

BEFORE THE OIL AND GAS BOARD OF REVIEW

DEPARTMENT OF NATURAL RESOURCES, STATE OF OHIO

CITY OF ELYRIA, OHIO, ET AL.
MICHAEL B. KEYS, MAYOR
328 Broad Street
Elyria, Ohio 44035

APPEAL NO. 112

Appellant

vs

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

Appellee

Appearances:

For Appellant: Terry S. Shilling
City of Elyria
614 Oberlin Road
Elyria, Ohio 44035

David A. Basinski
1000 Lorain County Bank
Building
Elyria, Ohio 44035

For Appellee: William J. Brown
Attorney General
By Dominic J. Hanket
Assistant Attorney General
Fountain Square
Columbus, Ohio 43224

For Applicant: John W. Hoberg
Vorys, Sater, Seymour & Peas
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216

ENTRY

This matter came on for hearing before the Oil and Gas Board of Review on April 18, 1985 at Fountain Square, Building E, Columbus, Ohio, pursuant to a Notice of Appeal filed December 13, 1984 by the Appellants. The Appeal was taken from Adjudication Order No. 84-100, issued by the Chief, Division of Oil and Gas, the Appellee, on November 16, 1984 granting the application submitted by Alchem-Tron, Inc. (Applicant) for a permit to construct a saltwater injection well in Lorain County, City of Elyria, Ohio. The case was heard by the testimony and exhibits presented to the Board by the Appellant, the Appellee and the original Applicant whose permit was being appealed, Alchem-Tron, Inc.

ISSUES

The specific issues listed in the Appeal of the Order of the Chief by the City of Elyria were ten in number intending to show that the Order of the Chief was unreasonable or unlawful. At the hearing, these ten were revised and summarized as three basic objections by the Appellant:

1. The application for the permit by Alchem-Tron, Inc. was incomplete and/or inaccurate, especially with regard to the fact of final disposal of the waste product.

2. The installation of a salt water injection well on the industrial zoned property located on Infirmary Road in Elyria would constitute a hazard or detriment to the health and safety of the residents of the City of Elyria, especially with regard to increased traffic on Infirmary Road, and

3. The applicant, AlChem-Tron, Inc. has not complied with the zoning requirements of the City of Elyria.

FINDINGS OF FACT

Based on the evidence presented and the exhibits, the Board makes the following findings:

1. The application for a salt water injection well by AlChem-Tron, Inc. was complete and proper, based on the undisputed testimony of Mr. Kopp, UIC section head.

2. The hazard to health and safety of the residents of the City of Elyria was not demonstrated. The only evidence presented by the Appellant related to possible increased truck traffic of 10 to 25 trucks per day on Infirmiry Road. Such evidence was in the form of opinion by a layman as to traffic matters. No traffic counts or other evidence were presented by the witness nor the City Engineer who also testified. In a prior case, involving the same issue, that is the effect of increased truck traffic due to a new salt water injection installation, the Board found that such increased traffic was not a proper basis for decision of the Chief to deny an application for an injection well. Here the objection of the Appellant fails because of lack of evidence.

3. The City of Elyria also objected that the permitted injection well will not meet Elyria's zoning laws. The Division's counsel objected that the Applicant had properly indicated that local laws and ordinances will be complied with, as required under Chapter 1509 and that the Chief is not required, and consequently did not and has no authority to

consider or enforce the City's zoning ordinances. The Board finds no basis for the Chief of the Division of Oil and Gas to enforce the City of Elyria's zoning.

Finally, the evidence showed that the Chief held an extensive public hearing on the issues raised by the Appellant at a place convenient to them and based her findings in support of Order 84-100 on that hearing.

CONCLUSIONS OF LAW

Based on the Finding of Fact set forth herein and the applicable law, the Board finds the Adjudication Order 84-100, issued by the Chief, Division of Oil and Gas is reasonable and lawful and

ORDERS, that adjudication order 84-100 be and hereby is AFFIRMED.

This Order effective this 1st day of May, 1985.

OIL AND GAS BOARD OF REVIEW

James J. Morgan / per
JAMES J. MORGAN, CHAIRMAN

George M. Hauswirth
GEORGE M. HAUSWIRTH, SECRETARY

Robert H. Alexander / per
ROBERT H. ALEXANDER

Alan H. Coogan
ALAN H. COOGAN

Beatrice W. Rakay / per
BEATRICE W. RAKAY

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

CITY OF ELYRIA, et al :

Appellant :

vs. : Case No. 85CV-05-3068

RENEE J. HOUSER, Chief :
Division of Oil and Gas

Appellee :

D E C I S I O N

Rendered this 20th day of May, 1987.

BRITT, J.

This matter comes before the Court on an appeal pursuant to O.R.C. §1509.37 by Appellant City of Elyria from the May 1, 1985 Order of the Oil and Gas Board of Review ("Board") granting a saltwater injection well ("SWIW") permit to Alchem-Iron, Inc.

Upon review of the briefs and certified record, this Court finds no indication that the Order issued by the Oil and Gas Board of Review is unreasonable or unlawful.

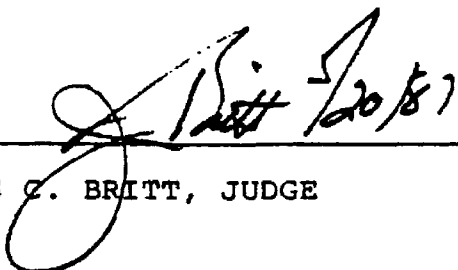
The Chief of the Division of Oil and Gas is not under a legal obligation to consider possible conflicts with local zoning provisions prior to issuing a SWIW permit. Zoning provisions will be enforced by the appropriate agencies, which have the authority to grant variations.

This Court finds that the Board properly affirmed the decision of the Chief to issue the SWIW permit. Accordingly, the decision and Order of the Oil and Gas Board of Review is

FILED
MAY 29 1987
CLERK OF COURT
FRANKLIN COUNTY, OHIO

AFFIRMED.

Counsel for Appellee shall submit judgment entry per
Court Rule 39.01.



JAMES C. BRITT, JUDGE

Appearances:

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Terry S. Shilling
Attorneys for Appellant

Dominic J. Hanket
Assistant Attorney General
Attorney for Appellee, Division of Oil and Gas

John W. Hoberg
Attorney for Alchem-Tron, Inc.

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