

THE COMPLAINT OF BOBBY AND HARRIET MCGEE THAT PROPER NOTICE WAS NOT GIVEN REGARDING THE PERMIT ISSUED TO POLK OPERATING LLC FOR A COMMERCIAL FACILITY TO DISPOSE OF OIL OR GAS WASTE BY INJECTION INTO A POROUS FORMATION NOT PRODUCTIVE OF OIL OR GAS, POLK KASHMIR SWD LEASE WELL NO. 2, MONTAGUE COUNTY REGULAR FIELD, MONTAGUE COUNTY, TEXAS

Heard by: Margaret Allen, Technical Hearings Examiner
James M. Doherty, Legal Examiner

Procedural history:

Hearing held: July 18, 2006

Proposal for decision issued: August 15, 2006

Appearances

	Representing
<u>Complainants and Protestants</u>	
Bobbie and Harriet McGee	themselves
Oliver Emmert	himself
<u>Respondent and Applicant</u>	
Steven Fenoglio	Polk Operating LLC
Kerry Pollard	
Joe Gonzales	

EXAMINERS' REPORT AND PROPOSAL FOR DECISION

STATEMENT OF THE CASE

This hearing was called by the Commission to consider the complaint of Bobby and Harriet McGee ("McGees") that Commercial Facility Permit No. 12216 was issued on January 9, 2006, to Polk Operating, LLC ("Polk") for the Polk Kashmir SWD Lease, Well No. 2 ("subject well"), Montague County Regular Field, Montague County, Texas, without notice and opportunity to protest having been provided to the McGees pursuant to Statewide Rule 9. Pursuant to the request of Polk, the call of the hearing was broadened to include consideration of whether a Commercial Facility Permit should be approved for the Polk Kashmir SWD Lease, Well No. 2, in the event it is determined that Commercial Facility Permit No. 12216 was issued without provision of the notice required by Statewide Rule 9.

A hearing was held on July 18, 2006. The McGees and Oliver Emmert appeared and presented evidence on the notice issue and in opposition to approval of a Commercial Facility Permit for the subject well. Polk appeared and presented evidence on these same issues.

DISCUSSION OF THE EVIDENCE

The Complaint Issue

The McGees gave sworn testimony that they are the surface owners of a tract adjacent to Polk's disposal well tract and did not receive any notice of Polk's application for Commercial Facility Permit No. 12216, which was approved administratively and issued to Polk on January 9, 2006. They also stated that they had been advised by surface owners of other tracts adjacent to the disposal well tract that notice of Polk's application was not received by them. Emmert is also the surface owner of a tract adjacent to the disposal well tract, and testified that he did not receive notice of Polk's application. Because of the failure of Polk to provide notice and opportunity for protest, the McGees and Emmert believe that the Commission should revoke Commercial Facility Permit No. 12216.

Polk presented evidence that its Form W-14 Application to Dispose of Oil and Gas Waste by Injection Into A Formation Not Productive of Oil and Gas filed December 9, 2005, was prepared and filed by an Austin consulting firm. A representative of the consulting firm testified that a copy of the front and back of the Form W-14 was mailed on November 22, 2005, to all surface owners of tracts adjacent to the disposal well tract, including the McGees and Emmert as required by Statewide Rule 9. In addition, notice of Polk's application was published on December 1, 2005, in The Bowie News, a newspaper having general circulation in Montague County. Polk stated that it has no information as to why the mailed notices sent to the McGees and Emmert were not received by them, but does not dispute the claim by the McGees and Emmert that the notices were not received. Because the McGees and Emmert have now been provided notice that the issue of whether a Commercial Facility Permit should be approved for the subject well would be considered in this docket, and have been provided an opportunity for hearing on this issue, Polk requests such approval in the event the Commission determines that there was an earlier failure of notice.

The Application On Its Merits

Polk's evidence

Polk filed a Form W-14 on December 9, 2005, wherein it proposed to drill a new well for saltwater disposal into a non-productive formation. By administrative action, Polk was granted Permit No. 12216 for its Polk Kashmir SWD Lease Well No. 2 on January 9, 2006. It has since drilled the disposal well though the well was not yet operational at the time of the hearing.

The approved disposal interval is the Strawn Formation between 2550' and 3850'. The actual perforations in the Kashmir SWD Lease Well No. 2 are between 2625' and 3766'. According to Polk, these Strawn sandstones are continuous across the area and should be able to accept the amount of fluid proposed. Polk's testimony is that the log of this interval shows at least 200' of porous and permeable sandstone.

According to the Texas Commission on Environmental Quality (“TCEQ”), usable-quality ground water should be protected to a depth of 500'. Polk set and cemented surface casing at 523', while the long string casing was cemented from the base of the well at 3868' with enough cement to reach the surface. Disposal will be through tubing set on a packer at 2550'.

Polk requested approval to dispose of up to 20,000 barrels of saltwater per day, with an average rate of 5000 barrels. The maximum surface injection pressure will be 1275 psi, with an average surface pressure of 800 psi. There are no wellbores within 1/2 mile of the Polk Kashmir SWD No. 2, which is a reason that Polk located this well here.

The water to be disposed of in the Polk Kashmir SWD No. 2 is produced by Barnett Shale development which is moving into Montague County. The Newark, East (Barnett Shale) Field has 4500-4600 wells, that produce about a million barrels of saltwater per month. Barnett Shale wells produce saltwater that must be disposed of, particularly early in their life.

According to Polk, saltwater hauling trucks frequently have to wait at existing permitted disposal wells in the area or travel from well to well to find one with spare capacity. Polk believes use of its proposed facility is in the public interest as this well will increase disposal capacity in Montague County, thus reducing costs for operators. Polk has a letter from D and G Dozer Company stating that it will utilize this well for the disposal of a minimum of 30 truckloads per day.

The proposed well will be a commercial disposal well and Polk will comply with all Commission requirements for commercial wells. Prior to beginning operations, collecting and other pits will be permitted separately under the requirements of Statewide Rule 8. A catch basin will be installed to collect waste which may spill as a result of connecting or disconnecting hoses from hauling trucks. All fabricated storage and pretreatment facilities will be constructed of steel, concrete, fiberglass or other approved material and will be maintained to prevent waste discharges. All facilities will be surrounded by dikes 36 inches high which are capable of containing the maximum holding capacity of all such facilities, and any wastes that do accumulate will be removed within 24 hours. Access to the facility will be secured by a fence with a locked gate when unattended. Each storage tank will be equipped with a device to alert drivers when the tank is within 130 barrels of being full.

Polk has a currently active Form P-5 and has filed financial assurance as required by Statewide Rule 78.

Complainants' evidence

The complainants are concerned about the additional traffic that this well will bring on a two-lane highway. According to the complainants, there are already disposal wells in the area and already large numbers of saltwater trucks. If Polk disposes of 20,000 barrels of water per day, that will increase the traffic by 154 trucks per day.

The complainants are concerned about the decrease in their property values caused by a disposal well next door. They also pointed out there are a number of water wells within 1/2 mile. Some water wells outside the 1/2 radius of review produce water from as deep as 575', which is deeper than the

surface casing. The McGees presented a petition signed by 16 landowners or residents in the area stating opposition to approval of a permit for the Polk Kashmir SWD Lease, Well No. 2.

EXAMINERS' OPINION

The examiners deem credible the testimony of the McGees and Emmert that they were entitled to notice of Polk's application filed on December 9, 2005, and notice was not received by them. Although, Polk cannot explain why the notices mailed on November 22, 2005, were not received by these complainants, it does not dispute the claim by the McGees and Emmert that the notices were not received. Because the notice required by Statewide Rule 9 was not provided prior to administrative approval of the Polk application and issuance of Commercial Facility Permit No. 12216 on January 9, 2006, the examiners conclude that the prior administrative approval was invalid. This notwithstanding, the notice problem was cured by the issuance of the notice of hearing in this docket which stated that the Commission would consider, among other issues, whether the Polk application should be approved on its merits. The McGees and Emmert have been afforded a hearing on the merits of Polk's application in this docket, including the right to cross-examine Polk's witnesses and present their own evidence in opposition to approval of the application.

The examiners believe that this application should be approved. The proposed disposal well will not harm usable-quality water in the area. The casing and cementing program in this well will ensure that injected waste is confined to the interval between 2550' and 3850'. The protestants claimed that someone else's freshwater wells were as deep as 575' but admitted that these wells were more than 1/2 mile away. The Texas Commission on Environmental Quality indicates that usable-quality water is 500' deep or less at this location, and the 523' of surface casing will be adequate to protect fresh water.

The sandstones in this part of the Strawn Formation appear adequate to accept the requested maximum volume of 20,000 barrels of salt water to be injected. The shale above these sandstones will form a good seal. The maximum requested surface pressure of 1275 psi will not exceed the fracture pressure of the overlying rock.

FINDINGS OF FACT

1. At least ten (10) days notice of this hearing was provided to all interested persons, including Polk Operating LLC ("Polk"), which is the owner of record of the surface tract on which the Polk Kashmir SWD Lease, Well No. 2 is located, the county clerk of Montague County, Texas, and Bobby and Harriet McGee, Oliver Emmert, and other owners of record of each surface tract that adjoins the proposed disposal tract, as identified by Polk.
2. On December 9, 2005, Polk filed a Form W-14 (Application to Dispose of Oil and Gas Waste By Injection Into A Formation Not Productive of Oil and Gas) seeking a Commercial Facility Permit for the Polk Kashmir SWD Lease, Well No. 2, Montague County Regular Field, Montague County, Texas. The application was accompanied by a signed service list stating that copies of the Form W-14 had been mailed to the surface owner of the disposal well tract (Polk), the County Clerk of Montague County, and offset surface owners on November 22, 2005. The service list stated that there were no offset operators within one-half mile of the proposed

disposal well. Notice of the Polk application was published on December 1, 2005, in The Bowie News, which is a newspaper of general circulation in Montague County, Texas.

3. No protest to the Polk application was received by the Commission. The Polk application was approved administratively by the Commission's Environmental Services Section, and Disposal Permit No. 12216, was issued to Polk Operating LLC. for its Polk Kashmir SWD Lease, Well No. 2 on January 9, 2006.
4. On April 6, 2006, Bobby and Harriet McGee ("McGees") filed a complaint with the Commission stating that they had not received prior notice of the filing of the Polk application and requesting a hearing on the complaint.
5. On July 7, 2006, the Commission issued a notice of hearing in this docket, scheduling a hearing on the McGees' complaint. This notice also stated that in addition to the issue of whether Disposal Permit No. 12216 had been issued without the proper notice required by Statewide Rule 9, the Commission would consider Polk's application on its merits and whether a permit for the Polk Kashmir SWD Lease, Well No. 2 should be approved.
6. The Commission mailed a copy of the July 7, 2006, notice of hearing in this docket to all persons entitled to notice under Statewide Rule 9, as identified by Polk, including the McGees and Oliver Emmert.
7. A hearing was held in this docket on July 18, 2006. The McGees and Oliver Emmert ("Emmert"), who are surface owners of tracts adjacent to Polk's disposal well tract, and Polk appeared at the hearing. The McGees and Emmert presented evidence on the notice issue and on the issue of whether a permit for the Polk Kashmir SWD Lease, Well No. 2 should be approved, and cross-examined Polk's witnesses. Polk also presented evidence and conducted cross-examination on the relevant issues.
8. For reasons unknown, the McGees and Emmert did not receive the copies of Polk's Form W-14 application mailed to them on November 22, 2005.
9. Polk has drilled the Kashmir SWD Lease, Well No. 2, but the well is not yet operational.
10. Disposal Permit No. 12216 allows disposal of up to 20,000 barrels of saltwater per day into the interval 2550'-3850, at a maximum surface injection pressure of 1275 psi.
11. The Polk Kashmir SWD Lease Well No. 2 will be used for disposal of oil and gas waste produced mostly by Barnett Shale wells.
12. A maximum surface injection pressure of 1275 psi will not fracture the overlying rock nor endanger hydrocarbon reserves in the area.
13. There are no wellbores within 1/2 mile of the Polk Kashmir SWD Lease Well No. 2.

14. According to the Texas Commission on Environmental Quality, usable-quality water should be protected to a depth of 500'.
15. The Polk Kashmir SWD Lease Well No. 2 has surface casing cemented from 523' to the surface, while the long string casing was cemented from the base of the well at 3850' with enough cement to reach the surface.
16. Use of the proposed disposal well is in the public interest as it will eliminate or reduce the amount of time saltwater haulers are required to wait to unload at existing disposal facilities or the necessity to travel from one disposal facility to another to find spare capacity. This will reduce disposal costs, thus encouraging further oil and gas development.
17. There is a need for disposal facilities in Montague County because of the active development of Barnett Shale wells.
18. Polk Operating LLC has a currently active Form P-5 and has filed financial assurance as required by Statewide Rule 78.

CONCLUSIONS OF LAW

1. On July 7, 2006, proper notice was given to all necessary parties as required by Statewide Rule 9 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.9] and other applicable statutory and regulatory provisions.
2. All things necessary to give the Commission jurisdiction to decide this matter have been performed or have occurred.
3. Administrative approval of Commercial Facility Permit No. 12216 on January 9, 2006, by the Environmental Services Section was invalid because proper notice of the application of Polk Operating LLC was not provided to Bobby and Harriett McGee and Oliver Emmert, as required by Statewide Rule 9.
4. The notice of hearing issued on July 7, 2006, provided all affected persons with the notice required by Statewide Rule 9 and §§2001.051 - 2001.052 of the Texas Government Code that the Commission would consider on its merits the application of Polk Operating LLC for a Commercial Facility Permit for the Polk Kashmir SWD Lease, Well No. 2.
5. Complainants Bobby and Harriet McGee, and Oliver Emmert, have been provided a full and fair hearing on the issue of whether the application of Polk Operating LLC for a Commercial Facility Permit for the Polk Kashmir SWD Lease, Well No. 2 should be approved by the Commission, in conformity with §2001.051 of the Texas Government Code.
6. Granting the application to dispose of oil and gas waste into the Polk Operating LLC Polk Kashmir SWD Lease, Well No. 2 under the terms and conditions set forth in the attached Final Order, will not endanger fresh water resources nor endanger oil or gas resources in the area.

7. No existing rights will be impaired by the use the Polk Kasmir SWD Lease, Well No. 2 to dispose of up to 20,000 barrels of saltwater at a maximum surface pressure of 1275 psi.
8. Granting the application is in the public interest.
9. The application to dispose of oil and gas waste into the Polk Kashmir SWD Lease, Well No. 2 meets the requirements for approval pursuant to Statewide Rule 9 and the Texas Water Code §27.051 and §27.073.
10. The terms and conditions set forth in the attached Final Order are reasonably necessary to protect usable-quality water from pollution.

EXAMINERS' RECOMMENDATION

Based on the above findings and conclusions, the examiners recommend that the application of Polk Operating LLC. to dispose of up to 20,000 barrels of saltwater per day by injection at a maximum surface pressure of 1275 psi, into the interval between 2550' and 3850' in its Polk Kashmir SWD Lease Well No. 2, in the Montague County Regular Field in Montague County, be **GRANTED**, with the conditions proposed in the attached Final Order.

Respectfully submitted,

James M. Doherty
Hearings Examiner

Margaret Allen
Technical Hearings Examiner