased vehicles from Mohawk. Hardrock's transportation certificate number was displayed on

¹¹ In various documents, Mohawk Disposal Management appears to be also identified as Mohawk Disposal Services or Mohawk Oil Field Services.

¹² It appears that Mohawk, or its customers, would actually rent tanks from either B & B Tanks, LLC (owners: Ben Lupo - 20%, Pipeline Systems, LLC - 25%, Michael McKenzie - 5%, Michael Esposito - 3%, Edward Hazboun - 5%, Edward Esposito - 25% and Ray Travaglini - 17%), from B & B Energy Services, LLC (owner: Ben Lupo - 100%), or from Mohawk Tanks (ownership unknown).

¹³ The testimony of William Hayes, dispatcher for Mohawk Disposal Management, LLC, indicated that Hardrock may have independently owned one truck used for brine haulage.

the vehicles leased from Mohawk. Hardrock's name also appears on these vehicles, although not displayed as prominently as the Mohawk name. Hardrock transported oilfield waste to the storage yard located at D & L's 2755 Salt Spring Road facility and, ultimately, transported waste to D & L's injection wells. Evidence presented at hearing established that D & L sometimes utilized Hardrock, in conjunction with Mohawk, to transport material from D & L Energy injection wells back to the Salt Springs Road storage facility or between injection wells. Manifests for brine transported by Hardrock drivers, in Mohawk vehicles, routinely identified the transporter as Mohawk. Prior to February 6, 2013, there were no outstanding Division enforcement notices pending against Hardrock. At least one of the employees involved in the January 31, 2013 dumping incident, Mr. Michael Guesman, was an employee of Hardrock Excavating. Following the January 31, 2013 dumping incident, Hardrock's transportation certificate was revoked by the Division Chief.

22. At the time of hearing (May 22 & 23, 2013), D & L Energy was delinquent in paying the required brine disposal fees for the fourth quarter of 2012 in violation of O.R.C. §1509.22(H).¹⁴ At this time, D & L Energy was also delinquent in the submission of its 2012 annual report in violation of O.A.C. §1501:9-3-04(B).

23. On February 6, 2013, the Division issued Chief's Order 2013-03 to D & L Energy, Inc. This Order: (1) revoked six saltwater injection permits held by D & L Energy, (2) denied three applications for new injection well permits sought by D & L Energy, (3) ordered the cessation of temporary storage operations on property owned by D & L Energy on Salt Springs Road in Youngstown, Ohio, and (4) required D & L Energy to dispose of all oilfield waste stored at the Salt Springs property within a specified period.

¹⁴ However, because of D & L filing for bankruptcy on April 16, 2013, such payment would be administered through the bankruptcy court.

DISCUSSION

In Ohio, oil & gas operations are conducted under the authority of Chapter 1509 of the Ohio Revised Code. The Division of Oil & Gas Resources Management possesses permitting, regulatory and enforcement authority over all aspects of oil & gas operations.

Typically one thinks of an oil & gas well as a "production" well (*i.e.*, a "conventional" well, drilled and operated to produce oil or gas). But, the Division is also the regulatory authority over injection wells and all disposal activities associated with the oil & gas production.

Industry produces waste; the oil & gas industry is no exception. The drilling of oil & gas wells, and their operation, both require and produce certain fluids. In some circumstances, fluids generated by oil & gas production can be recycled and reused in other oil & gas operations. If not recycled, these fluids must be properly disposed of. One method of disposing of oilfield-produced waste is by injecting this waste into porous rock, located far below the ground surface. Under specific regulatory guidelines, existing "conventional" oil & gas wells (no longer capable of producing oil or gas in commercial quantities) may be converted into injection wells. Or wells may be drilled for the specific purpose of providing disposal space for oilfield waste. All aspects of oil & gas waste disposal are regulated by the Division, including the construction and operation of injection wells, and the transportation, handling and storage of oilfield wastes.

The use of injection wells as a method of disposal is not a new concept. However, recent expansions of oil & gas activity within the State of Ohio has increased the need for oilfield disposal options. Not all injection wells are created equal. First, there are different classes of injection wells, each subject to distinct regulatory requirements. Class II disposal wells handle oilfield wastes, and are regulated under Ohio Revised Code Chapter 1509. Individual disposal wells may also differ because of the unique characteristics of the well or the nature of surrounding geologic formations. For example, some injections wells are particularly "thirsty," and will readily receive injected fluids, while others will not.

By the same token, not all oilfield waste is created equal. Fluids generated by the oil & gas industry are considered "produced waters." These include saltwater or "brine," and frac water. Brine is an aqueous solution with high dissolved salt content, and is specifically defined in Ohio law, at O.R.C. §1509.01(U), as:

"Brine" means all saline geological formation water resulting from, obtained from, or produced in connection with exploration, drilling, well stimulation, production of oil or gas, or plugging of a well.

Generally, brine can be readily injected for disposal. Frac water is fluid that is recovered immediately following well stimulation by the fracturing process. Frac water (also known as "flow back water") may be chemically-laden. However, frac water is, inherently, "fresher" than brine, and is considered a "light" water. "Light" water is more difficult to inject than brine. "Drilling mud" is a semi-solid, slurry-like, material, containing high levels of suspended solids (mostly bentonite), and some petroleum. Drilling mud is frequently recycled and reused. Drilling mud is a material that requires proper treatment and disposal, usually involving the settling and drying of the particulates, and the disposal of the particulates in a landfill facility.

Thus, the disposal of oilfield wastes necessitates consideration of the nature of the materials to be injected, the unique characteristics of each injection well, and the characteristics of the geologic formation receiving the injected fluids.

Against this backdrop, in October 1997, D & L Energy - which had been in the oil & gas production business since 1986 - entered into the oilfield waste disposal business. In 1997, D & L obtained its first injection well, the Koontz #1 Well. By January 31, 2013, D & L had applied for, and received, five more permits for injection wells, although in January 2013 only two of these six wells were operational. By January 31, 2013, D & L also had three applications for injection wells pending with the Division.

D & L Energy is in the oilfield waste disposal and injection business. Various companies, associated with D & L through common ownership, and operating out of the same business address, handle other aspects of oilfield waste disposal. The evidence at hearing indicates that a customer, seeking to dispose of oilfield waste in a D & L injection well, typically would:

- Contact Mohawk Disposal Management, a company that owned trucks suitable for haulage of oilfield waste, but employed no drivers. Mohawk had only one employee, who acted as a dispatcher. Mohawk held no Division-issued permits or certificates.

- Mohawk did not own any oilfield waste storage tanks. So, Mohawk would secure, or aid a customer in securing, the rental of tanks from another company (*i.e.*, B & B Tanks, B & B Energy Services or Mohawk Tanks).

- Mohawk's dispatcher would contact Hardrock Excavating, LLC, a transportation company that leased trucks from Mohawk and employed drivers. Hardrock held a brine transportation certificate issued by the Division. A Hardrock driver (driving a vehicle leased from Mohawk) would pick up oilfield waste and haul the waste to a storage yard located on property owned by D & L Energy or directly to a D & L injection well. Manifests for such shipments routinely identified Mohawk as the transporter.

- Some of the oilfield waste would be temporarily stored on D & L Energy's property located at 2755 Salt Springs Road. A period of storage allowed suspended solids in waste water to settle. Then the waste water would be hauled by Hardrock drivers either to an injection well owned by D & L Energy (if the water was suitable for injection) or, possibly, to a production well (if the water was suitable for recycling and reuse). Evidence was also presented at hearing showing that sometimes waste water was picked up at one of D & L's injection wells, and returned to the storage area on D & L's property or transported between injection wells. Waste returned to the storage area may have required more settling time, may have been determined to be inappropriate for injection (*i.e.*, too "light" or too muddy), or may have been better suited for injection into another well.

Thus, to dispose of oilfield waste, a customer would deal with at least four separate companies, each company engaged in a specific aspect of the disposal process. The evidence did not clearly establish whether customers independently contracted with these separate companies.

Whether D & L Energy, Inc. bears any responsibility for the illegal dumping incident that occurred on January 31, 2013.

D & L Energy, Inc. maintains that the illegal dumping incident that occurred on January 31, 2013 was conducted by Hardrock Excavating, LLC. In recorded messages, and in interviews with government officials, Mr. Ben Lupo acknowledged that he directed Hardrock employees to dump waste water from a storage tank, held at the storage facility at 2755 Salt Springs Road, directly into a storm sewer. D & L's position is that Mr. Lupo was acting on behalf of Hardrock Excavating when he directed these employees to act.

Corporations are "separate persons" under Ohio law. Thus, D & L Energy, Inc. and Hardrock Excavating, LLC are separate and distinct entities. Because of common ownership (*i.e.*, Mr. Lupo is an owner of both companies), D & L and Hardrock may be considered "sister corporations." But, the fact that these two companies share a common owner does not, in and of itself, mean that one company can be held responsible for the acts of the other. *See Minno v. Pro-Fab, Inc.*, 121 Ohio St.3d 464 (2009).

While it is true that Mr. Ben Lupo was the majority shareholder in D & L, and was also a shareholder and manager of Hardrock, D & L maintains that Mr. Lupo "wore several different hats" in regards to the disposal business on Salt Springs Road.

The Commission finds that on the night of January 31, 2013, Mr. Lupo actually wore two "corporate hats." Mr. Lupo directed employees of Hardrock to illegally dump oilfield waste into a storm sewer (wearing his "Hardrock hat"). But, Mr. Lupo also authorized this dumping to occur on property owned by D & L Energy (wearing his "D & L Energy hat"). As an officer of D & L Energy, Mr. Lupo had a basic responsibility to D & L regarding his actions relative to corporately-owned property. The illegal dumping of oilfield waste on property owned by D & L Energy exposed that company to significant liability. Therefore, this decision would not have been taken lightly. Mr. Lupo (at the time the majority shareholder of D & L Energy) cannot fain ignorance of his responsibilities to D & L Energy in authorizing such dumping to occur on D & L's property.

Mr. Lupo acted within the scope of his employment as an officer of D & L Energy in authorizing dumping upon D & L's property. By authorizing Hardrock employees to illegally dump material on D & L Energy's property, D & L Energy became complicit in this illegal activity.

D & L argues that Mr. Lupo could not have acted on behalf of D & L Energy on January 31, 2013, as dumping waste into a storm sewer would create no benefit for D & L Energy. In this regard, D & L Energy asserts that it is in the injection business, and, therefore, realizes no financial gain unless material is actually injected into one of its wells. However, samples of the material dumped on January 31, 2013 show this material to be oil-based mud and brine. Because of the material's heavy sediment content, without treatment, this material was not suitable for injection. The dumping of the oil-based muds into the storm sewer allowed D & L to dispose of mud-laden water without compromising the capacities of its injection wells, and allowed D & L to dispose of this material without the effort and expense of drying out, treating, transporting and depositing this material at a landfill facility.

Moreover, D & L has assumed responsibility for the environmental clean-up necessitated by the dumping incident, indicating D & L's ratification of the act of its officer, Ben Lupo, in authorizing illegal dumping on D & L Energy property.

Whether the Division Chief has authority to revoke injection well permits.

Under Chapter 1509 of the Revised Code, the Division of Oil & Gas Resources Management is the permitting and regulatory authority over all oil & gas operations within the State of Ohio. Before any well is drilled, the owner of the well must file an application for a drilling permit with the Division. The requirements for a permit application are set forth by statute and regulation. An applicant for a permit must also demonstrate financial responsibility by posting bond and obtaining liability insurance.

A permit is not only necessary for the drilling and construction of an injection well, but also for the handling of oilfield waste and the operation of the well. Injection well permits may include specific terms and conditions, addressing the construction and operation of a particular well. The permittee must also produce a plan, describing how it will handle oilfield wastes, and where these wastes will be disposed. O.R.C. §1509.22(H) requires an injection well owner to submit disposal fees, which are due on a quarterly basis. Additionally, O.A.C. §1501:9-3-04(B) requires a person engaged in any phase of oilfield waste disposal to annually submit to the Division records of disposals made. Injection wells must be operated consistent with Ohio law, in accordance with the terms and conditions of a permit, and pursuant to the permittee's approved disposal plan.

In this matter, the Division Chief had granted six injection well permits to D & L Energy, Inc. Of these six permitted wells, only two – the Parobek and the Koontz – were operational. Following the illegal dumping incident of January 31, 2013, the Chief issued Order 2013-03, revoking D & L's six injection well permits.

While the Commission heard evidence that D & L, historically, had compliance issues regarding its injection operations, on February 6, 2013 (when Chief's Order 2013-03 was issued), the Parobek and the Koontz wells were not subject to any outstanding violations. And, no violations existed on the four permitted wells not yet in operation. However, the actions of D & L Energy on January 31, 2013, authorizing the illegal dumping of oilfield waste (ultimately destined for disposal by D & L) directly into a storm sewer located upon D & L's property, clearly violated Ohio law and were not in compliance with D & L's approved waste disposal plan.

O.R.C. §1509.06 specifically authorizes the Division Chief to grant permits relating to oil & gas activities. O.R.C. §1509.06(E) requires that wells be operated in accordance with approved plans. O.R.C. §1509.06(F) authorizes the Chief to deny a requested permit where the Chief finds a substantial risk that the operation will result in violations of the law or will present an imminent danger to public health, safety or damage to the environment. O.R.C. §1509.22(A)(2) forbids any person from placing, or causing to be placed, any oilfield wastes in surface or ground water, or on land in a manner that could cause damage to public health or safety

or damage to the environment. Other sections of O.R.C. §1509.22, and the regulations that amplify O.R.C. §1509.22 (O.A.C. §1501:9-03-1 through §1501:9-3-13), provide additional requirements regarding the appropriate handling of oilfield waste, and specifically require the protection of water supplies.

However, D & L Energy argues that nowhere in these statutory or regulatory provisions, does the Legislature clearly state that the Division Chief may revoke an injection well permit that has been granted and has not been determined to be an "unused permit." This is true.

The ability to engage in oil & gas production and disposal operations is a privilege, granted only when an operator obtains the appropriate permits and/or certificates to engage in these activities. In obtaining a permit or certificate to engage in oil & gas production or disposal activities, an operator submits to the regulatory authority of the Division and its Chief.

The Chief's authority to grant or deny permits infers the ability to also revoke permits that are found to be improvidently issued. The provisions of Chapter 1509, and the rules promulgated thereunder, contain many warnings to persons associated with oil & gas production or disposal, that they will be expected to act in compliance with the law. Where the Chief determines that a permittee has engaged in an egregious violation of Chapter 1509, the Commission cannot find that it is outside the scope of the Chief's permitting, regulatory or enforcement authorities, for a decision to be made revoking a permit.

Where the Chief, in his discretion, issues an order revoking a permit, this order is appealable to, and reviewable by, the Oil & Gas Commission (see O.R.C. §1509.36). The permittee is afforded administrative due process through this opportunity for hearing. As the issuance of Chief's Order 2013-03 is subject to administrative review, the fact that an agency hearing was not conducted prior to the issuance of the Chief's order does not render Chief's Order 2013-03 defective or invalid. *See Shiner v. Edco Drilling & Production, Inc.*, 34 Ohio App. 3d 178, 517 N.E.2d 1044 (11th District, 1986).

Whether the mandates of Chief's Order 2013-03 are appropriate under the facts of this case.

Chief's Order 2013-03, basically, removed D & L Energy, Inc. from the oilfield waste disposal business. In addition to D & L's complicity in the dumping incident of January 31, 2013, the Division cites in support of its order the fact that D & L knowingly contracted with, or received waste from, an unregistered brine transporter or from a registered transporter that utilized trucks with improper signage and whose certificate was not current. At hearing, the Division established that D & L had a history of violations involving both injection and production wells. At hearing, the Division also established that D & L had failed to submit to the Division certain records reflecting disposal activities in violation of O.A.C. §1501:9-3-04(B), and had failed to submit disposal fees for the last quarter of 2012 in violation of O.R.C. §1509.22(H).

The citation of D & L for its use of Hardrock or Mohawk, as a transporter for its disposal business, is not, by itself, sufficient to support the revocation of six permits and the denial of three permit applications. Evidence at hearing established that, traditionally, the Division has dealt with signage and certification violations through discussions with the transporter or via the issuance of compliance orders. Likewise, D & L's failure to submit the annual reports or quarterly disposal fees would not, alone, be sufficient to support the enforcement actions set forth in Chief's Order 2013-03.

So, the question becomes: was D & L's participation in the illegal dumping incident of January 31, 2013 so egregious as to justify removing this company from the disposal business? And, the answer is: yes.

The statutes and regulations addressing oil & gas operations in Ohio have, as one of their stated purposes, the protection of water supplies. Regulation of disposal operations are very specific as to the importance of protecting water. The worst case scenario envisioned under these laws would be the intentional dumping of oilfield wastes directly into the waters of the State. Here, the proverbial worst case scenario has occurred. Mr. Ben Lupo, acting on behalf of D & L Energy and Hardrock Excavating, admitted to authorizing the intentional and illegal dumping

incident on January 31, 2013. However, the investigation of this incident by EPA personnel indicated that this was not an isolated occurrence. Testimony of EPA emergency response investigator Mr. Kurt Kollar established that, in "chiseling away" the sediment deposited in the storm sewer at 2755 Salt Spring Road, several separate layers of sediment were observed – he likened these layers to the rings on a tree. The layers of sediment established that the illegal disposal of oilfield wastes into the storm sewer at 2755 Salt Spring Road was a repeated occurrence, if not a routine practice. In statements made to the EPA investigators, Mr. Lupo admitted to six such occurrences between November 2012 and January 2013. But, other evidence suggests that illegal dumping may have occurred as many as twenty times during this period.

Customers seeking to dispose of waste through the D & L Energy Group, may have interacted with the Mohawk dispatcher and the Hardrock drivers, but the entity ultimately responsible for the disposal of waste was D & L Energy. D & L Energy's decision to allow the dumping of oilfield waste on its property, which waste was destined for injection into a D & L Energy well, was a short-cut with serious consequences. Clean-up of the waters affected by the illegal dumping has cost D & L Energy over \$400,000. And, testimony from EPA's Mr. Kollar indicates that oil is still entrained in the sediments of the tributary to the Mahoning River.

D & L Energy has been involved in the oil & gas industry for decades, and certainly is aware of the requirements of the law regarding oilfield waste disposal. Yet, through its corporate officer, D & L acted in total disregard of both Ohio law and its own disposal plans. The violations committed, and condoned, by D & L Energy were egregious and repeated.

While D & L's use of a brine hauler with improperly placarded trucks, or D & L's failure to make certain filings required by the Division, do not separately appear to be violations that would lead to the revocation of permits, or the denial of applications, the aggregate effect of these violations, when combined with the repeated dumping of oilfield waste on D & L property, shows a disposal operator who cannot be trusted to act in compliance with Ohio law. And, this is of particular concern where the material being handled is of an environmentally-sensitive nature. Therefore, the Commission finds that the Chief's decision to issue Chief's Order 2013-03, and to remove D & L Energy from the oilfield disposal and injection business, was neither unreasonable nor unlawful.

CONCLUSIONS OF LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief, if the Commission finds that the order appealed is lawful and reasonable.
2. O.R.C. §1509.03(A) provides that no person shall act in violation of rules adopted by the Division Chief. O.R.C. §1509.03(D) provides that no person shall violate the terms or conditions of an issued permit. O.R.C. §1509.04(A) allows the Chief to enforce the provisions of the law, and the terms and conditions of permits, through the issuance of orders.
3. O.R.C. §1509.06(F) allows the Division Chief to deny a permit if the Chief finds that there is a substantial risk that the operation will result in violations of law or will present an imminent danger to public health or safety or damage to the environment.
4. Unless specifically exempted by O.R.C. §1509.226, O.R.C. §1509.22(A)(2) forbids any person from placing, or causing to be placed, any brine, crude oil, natural gas, or other fluids associated with oil & gas activities in surface or ground water or upon land surfaces in quantities, or by such manner, that causes, or could reasonably be anticipated to cause, injury to public health or safety or damage to the environment.
5. O.R.C. §1509.22 requires injection operations associated with the disposal of oilfield waste, to obtain a permit for an injection well, and to submit a disposal plan for the Division's approval.
6. O.A.C. §1501:9-3-04(B) requires persons engaged in any phase of disposal operations to maintain, and submit on a quarterly basis, records reflecting quantities of oilfield waste disposed, and the disposal locations.

7. O.R.C. §1509.22(H) requires the owner of a permitted injection well to collect, and submit to the Division on a quarterly basis, certain fees associated with injection activities.

8. D & L Energy, Inc. applied for, and obtained, Division-issued permits for six injection wells, posting bond in support of these wells and providing proof of liability insurance for these well. D & L Energy, Inc. is the "owner" of the six injection wells addressed in Chief's Order 2013-03, as D & L Energy had the right to inject materials into said wells, and did not effectively transfer this right to another entity. See O.A.C. §1501:9-3-01(I).

9. The Division Chief does not act in an unlawful or unreasonable manner in revoking permits, denying permit applications, ordering the cessation of temporary storage operations, or ordering the removal of stored disposal materials from an identified site, where it is established that the permittee, or applicant, engaged in egregious and repeated violations of Chapter 1509 of the Revised Code, violated its injection well permits or its oilfield waste disposal plans, or operated in a manner that presented an imminent danger to public health or safety or damage to the environment.

10. A permittee acts in violation of Chapter 1509 of the Revised Code, and in violation of its permit or approved oilfield waste disposal plan, where the permittee authorizes the dumping of oilfield waste on property owned by the permittee, which waste then enters the waters of the State of Ohio.

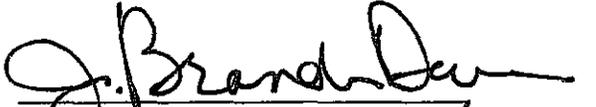
11. The Chief's issuance of Order 2013-03 was not unlawful and/or unreasonable.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2013-03, consistent with the Findings and Conclusions set forth in the immediate Order.

Date Issued: 6/21/2013


DR. KAREN H. FRYER, Chairperson *wo*


J. BRANDON DAVIS *un*


DOUGLAS W. GONZALEZ *wo*

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

Michael A. Cyphert, Bozana L. Lundberg, Via E-Mail [mcyphert@walterhav.com & blundberg@walterhav.com] & Certified Mail
#: 91 7199 9991 7030 3132 9569
Brian Ball, Via E-Mail [brian.ball@ohioattorneygeneral.gov] & Inter-Office Certified Mail #: 6711

BEFORE THE OIL & GAS COMMISSION

D & L ENERGY, INC., : Appeal No. 847
: :
Appellant, : :
: : Review of Chief's Order 2013-03
-vs- : :
: :
DIVISION OF OIL & GAS RESOURCES : INDEX OF EVIDENCE
MANAGEMENT, : PRESENTED AT HEARING
: :
Appellee. : :

Before: Dr. Karen H. Fryer

In Attendance: J. Brandon Davis, Douglas W. Gonzalez

Appearances: Michael A. Cyphert, Bozana L. Lundberg, Counsel for Appellant D & L Energy, Inc.; Brian Ball, Assistant Attorney General, Counsel for Appellee Division of Oil & Gas Resources Management.

WITNESS INDEX

Appellant's Witnesses:

Richard Simmers	Cross Examination; Direct Examination
Nicholas Paparodis	Direct Examination; Cross Examination
William Hayes	Direct Examination; Cross Examination

Appellee's Witnesses:

John Fleming	Direct Examination; Cross Examination
Stephen Ochs	Direct Examination; Cross Examination
Thomas Hill	Direct Examination; Cross Examination
William Frederick Romeo	Direct Examination; Cross Examination
Kurt Kollar	Direct Examination; Cross Examination
Robert Worstall	Direct Examination; Cross Examination
Thomas Tomastik	Direct Examination; Cross Examination

EXHIBIT INDEX

Appellant D & L Energy, Inc.'s Exhibits (ALL ADMITTED):

Appellant's Exhibit 1	Appendix A to D & L Energy, Inc.'s Pre-Hearing Brief, filed with Commission on May 15, 2013 (6 pages)
Appellant's Exhibit 2	List and Certificates of Equity Security Holders of D & L Energy, Inc. (4 pages)
Appellant's Exhibit 3	List of Production and Injection Wells in D & L Energy, Inc.'s Name, with codes (13 pages)
Appellant's Exhibit 4	Certificates of Liability Insurance of D & L Energy, Inc., dated June 15, 2012 and February 1, 2013 (2 pages)
Appellant's Exhibit 5	Surety Bond for D & L Energy, Inc., dated December 15, 1999 (1 page)
Appellant's Exhibit 6	Permit for Parobek #2 Injection Well, issued December 20, 1982 and Form 7 Transfer to D & L Energy, Inc., dated October 1, 1997 (4 pages)
Appellant's Exhibit 7	Permit for Koontz #1 Injection Well, issued May 6, 1997 and Form 1 Conversion to Saltwater Injection, dated January 22, 1997 (5 pages)
Appellant's Exhibit 8	Facility Reports for Parobek #2 Injection Well, various dates (5 pages)
Appellant's Exhibit 9	Facility Reports for Koontz #1 Injection Well, various dates (13 pages)
Appellant's Exhibit 10	Criminal Complaint, dated February 13, 2013 (case no. 4: 13M 6006) and Indictment, filed February 28, 2013 (case no. 4: 13CR113) (both filed in the United States District Court for the Northern District of Ohio) (18 pages)
Appellant's Exhibit 11	Ohio EPA Notice of Violation, Division of Emergency and Remedial Response, Incident Number: 1302-50-0245, issued February 1, 2013 (2 pages)

- Appellant's Exhibit 12 Employee Earnings Record for Michael P. Guesman, from January 4, 2013 through March 29, 2013 (1 page)
- Appellant's Exhibit 13 Judgment Entry, *Susan A. Faith, et al. v. Benedict W. Lupo, et al.*, (case no 11 CV 3624, Mahoning County Court of Common Pleas), filed May 1, 2012 (9 pages)
- Appellant's Exhibit 14 Resignation of Benedict W. Lupo as Director of D & L Energy, Inc., dated February 15, 2013, and associated information (12 pages)
- Appellant's Exhibit 15 Permit for Northstar Lucky #4 Injection Well, issued June 28, 2011 (4 pages)
- Appellant's Exhibit 16 Permit for Northstar Collins #6 Injection Well, issued November 10, 2011 (4 pages)
- Appellant's Exhibit 17 Permit for Mohawk Printup #7 Injection Well, issued January 7, 2013 (4 pages)
- Appellant's Exhibit 18 Permit for Northstar United #2 Injection Well, issued June 28, 2011 (5 pages)
- Appellant's Exhibit 19 Chief's Order 2013-03, issued February 6, 2013 (5 pages)
- Appellant's Exhibit 20 Various Ohio Revised Code Sections (36 pages)
- Appellant's Exhibit 21 Various Ohio Administrative Code Sections (11 pages)
- Appellant's Exhibit 22 Currently Active Brine Haulers as of February 5, 2013 (11 pages)
- Appellant's Exhibit 23 Photographs of Trucks, dates unknown (3 pages)
- Appellant's Exhibit 24 Photographs of Trucks provided by Division, dates unknown (7 pages)
- Appellant's Exhibit 25 Appellee's Answers and Objections to Appellant's First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents, submitted May 6, 2013 (20 pages)
- Appellant's Exhibit 26 Aerial Photograph of 2761 and 2755 Salt Springs Road, date unknown (1 page)

Appellant's Exhibit 27

List of Employees for Hardrock Excavating, LLC and Temporary Hardrock Employees from Staff Right, dated February 5, 2013 (1 page)

Appellee Division's Exhibits (ALL ADMITTED):

- Appellee's Exhibit 1 Brief of D & L Energy, Inc. in Support of its Motion for Stay, with attachments, filed with Commission on April 2, 2013 (54 pages)
- Appellee's Exhibit 2 Motion for Stay, filed with Commission on March 4, 2013 (3 pages)
- Appellee's Exhibit 3 Aerial Photograph of D & L Energy Property; date unknown (1 page)
- Appellee's Exhibit 4 D & L Energy, Inc.'s Response to the Division's First Set of Requests for Admissions, Interrogatories and Request for Production of Documents; served on Division on April 22, 2013 (29 pages)
- Appellee's Exhibit 5 D & L Energy, Inc.'s Notice of Appeal to the Oil & Gas Commission, with cover letter, filed with Commission on March 4, 2013 (6 pages)
- Appellee's Exhibit 6 Filings with Secretary of State regarding D & L Energy, various dates (118 pages)
- Appellee's Exhibit 7 2011 Annual Reports for Parobek #2 Well and Koontz #1 Well, dated October 9, 2012 (4 pages)
- Appellee's Exhibit 8 Filings with Secretary of State regarding Hardrock Excavating, LLC, various dates (12 pages)
- Appellee's Exhibit 9 Filings with Secretary of State regarding Mohawk Disposal Management, LLC, various dates (16 pages)
- Appellee's Exhibit 10 Certificates of Liability Insurance from Leonard Insurance Service Agency, Inc. for various companies, with cover letter, filed with Division on February 1, 2013 (4 pages)

- Appellee's Exhibit 11 Brine Transportation Certificate No. 24-497, issued to Hardrock Excavating, Inc. on June 21, 2012, with Application Route Sheet, Application and Certificate of Liability Insurance (6 pages)
- Appellee's Exhibit 12 Manifests and Time Sheets, dated from November 25, 2012 to January 29, 2013 (21 pages)
- Appellee's Exhibit 13 Photograph of Truck, taken February 1, 2013 (1 page)
- Appellee's Exhibit 14 Photograph of Truck, taken February 1, 2013 (1 page)
- Appellee's Exhibit 15 Photograph of Truck, taken February 1, 2013 (1 page)
- Appellee's Exhibit 16 Affidavit of Stephen Ochs, signed February 14, 2013 (3 pages)
- Appellee's Exhibit 17 Affidavit of Thomas Hill, signed February 14, 2013 (3 pages)
- Appellee's Exhibit 18 Affidavit of John Fleming, signed February 14, 2013 (2 pages)
- Appellee's Exhibit 19 Digital Recording of Ben Lupo Telephone Conversation (on disc including Appellee's Exhibit 20)
- Appellee's Exhibit 20 Digital Recording of Ben Lupo Telephone Conversation (on disc including Appellee's Exhibit 19)
- Appellee's Exhibit 21 E-mail from Hill to Simmers, Worstall, Claus and Corey, dated February 5, 2013 (1 page)
- Appellee's Exhibit 22 E-mail from Tomastik to Lupo, dated February 6, 2013 (1 page)
- Appellee's Exhibit 23 Ohio EPA Notice of Violation, Division of Emergency and Remedial Response, Incident Number: 1302-50-0245, issued February 1, 2013, and Tri-County Disposal LLC Work Order #49415, dated December 17, 2012 (2 pages)

- Appellee's Exhibit 24 Test America, Analytical Report with Sample Results, dated February 11, 2013, including cover sheet, dated February 12, 2013 (188 pages)
- Appellee's Exhibit 25 Permits and Permit Terms and Conditions for Parobek #2 Well (dated December 20, 1982), Koontz #1 Well (dated May 6, 1997), Northstar United #2 Well (dated June 28, 2011), Northstar Lucky #4 Well (dated June 28, 2011), Northstar Collins #6 Well (dated November 10, 2011), Mohawk Printup #7 Well (dated January 7, 2013), (24 pages)
- Appellee's Exhibit 26 Chief's Order 2013-03, issued February 6, 2013 (5 pages)
- Appellee's Exhibit 27 Letter from Freeman to Tomastik, dated February 25, 2013 (2 pages)
- Appellee's Exhibit 28 E-Mails between Freeman, Worstall, Tomastik and Ball, dated March 7, 2013 and April 24, 2013 (2 pages)
- Appellee's Exhibit 29 Motion of Debtors and Debtors in Possession for Joint Administration of Chapter 11 Cases Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure in case *In Re: D & L Energy, Inc. and Petroflow, Inc.*, # 13-40813, filed April 16, 2013 (9 pages)
- Appellee's Exhibit 30 D & L Energy Group Website (7 pages)
- Appellee's Exhibit 31 Affidavit of William Hayes, dated February 18, 2013, with cover letter and Ohio Apportioned Registration Cab Card (4 pages)
- Appellee's Exhibit 32 Internet Photograph of 2004 Mack CV7 Truck (1 page)
- Appellee's Exhibit 33 Ohio EPA, Office of Special Investigations, Field Report of Bart Ray, case 3601, dated February 1, 2013 (2 pages)
- Appellee's Exhibit 34 D & L Energy Brine Transportation Certificate No. 25-334, issued November 12, 2004 (1 page)
- Appellee's Exhibit 35 Division Information Regarding Applications for Brine Transporter Registration (2 pages)