

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of a General Investigation to)
Examine the Legal Issues Pertaining to the) Docket No. 18-CONS-3224-CINV
Notice Requirements for Applications, Filed)
Between October 2008 and the Present,) CONSERVATION DIVISION
Seeking Underground Injection of Salt Water)
Pursuant to K.A.R. 82-3-402.)

ORDER OPENING GENERAL INVESTIGATION

This matter comes before the State Corporation Commission of the State of Kansas (Commission) upon its own motion. Being duly advised in the premises, the Commission makes the following findings and conclusions:

Background

1. On October 24, 2008, K.A.R. 82-3-135a was amended to extend the protest period for underground injection well applications from 15 days to 30 days, as required by 40 C.F.R. § 124.10(b).¹

2. On October 24, 2017, Cindy Hoedel, a Kansas citizen, submitted an email to the Director of the Commission's Underground Injection Control (UIC) program, Rene Stucky, alleging that in the past four months the Commission had accepted a number of underground injection well applications where the applicants' publication notice provided a 15-day period in which to protest the application.²

3. On October 31, 2017, Ms. Hoedel submitted an email to the Commission's Director of Public Affairs and Consumer Protection (PACP), Linda Berry, inquiring whether

¹ See K.A.R. 82-3-135a, Credits ("effective April 23, 1990; amended Oct. 24, 2008; amended Aug. 16, 2013"). See also Kansas Register, vol. 27, No. 20, p. 655, May 15, 2008.

² E-mail from Cindy Hoedel to Rene Stucky, Director of the Commission's UIC program (Oct. 24, 2017), attached as Exhibit A.

there are underground injection well applications going back farther than the past four months where publication notice also provided the aforementioned 15-day protest period.³

Jurisdiction

4. The Commission has exclusive jurisdiction and authority to regulate oil and gas activities in the state of Kansas.⁴ The Commission has jurisdiction to regulate the disposal of salt water or waters containing minerals in an appreciable degree which are produced as a result of oil or gas operations.⁵ The Commission also regulates the construction, operation, and abandonment of any well, along with the protection of usable water of this state from any actual or potential pollution from any well.⁶ Furthermore, the Commission is authorized to investigate and initiate proceedings against anyone believed to have violated any provisions of K.S.A 55-101 *et seq.* or rules and regulations adopted pursuant thereto.⁷ The Commission may also conduct a hearing upon a written complaint charging that any operator has violated any of the rules and regulations adopted by the Commission pursuant to K.S.A. chapter 55.⁸

Findings

5. Although the Commission may adjudicate complaints against operators, Ms. Hoedel's October 24 and October 31, 2017, emails are not styled as complaints and do not seek any particular remedy. Moreover, her inquiry regarding publication notice on underground injection well applications going back more than four months may encompass numerous such applications. Thus, the Commission finds the complaint process is not appropriate to address the

³ E-mail from Cindy Hoedel to Linda Berry, Director of the Commission's PACP division (Oct. 31, 2017), attached as Exhibit B.

⁴ K.S.A. 74-623.

⁵ K.S.A. 55-901.

⁶ K.S.A. 55-152.

⁷ K.S.A. 55-162. *See* K.S.A. 55-605.

⁸ K.A.R. 82-3-122.

publication notice issue raised by Ms. Hoedel. The Commission opts instead to initiate a general investigation.

6. The Commission opens this general investigation: (1) to determine the accuracy of the facts alleged regarding publication notice of underground injection well applications; and (2) if the allegations prove to be accurate, to address the legal questions pertaining to publication notice of underground injection well applications and determine the appropriate course of action.

7. Therefore, the Commission directs the Conservation Staff (Staff), within 90 days of the issuance of this Order, to file a Report and Recommendation providing information on previous underground injection well applications.

8. Specifically, Staff's Report and Recommendation shall provide the Commission with the following:

- a. A list of all underground injection well applications going back to October 2008 where the applicant's publication notice informed persons that they only had 15 days from publication to file an objection or protest;
- b. From the above list, a sub-list of the applications that were approved by the Commission. If approved in a Commission docket, Staff shall provide the docket number. If approved administratively, Staff shall provide the identity of the well(s) at issue; the name(s) of affected operators or applicants; and dates approved.

9. Upon Staff's filing of its Report and Recommendation, any affected operator has 45 days to become a party to this docket by filing an entry of appearance. Within that same timeframe, affected operators may file legal briefs recommending to the Commission an appropriate course of action for handling approved underground injection well applications,

going back to October 2008, whose publication notices communicated an allotment of 15 days to object to or protest the application.

10. Upon Staff's filing of its Report and Recommendation, any interested party may file a petition for intervention in accordance with K.A.R. 82-1-225, stating: (1) facts demonstrating that petitioner's *legal* rights, duties, privileges, immunities, or any other *legal* interests may be substantially affected by the proceeding; or (2) that the petitioner qualifies as an intervenor under any provision of law. Petitions for intervention must be submitted in writing, or electronically filed, with copies mailed to all named parties at least three days before any hearing.⁹ A certificate of service to all named parties shall accompany any submitted petition for intervention.

11. As with affected operators, interested parties who are granted intervention have 45 days from Staff's filing of its Report and Recommendation to file legal briefs recommending to the Commission an appropriate course of action for handling approved underground injection well applications, going back to October 2008, whose publication notices communicated an allotment of only 15 days to object to or protest the application. Thus, interested parties should file their petitions to intervene and their legal briefs concurrently.

12. The Commission has broad discretion to grant intervention if it serves the interests of justice, if it will not impair the orderly and prompt conduct of the proceedings, and if the party has stated facts demonstrating its legal rights, duties and privileges, immunities or other legal interests may be substantially affected by the proceeding.¹⁰ Furthermore, at any time during a proceeding, the Commission may limit an intervenor's participation in the following ways: (1)

⁹ K.A.R. 82-1-225(a)(1).

¹⁰ K.S.A. 77-521; K.A.R. 82-1-225.

limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; (2) limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and (3) requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.¹¹

13. The Commission also encourages members of the general public, that is, those who do not meet the definition of "interested parties" or "affected operators," to submit public comments concerning this docket to the Commission's Public Affairs and Consumer Protection (PACP) division online at www.kcc.ks.gov, via electronic mail, or by mail. The public comment period begins upon the filing of Staff's Report and Recommendation and ends on April 5, 2018. PACP is directed to file a report in the docket by April 12, 2018, summarizing the public comments received by April 5, 2018.

14. Upon the close of the 45 day legal briefing period for interested parties and affected operators, Staff shall have 60 days to file its own brief, which shall recommend to the Commission an appropriate course of action for handling approved underground injection well applications, going back to October 2008, whose publication notices communicated an allotment of only 15 days to object to or protest the application.

15. The above deadlines fall on the following dates:

DUE DATE	TIME	DESCRIPTION
Monday, February 19, 2018	5:00 pm	Staff's Report & Recommendation
Thursday, April 5, 2018	5:00 pm	<ul style="list-style-type: none">• Legal briefs from Affected Operators and Interested Parties• Comments from General Public
Monday, June 4, 2018	5:00 pm	Staff's Legal Brief

¹¹ K.A.R. 82-1-225(c).

16. The sole purpose of this docket is to create a record on the legal questions pertaining to publication notice for the underground injection well applications described above. The Commission is bound by state law, and thus, seeks input on the understanding of that law as it relates to this issue. Any other issues pertaining to specific wells will not be addressed in this docket.

17. The Commission may designate a Prehearing Officer to address appropriate matters in Prehearing Conferences, including all items listed in K.S.A. 77-517(b) of the Kansas Administrative Procedure Act (KAPA). Accordingly, the Commission designates Michael J. Duenes, Assistant General Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604, telephone number (785) 271-3181, m.duenes@kcc.ks.gov, to serve as Prehearing Officer in this proceeding.¹² The Commission may designate other Staff members to serve in this capacity.

18. Should a Prehearing Conference be scheduled in this docket, parties shall be prepared to discuss deadlines for filing testimony and briefs, discovery procedures, and any other issues that will promote the orderly and prompt resolution of this proceeding. Any party that fails to attend or participate in a Prehearing Conference, hearing, or other stage of this proceeding may be held in default under the KAPA.¹³

19. Although a Prehearing Officer is designated in this docket, parties are still required to file pleadings with the Commission, and filings shall be made with the Commission's Docket Room before 5:00 p.m. on the date scheduled for service. Any electronic service received after the deadline set forth in the procedural schedule, or any filing made after 5:00 p.m. on the date scheduled for service, shall be accompanied by a Motion to File Out-of-Time. The

¹² K.S.A. 77-514; K.S.A. 77-516; K.S.A. 77-551(c).

¹³ K.S.A. 77-506; K.S.A. 77-516(c)(7)-(8).

Commission will subsequently rule on the Motion and determine whether to permit the filing Out-of-Time.

20. The Commission approves the use of electronic service of all comments, testimony, briefs, and orders, without requiring provision of follow-up hard copies as required by K.A.R. 82-1-216(a)(6). Testimony and briefs must be filed electronically by 5:00 p.m., on the date due, without requiring service among the parties of a follow-up copy. The Commission directs electronic service of testimony and briefs to include service on the Prehearing Officer at m.duenes@kcc.ks.gov.

21. A corporation, as well as an unincorporated association, shall appear before the Commission by a Kansas licensed attorney.¹⁴

THEREFORE, THE COMMISSION ORDERS:

A. A general investigation shall be opened to examine the legal issues pertaining to the notice requirements for applications, filed between October 2008 and the present, seeking underground injection of salt water pursuant to K.A.R. 82-3-402.

B. Staff shall file its Report and Recommendation, as outlined in paragraph 8 of this Order, 90 days from the issuance of this Order.

C. Upon the close of the 45 day legal briefing period for interested parties and affected operators, Staff shall have 60 days to file its own brief, which shall recommend to the Commission an appropriate course of action for handling approved underground injection well

¹⁴ K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2). *See State ex rel. Stephan v. Williams*, 246 Kan. 681, 690-91, 793 P.2d 234 (1990) (holding that “[t]he KTAS is not incorporated under the laws of the State of Kansas and has no legal existence as a corporate entity. At best, the KTAS, if it exists at all, is a voluntary unincorporated association of individuals without separate legal status. In any event, it can only be represented in Kansas courts by a duly licensed attorney admitted to the practice of law in Kansas by order of this court”). *See also In re Flack*, 272 Kan. 465, 476, 33 P.3d 1281 (2001) (quoting approvingly from *In re Thrasher*, 661 N.E.2d at 549 (Ind. 1996) when it held that “the privilege of providing legal services to others is entrusted only to those who are duly licensed to practice law”).

applications, going back to October 2008, whose publication notices communicated an allotment of only 15 days to object to or protest the application.

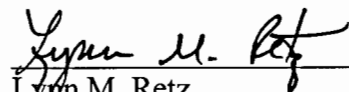
D. The parties have fifteen (15) days from the date of electronic service of this Order in which to petition for reconsideration.¹⁵

E. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: NOV 21 2017



Lynn M. Retz
Secretary to the Commission

MJD

¹⁵ K.S.A. 55-162; 55-606; K.S.A. 66-118b; K.S.A. 77-529(a)(1).

[REDACTED]
[REDACTED]
[REDACTED]
From: Cindy Hoedel [REDACTED]
Sent: Tuesday, October 24, 2017 1:16 PM
To: Rene Stucky
Subject: Defective notices

This is an EXTERNAL EMAIL. Think before clicking a link or opening attachments.

Hi, Rene.

I read in the KCUR story that Midstates Energy is going to have to re-publish their public for the Hadl and Thrasher permits in Douglas County because they improperly listed the protest period as 15 days, rather than the legally required 30 days.

Below is a list of notices for injection wells in the past four months (including the two in Douglas County) that were defective because they gave a 15-day notice period:

Hadl / Douglas County (Oct. 9)
Thrasher / Douglas County (Oct. 9)
Danis / Lane County (Oct. 4)
Gillespie / Johnson County (Sept. 30)
Broers / Franklin County (Sept. 21)
Breshears / Leavenworth County (Sept. 19)
Herman Trust / Graham County (Sept. 13)
Younklin E. / Logan (Sept. 13)
Harper-Taldo / Lane (Sept. 13)
Amy 1-30 SWD / Ellis (Sept. 8)
Kanzelman / Phillips (Sept. 8)
Morphew No. 4-33 / Graham (Aug. 30)
anderson / Miami (Aug. 30)
Snyder / Linn (Aug. 30)
Snouffer Lease / Miami (Aug. 23)
Eslinger #15 / Greenwood (Aug. 23)
Wellington Unit #78 / Sumner (Aug. 16)
Gasaway A #78 / Sumner (Aug. 16)
Vernon North #21A / Sumner (Aug. 16)
Wellington #15 / Sumner (Aug. 16)
VI-13 Kadau / Cowley (Aug. 5)
Esslinger #10 / Greenwood (July 26)
Mamie Berry #11 / Greenwood (July 19)
Hoxie Mosier / Sheridan (July 13)
Matney / Allen (July 11)
Nighswonger #1 / Graham (June 28)

Some of those wells I did not write protest letter for because when I found them the 15 days had expired and I did not know I was legally entitled to 30 days to file a protest letter.

My question is, will all of these companies have to re-publish a correct notice? Have any of them already been granted injection authority and, if so, what is the procedure for remedying the defective notice?

Thank you,
Cindy

--

Cindy Hoedel

[REDACTED]
Matfield Green, KS [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

From: Cindy Hoedel [REDACTED]
Sent: Tuesday, October 31, 2017 4:21 PM
To: Linda Berry
Subject: Re: Response to protest period Inquiry

This is an EXTERNAL EMAIL. Think before clicking a link or opening attachments.

Hi, Linda.

Thank you for this information. I am glad that the KCC is working to remedy the situation with the wells where injection authority is pending.

I have two questions:

- 1) How far back does the problem of defective notices go? The kansaspublishnotices.com database only goes back 4 months. What do I need to do to review applications going back farther than that?
- 2) What is the process for the commissioners determining the remedy for improperly permitted wells, and will the public be allowed to participate in that process?

Best regards,
Cindy

--
Cindy Hoedel

[REDACTED]
Matfield Green, KS [REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF SERVICE

I certify that on 11/21/17, I caused a complete and accurate copy of this Order to be served electronically to the following:

David Bleakley, EKOGA
Colt Energy Inc.
PO Box 388
Iola, KS 66749-0388
dpbleakley@msn.com

Diane Knowles, KWO
Kansas Water Office
900 SW Jackson Street, Suite 404
Topeka, KS 66612
diane.knowles@kwo.ks.gov

Jon Callen, KIOGA
Edmiston Oil Company, Inc.
125 N. Market, Suite 1420
Wichita, KS 67202-1714
jmcallen@edmistonoil.com

Kent Eckles, KPC
Kansas Petroleum Council
800 SW Jackson Street, Suite 1005
Topeka, KS 66612
ecklesk@api.org

Mike Cochran, KDHE
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, KS 66612-1367
mcochran@KDHE.state.ks.us

Mike Dealy, KGS
Kansas Geological Survey
4150 W. Monroe Street
Wichita, KS 67209-1261
mdealy@kgs.ku.edu

Tim Boese, GWMD
Equus Beds GMD #2
313 Spruce Street
Halstead, KS 67056-1925
tboese@gmd2.org

Terry Holdren, KFB/KLA
Kansas Farm Bureau
2627 KFB Plaza
Manhattan, KS 66503-8116
holdrent@kfb.org

Tom Black, KFB/KLA
306 S. Oak Street
Pratt, KS 67124
prcoatty@hotmail.com

Kenny Carter, SWKROA/EKROA
Southwest Royalty Owners Association
209 E. 6th Street
Hugoton, KS 67951
kennycarter@embarqmail.com

Ryan Hoffman
Kansas Corporation Commission
266 N. Main Street, Suite 220
Wichita, KS 67202-1513
r.hoffman@kcc.ks.gov

Rene Stucky, UIC Department
Jonathan R. Myers, Litigation Counsel
KCC Central Office

Michael J. Duenes, Assistant General Counsel
KCC Topeka Office

/s/ Paula J. Murray
Paula J. Murray
Legal Assistant
Kansas Corporation Commission