



BOARD OF OIL AND GAS REVIEW

DIVISION OF OIL & GAS

DEPARTMENT OF NATURAL RESOURCES, STATE OF OHIO

Allen and Alice Shiner
5972 March Road
Pierpont Ohio
44082
and Others

Appellants

APPEAL NO. 154

vs

RENEE J. HOUSER, CHIEF
Division of Oil & Gas
Ohio Department of Natural Resources
Fountain Square, Columbus
Ohio 43224

Appellee

Appearances:

For Appellant: Daniel D. Wilt
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Seven Hills, Ohio 44131

For Appellee: Anthony J. Celebrezze, Jr
Attorney General
By: John McGuire
Assist. Attorney General
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Ohio, 43224

For Edco: Mr. John K. Keller
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P.O. Box 1008
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ENTRY

This matter came on for hearing before the Oil and Gas Board of Review on December 4, 1986, in the First Floor Conference Room Building E., Fountain Square, Columbus, Ohio pursuant to a timely Notice of Appeal filed by the Appellant. The appeal was taken from the Order of the Chief, Division of Oil and Gas, # 85-117, to Edco Drilling & Producing, Inc. dated May 8, 1986 granting the application of Edco Drilling & Producing, Inc. to convert two existing oil and gas wells in Pierpont Township, Ashtabula County, Ohio to saltwater injection wells.

ISSUES

The general issue raised in this Appeal is whether the Chief of the Division of Oil and Gas lawfully and reasonably issued the permits to convert the wells for the injection of saltwater pursuant to the provisions of O.R.C. 1509.22 and other applicable provisions of the Ohio Revised Code?

The subissues raised in hearing and posthearing briefs are:

1) Whether Chapter 1509 and the rules promulgated thereunder, as approved by the Administrator of the U.S. EPA, and as provided for in Section 1425 of the SDWA are part of the SWDA to be implemented in Ohio (See 42 C.F.R. 147.1800, Federal Register, August 23, 1983 (48 FR 38238)? Answer: Yes.

2) Whether the application complies with the provisions of OAC 1501:93 and other applicable provisions, specifically whether the application was complete? Answer: Yes.

3. Whether the requirement that the application be complete be read to mean:

a) complete enough to proceed with the application process in the view of the appropriate officers of the Division of Oil and Gas? Answer: Yes.

b) sufficiently complete to proceed with the application process, to hold a public hearing, if appropriate and to investigate the area of review around the well site?

Answer: Yes.

c) is the application itself complete, as it is so labelled, handled and recognized by the Division of Oil and Gas?

Answer: Yes.

4. Whether a modification, alteration, supplement or change of the application, the plans, the construction and design or the other features of the request for a permit as the result of information gained from a public hearing or other review of the application is reasonable and lawful without additional public hearings to repeatedly obtain comment on the modifications, alterations supplements or changes? Answer: Yes.

5. Whether the Chief is required by due process to call additional public hearings after a discretionary public hearing has been held, information obtained and revisions to the application made based on that hearing, before the Chief may issue an order? Answer: No.

6. Whether wording "or may otherwise adversely affect the health of persons" in Section 1509.22D to wit:

"...the Chief shall not issue a permit for the injection of brine or other waste substances, resulting, obtained or produced in connection with oil or gas well drilling, exploration or production,

unless the Chief concludes that the applicant has demonstrated that the injection will not result in the presence of any contaminant in groundwater that supplies or can reasonably be expected to supply any public water system, such that the presence of the contaminant may result in the systems' not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons." (Emphasis added).

to be read to relate back to the phrase "injection will not result in the presence of any contaminant in groundwater"?

Answer: Yes.

7. Is the mere possibility of traffic accidents on state and county roads involving brine hauling trucks in and of itself sufficient grounds for denial of a permit on the grounds that the applicant has not demonstrated that the injection may not in this manner adversely affect the health of persons? Answer: No.

8. Is the transportation of brine to a disposal site to be construed under Section 1509.22 as part of the method of injection? Answer: No.

9. Is the definition of brine in Section 1509.01 (U), to wit:

"Brine" means all saline geological formation water resulting, obtained, or produced in connection with the exploration, drilling or production of oil or gas.

a sufficient definition for the purposes of regulating the disposal of brine by injection, or otherwise? Answer: Yes.

BACKGROUND

The applicant, Edco Drilling & Producing, Inc. requested a permit to convert two existing oil and gas wells, identified by permit numbers as No. 927 and No. 919 on the Renshaw and Renshaw/Bradnan lesses in lot 30, Pierpont Township, Ashtabula County, Ohio.

The Application was reviewed by the U.I.C. (Underground Injection Control) technical section and found to be complete. Publication of the notice of the application was made in accordance with the rule. Appellants filed objections to the application and the Chief granted a public hearing which was held on September 19, 1985 in Ashtabula County.

Subsequently, based on the applications and based on the results of the hearing and further modifications and requirements, the Chief issued injection permits for the No. 927 and 919 wells on November 20 stipulating the construction and operation requirements to insure compliance with the provisions of Section 1509.22. On the same date, the Chief of the Division of Oil and Gas made a final set of findings and issued Order No. 85-117 which, inter alia states that:

1. The applicant has demonstrated that the injection will not result in the presence of any contaminant in groundwater...
2. That the applications comply with the requirements of Administrative Code 1501:9-3.
3. That the method of injection will not be in violation of the law, and that
4. The proposed method will not jeopardize public health or safety or the conservation of natural resources.

The Appellants appealed the order without requesting a stay. When construction on the well conversion began, the Appellants filed a complaint in the Court of Common Pleas asking for a temporary and permanent injunction. When injunctive relief was denied, that decision was appealed to the Court of Appeals for the Eleventh District of Ohio where Appellant's assignments of error were overruled. The process resulted in substantial delay in the hearing of this appeal before the Board of Oil and Gas Review.

At the December 4, 1986 hearing, the Appellants presented two witnesses, Julie Weatherinton Rice, a geologist and Brigitte Racinskas, one of the parties. The testimony of Ms. Rice essentially went to her opinion in support of the theories of the Appellants that:

1. The applications were incomplete.
2. The Division's procedures are flawed,
3. Federal law and procedures should be followed.
4. There is danger of groundwater contamination of surrounding areas by various means, not necessarily related to the injection well method or wells per se.

In summary, Ms. Rice testified she was and would be dissatisfied with the Chief's Order even if it were shown to be reasonable and lawful. No geological evidence regarding the wells was submitted at the hearing and the Ms. Rice agreed that she had not personally performed any investigation on the wells or of the groundwater conditions.

The testimony of Mr.s Racinskas was basically as to her

opinion as to the completeness of the applications; her perceptions of the reliability of the company and her beliefs as to how the Divisions's procedure should be administered. A third party witness withdrew his statement when not allowed by the Board to simply read it into the record without cross examination.

No factual testimony or evidence was presented by the Appellants which showed the four findings of the Chief made in Order 85-117 were either unreasonable or unlawful.

Appellee's witnesses, Mr. George Hudak, UIC geologist for the Division of Oil and Gas testified that the procedures used for and approved by the Division of Oil and Gas for salt water disposal applications were in fact met by the applicant, that the application was deemed complete at one stage for the continuation of the procedure and at another stage for the granting of the permit and that the well plan met the construction design criteria for the prevention of introducing contaminants into the ground water.

Testimony by Appellee witness, Mr. David Hodges, Division of Oil and Gas, essentially confirmed that of Mr. Hudak.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony of the witnesses and the documents submitted and accepted by the Board, the Board makes the following findings of fact:

- 1) The Ohio Revised Code Chapter 1509 and the rules promulgated thereunder, are the controlling statutes in Ohio which regulate the underground injection control program pursuant to the provisions of the SWDA, as approved by the

Administrator of the U.S. EPA, and as provided for in Section 1425 of the SDWA are part of the SWDA to be implemented in Ohio (See 42 C.F.R. 147.1800, Federal Register, August 23, 1983 (48 FR 38238) which gives the State of Ohio primacy in the regulation and enforcement of underground injection. Consequently, the Division of Oil and Gas, absent a ruling by a court of competent jurisdiction to the contrary, follows the provisions of Chapter 1509 in the regulation of underground injection.

2. The applicant, Edco Drilling and Producing, Inc. met the requirements of the Ohio Revised Code and Ohio Administrative Code as to the completeness and correctness of its application to convert the two wells in Pierpont Township, Ashtabula County to saltwater disposal wells.

3. The Chief of the Division of Oil and Gas has sufficient discretion under the Administrative Code to determine as part of her duties the completeness of an application.

4. The Board finds specifically that the requirement that the application be complete means:

a) it is complete enough to proceed with the application process as determined in a reasonable and factual manner by personnel charged with such duty, or

b) it is complete enough to proceed with a public hearing and/or to investigate the area of review or to continue work on other parts of the application procedure, and

c) the application is complete if it is complete in itself. It need not contain or have attached to it records, information, reports, computer-stored data or work papers available to the

personnel charged with the review of the application, if in their view such documents are sufficiently available to them in the records of ODNR to carry out their duties.

5. An application for a saltwater injection well or the conversion of an oil and gas well to a saltwater injection well may be modified, amended, altered or supplemented by the applicant, without a public hearing, in consultation with Chief, Division of Oil and Gas or her designate who is charged with the application review, before the final order of the Chief granting or denying the permit. Because the holding of a public hearing by the Chief is discretionary, and where the comments of a prior public hearing have been considered by the Chief, no additional public hearings are required to inform persons of modifications, where, as here, the law provides for a subsequent appeal to the Board of Review by any person adversely affected by the final order of the Chief.

6. Appellant presented no substantive, reliable or probative evidence that the existing wells which produce oil, gas and brine or that injection of salt water into the same wells when converted to saltwater injection wells have affected, or currently affect any public water supply or otherwise endanger the health of persons.

7. The Board interprets the wording "or may otherwise adversely affect the health of persons" in Section 1509.22D to wit:

"...the Chief shall not issue a permit for the injection of brine or other waste substances, resulting, obtained or produced in connection with oil or gas well drilling, exploration or production, unless the Chief concludes that the applicant has demonstrated that the injection will not result in

the presence of any contaminant in groundwater that supplies or can reasonably be expected to supply any public water system, such that the presence of the contaminant may result in the systems' not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons."

to be read to relate back to the phrase "injection will not result in the presence of any contaminant in groundwater" and not to be read to refer to the health of persons generally or in a manner not related to contamination of groundwater by injection of brine.

8. Appellant argue that the proposed use of the wells will cause additional traffic problems on federal, state and county roads and that these alleged resultant hazardous traffic conditions, including the possibilities of dangers incident to traffic accidents, may adversely affect the health of persons and should be the basis for denial of a well permit.

The Board finds no rational relationship between this line of reasoning the provisions of the Ohio Revised Code sections on brine injection and the prevention of groundwater contamination by underground injection pursuant to the Safe Drinking Water Act. Roads open to general traffic have trucks which carry various types of liquids, including flammable, explosive, toxic, radioactive and reactive chemical compounds. If there is need for additional regulation of liquid haulers, that is the duty of another body. The Board finds no authority for the Chief's limiting or regulating general traffic on the state's highways and no basis in Chapter 1509 or OAC 1501 for denial of a permit on the grounds that traffic accidents might occur.

Neither does the Board find that the transportation of brine to a disposal site is to be construed under Section 1509.22 as part of the method of brine injection. The specific methods of brine disposal and injection are spelled out in Chapter 1509, e.g. annular disposal (injection), deep well injection, spreading on township roads, etc.

9. The Board has considered the definitions in Section 1509.01 and finds that the definition of brine in Section 1509.01 (U), to wit:

"Brine" means all saline geological formation water resulting, obtained, or produced in connection with the exploration, drilling or production of oil or gas.

is a definition which is sufficient and clearly understood for the purposes of regulating the disposal of brine by injection. In other words, the Chief of the Division need not order or require brines meeting the definition of ORC 1509.01(U) be tested to determine their specific chemical compositions as demanded by the Appellants in order to find that such brine may be disposed of pursuant to a permit issued or to be issued under Chapter 1509.

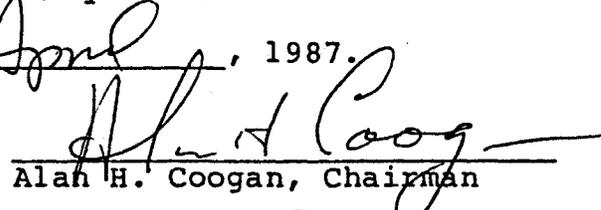
10. The Board finds that the conclusions stated in Order 85-117 that the method of injection will not be in violation of the law and that the proposed method of injection will not jeopardize public health or safety or the conservation of natural resources are well founded in the findings and review of the personnel of the UIC section and as additionally provided for by the Construction Stipulations issued for the wells identified by Permit Nos. 919 and 927.

Consequently, the Order of the Chief, No. 85-117 is found by the Board to have been lawful and reasonable.

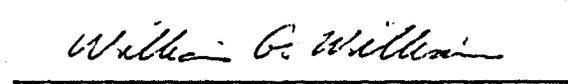
Based on these findings of fact and conclusions of law, the Board of Oil and Gas Review

ORDERS, that Appeal 154 is hereby DISMISSED . and that the Adjudication Order No. 85-117 granting a permit for injection of saltwater into the wells identified by Nos. 919 and 927, Astabula County, Ohio be and hereby is AFFIRMED.

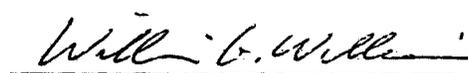
Dated this 4th day of April, 1987.


Alan H. Coogan, Chairman


Robert H. Alexander


William G. Williams

This is a certified and true copy.


William G. Williams, Secretary
Ohio Oil and Gas Board of Review