

**BEFORE THE
OIL & GAS BOARD OF REVIEW**

KILBARGER CONSTRUCTION, INC.,	:	Appeal No. 485
	:	
Appellant,	:	
	:	Review of Chief's Order 91-518
-vs-	:	
	:	
	:	
DONALD L. MASON, CHIEF,	:	<u>FINDINGS, CONCLUSIONS</u>
DIVISION OF OIL & GAS,	:	<u>& ORDER OF THE BOARD</u>
	:	
Appellee.	:	

Appearances: Douglas Bricker, Counsel for Appellant Kilbarger Construction, Inc.; Ray Studer, Assistant Attorney General, Counsel for Appellee Division of Oil & Gas.

Date Issued: June 27, 1996

BACKGROUND

This matter came before the Oil & Gas Board of Review upon appeal by Kilbarger Construction, Inc. ["Kilbarger"] from Chief's Order 91-518. Chief's Order 91-518 denied Kilbarger's application to construct a saltwater injection well.

On October 26, 1993, this cause came on for hearing before four members of the Oil & Gas Board of Review. At hearing, the parties presented evidence and examined witnesses appearing for and against them. The parties filed post-hearing briefs, with the last document submitted on December 26, 1993.

ISSUE

The issue presented by this appeal is: **Whether the Division Chief acted lawfully and reasonably in denying a permit for the construction of an injection well, where the proposed well could result in the contamination of ground water that supplies a public water system.**

Under Ohio law oilfield injection wells must be permitted by the Division of Oil & Gas. The law further requires that in order to obtain a permit, an applicant for an injection well must demonstrate to the Chief's satisfaction that the well will not result in the presence of any contaminant in ground water that supplies . . . a public water system." See O.R.C. §1509.22(D).

FINDINGS OF FACT

1. On April 25, 1991, Edward and Ann Kilbarger submitted to the Division of Oil & Gas an application for a permit to construct a Class II saltwater injection well. The application was revised to incorporate suggestions from the Division. The final revised application was submitted on July 19, 1991.

2. The proposed well would be used for the underground injection of brine and other waste resulting from the production of oil and gas. The well would be drilled to the Mt. Simon Formation, with the disposal point at approximately 6,000 feet below the land surface. The proposal called for the construction of eight holding tanks. Each tank would be capable of storing 210 barrels of brine, with a total holding capacity of 70,560 gallons. The proposal also provided for a dike, capable of holding an additional 15,000 gallons of brine. The proposed facility would be the first, and only, injection well constructed and operated by Kilbarger.

3. The operation was proposed to be located on property owned by James and Anthony Kilbarger.

4. The proposed injection well site is in close proximity to the municipal water well field for the City of Logan, Ohio. The city operates two water wells within 1600 feet of the proposed injection site. Four additional public water wells are located about ½ mile from the injection site. The water wells are drilled to a depth of approximately 80 feet. The water wells receive ground water from the Hocking River Valley Aquifer. The city wells provide the sole source of public drinking water for this community of 7,000 residents.

5. The Hocking River Valley Aquifer is an unconfined sand and gravel aquifer. It is composed of coarse materials. Therefore, the aquifer has a high level of permeability and porosity. Water moves through the aquifer very easily and rapidly. Likewise, contaminants entering the aquifer can quickly spread.

6. The Hocking River Valley Aquifer falls within the most productive category of aquifers. The aquifer is capable of generating more than a thousand gallons of drinking water per minute.

7. The static depth of the Hocking River Valley Aquifer is about 12½ feet below ground level. Because of the composition of this aquifer, and its shallow stratigraphic location, it is highly sensitive to surface infiltration. Also, since this aquifer is unconfined, there is no barrier over the aquifer to prevent contaminants discharged at the land surface from entering the ground water.

8. The proposed site for the injection well is located within the Hocking River Valley Aquifer.

9. The proposed site for the injection well is located within the Hocking River's 100 year flood plain.

10. Leaks and spills of brine and other chemicals may occur at the proposed surface facility. Mr. Jerry James, a petroleum engineer who testified on behalf of Kilbarger, acknowledged that the possibility exists that leaks or spills could occur at the proposed site.

11. The brine and other wastes proposed to be stored and injected at this site contain high levels of chlorides and other chemicals. Analyses of water samples compiled by the Ohio EPA, and entered into the Record in this appeal, established that the Logan water supply already contains an elevated level of chloride. David Hodges, the Supervisor of the Division's Groundwater Protection Section, testified regarding the Division's concern that additional contamination from the injection well facilities could increase the chloride level to a point where the Logan water system could no longer be utilized as a public source of drinking water. Moreover, the potential contamination of the water supply could adversely affect the health and safety of persons.

12. On August 9, 1991, the Chief issued Order 91-518, denying the application to construct a Class II injection well. The Chief found that Kilbarger failed to demonstrate that placing the injection well at the proposed site ". . . will not contaminate ground water that supplies a public source of water and will not adversely affect the health of persons as required by R.C. 1509.22(D)."

DISCUSSION

Ohio law requires that oil and gas wells be permitted by the Division of Oil & Gas. See O.R.C. §1509.05. Oilfield brine injection wells are included within this permitting requirement. See O.R.C. §1509.22; O.A.C. §1501:9-3-06.

Fundamental goals of the O.R.C. Chapter 1509 are the conservation of natural resources and the protection of public health and safety. State v. Tipka, 12 Ohio St. 3d 258 (1984). To this end, the law requires that well owners prevent the contamination of land surfaces and ground water. See O.A.C. §1501:9-3-04(A). Indeed, in order to obtain a permit, an applicant for an injection well must demonstrate to the Chief's satisfaction that the well will not result in the presence of any contaminant in ground water that supplies . . . a public water system." See O.R.C. §1509.22(D).

The facts of this case reveal that Kilbarger has proposed to construct a Class II injection well in an environmentally sensitive area. The Board's Findings of Fact describe the sensitive nature of this proposed well site. The proposed operation would expose the Hocking River Valley Aquifer, and the Logan municipal water supply, to the possibility of ground water contamination. Notably, the Ohio EPA and the City of Logan joined with the Division in opposing the construction of the injection well at the proposed site.

Based upon the site specific facts of this case, the Board **FINDS** that the Chief's decision to deny a permit to construct an injection well in this area was both lawful and reasonable.

CONCLUSIONS OF LAW

1. Pursuant to O.R.C. §1509.36, the Board will affirm the Division Chief if the Board finds that the order appealed is lawful and reasonable. Johnson v. Kell, case no. 93 AP 480, Franklin County Court of Appeals [appeal from Board case #370] (July 27, 1993).

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

(D) No person shall, without first having obtained a permit from the chief, inject brine . . . into an underground formation . . .

* * *

. . . the chief shall not issue a permit for the injection of brine . . . unless the chief concludes that the applicant has demonstrated that the injection will not result in the presence of any contaminant in ground water that supplies or can reasonably be expected to supply any public water system, such that the presence of the contaminant may result in the system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

3. The proposed injection well site is in the Hocking River Valley Aquifer. This aquifer supplies the public water system for the City of Logan.

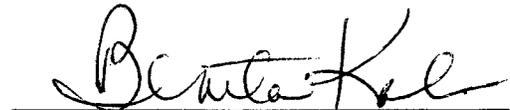
4. Kilbarger has not demonstrated that the injection well will not result in the presence of any contaminant in the ground water that supplies the Logan public water system.

5. The issuance of Chief's Order 91-518 was lawful and reasonable.

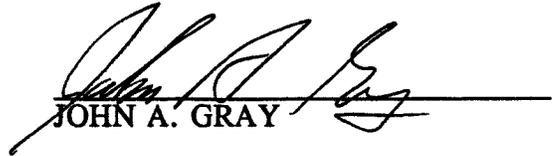
ORDER

Based upon the foregoing findings of fact and conclusions of law, the Board hereby **AFFIRMS** the Division's issuance of Chief's Order 91-518.


WILLIAM J. TAYLOR, Chairman


BENITA KAHN, Secretary


JAMES H. CAMERON


JOHN A. GRAY

* **ABSTAINED**
GAIL IGNATZ-HOOVER

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:

Douglas Bricker
Certified Mail #: Z 723 036 991

Ray Studer
Inter-Officer Certified Mail #: 5304