

**AOPA COMMITTEE OF THE
NATURAL RESOURCES COMMISSION**

Meeting Minutes of September 20, 2011

MEMBERS PRESENT

Jane Ann Stautz, Chair
Mark Ahearn
R. T. Green
Doug Grant
Robert Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen
Stephen Lucas

DEPARTMENT OF NATURAL RESOURCES STAFF AND GUESTS PRESENT

Ihor Boyko
Leo Rexing
Douglas M. Hill
Martha E. Hill

Call to order

Jane Ann Stautz, Chair, called the meeting to order at 8:34 a.m., EDT on September 20, 2011 in The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With the presence of all five members, the Chair observed a quorum.

Consideration and approval of minutes for meeting held on March 15, 2011

Mark Ahearn moved to approve the minutes of the meeting held on March 15, 2011 as presented. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of Findings of Fact and Conclusions of Law with Nonfinal Order, and of objections to them, in the matter of *Department of Natural Resources v. Leo Rexing*, Administrative Cause No. 10-123G

Jane Stautz reported for consideration was administrative review involving a 2010 complaint by the Department of Natural Resources against Leo Rexing to revoke Permit 36180 to operate a Class II Injection Well. The Administrative Law Judge, Sandra Jensen, issued a nonfinal order to revoke the permit, because Rexing failed to seek administrative review of the notice of violation or to perform the remedial action specified by the Department in a previously issued Notice of Violation. Rexing was ordered to properly plug and abandon the well site associated with the permit. The nonfinal order provided that if the well was abandoned, the Commission may enter an order authorizing the disposal of casing and all equipment located on or removed from the

well site and to recover any crude oil store on the well site. An inventory of the casing, equipment, and crude oil shall be made, and the salvage or other reasonable market value of the casing, equipment and any crude oil shall be applied as a credit to offset the actual costs incurred by the agency to plug and abandon the well. A civil penalty assessment issued to Rexing in the amount of \$500 was also affirmed. Rexing filed written objections to the ALJ's nonfinal order. Stautz said Rexing was present on his own behalf, and Ihor Boyko was present as attorney for the Department.

Leo Rexing said, "During a prehearing conference with Judge Jensen, the DNR" claimed the well could be leaking oil. He urged that the "well was MITed legally and not yet due" for re-testing when the Department issued the notice of violation and filed the complaint to revoke the permit.

Ihor Boyko responded that the Division of Oil and Gas inspector tried to pressure test the well and noted some leakage, but the leakage was not the basis for seeking permit revocation. The underlying notice of violation was issued for failure to operate the well properly. Rexing could have placed the well in operation, plugged the well, or sought temporary abandonment for the well, but he did not. Boyko added Rexing did not submit monitoring reports that would have established the well was operating. "Mr. Rexing does not challenge the facts or law" on which the Administrative Law Judge revoked Permit 36180 and ordered its proper plugging and abandonment. Boyko asked that her nonfinal order be approved as the final order of the Commission.

The Chair directed attention of the Committee to Finding 54 through 58 as constituting the nonfinal order of the Administrative Law Judge.

R. T. Green asked about leakage from the well. Boyko responded the Department asked Rexing to pressure test the well because of pressures discovered during an inspection. Boyko added that some operators have the equipment to do this testing, or they have to hire it done.

The Chair observed the specified corrective action was identified in Finding 20.

Robert Wright asked about correspondence pertaining to the MIT that was due in February 2011.

Rexing explained that because of the outcome of this proceeding, he had been disallowed to complete the test in February.

The Administrative Law Judge explained that a mechanical integrity test (or "MIT") is part of a State program to implement EPA law pertaining to Class II Injection wells. An operator of a Class II injection well is required minimally to demonstrate every five years that a Class II well would satisfy an MIT. In addition, the Department may require testing more frequently to help assure the protection of drinking water sources. In this proceeding, although the five year MIT was not due until February 2011, the Department sought an additional test because of pressures discovered during the inspection. Rexing refused to perform the additional testing.

Mark Ahearn moved to approve the findings of fact and conclusions of law with nonfinal order of the Administrative Law Judge as the final disposition of the Natural Resources Commission. He said his motion was based on:

- (1) Substantive evidence which supports the findings made by the Administrative Law Judge and her final order.
- (2) There is nothing in the record that is to the contrary.

Robert Wright seconded the motion. On a voice vote, the motion carried 5-0.

Consideration of Findings of Fact and Conclusions of Law with Nonfinal Judgment, and of objections to them, in the matter of *Hill v. Patton, Ohio Casualty Insurance Co., and Slater, Administrative Cause No. 09-133F*

Sandra L. Jensen, Administrative Law Judge, reported that only Robert Slater offered objections. These were delivered to the Commission's Division of Hearings but not served on other parties and not accepted for filing. Slater subsequently informed the AOPA Committee he would not attend the oral argument on objections. She said Michael Patton had not filed any document or pleading subsequent to the hearing of the evidence. Ohio Casualty Insurance Company has not participated in the proceeding since "early on". The Administrative Law Judge stated Douglas Hill and Martha Hill were present. She believed they supported affirmation of the nonfinal order.

Douglas Hill said he and his wife were hopeful the AOPA Committee would affirm the ALJ's administrative judgment for \$10,319.90 in their favors. Martha Hill stated they were present to answer any questions.

The Chair asked if any member of the AOPA Committee had comments or questions.

Robert Wright moved to approve the findings of fact and conclusions of law, with nonfinal judgment, of the Administrative Law Judge as the final disposition of the Natural Resources Commission. Doug Grant seconded the motion. On a voice vote, the motion carried.

Consideration of Findings of Fact and Conclusions of Law with Nonfinal Order in the matter of *Taylor v. DNR, Administrative Cause No. 11-122L*

Steve Lucas, Administrative Law Judge, reported that no party filed objections to the nonfinal order. As a result, "the Secretary of the Commission last week approved them as the final disposition of the Natural Resources Commission." The AOPA Committee and the Administrative Law Judge spoke briefly concerning the relationship of this item to Item 15 on the agenda of the Commission's regular meeting set for later in the day.

Adjournment

The meeting adjourned at 9:41 a.m., EDT.