

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

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

In the Matter of the Application of Town Oil) Docket No. 15-CONS-241-CUIC
Company, Inc. to commence injection of saltwater)
into the Squirrel Formation at the Savage Lease,) CONSERVATION DIVISION
Well #1-W, #2-W, #3W, #5W and #6W, located in)
the NW/4 of Section 5, Township 18 South, Range) License No. 6142
21 East, Franklin County, Kansas.)

**STAFF'S RESPONSE IN SUPPORT OF THE
APPLICANT'S MOTION TO DISMISS PROTESTS**

The Staff of the Kansas Corporation Commission supports the motion filed by Town Oil Company, Inc., for the following reasons:

I. BACKGROUND

1. The application in this docket was filed on August 28, 2014, requesting permission to inject, at 400 psi, the low volume of 40 barrels of water per day into each of five wells.¹ The purpose of the application is to inject saltwater into the productive formation for secondary recovery of recoverable hydrocarbons from nearby producing wells. The wells are located on a small tract of land at the western edge of the NW/4 of Section 5.²

2. On September 19, 2014, Mark and Rebecca Enright, landowners of the NE/4 of Section 5, filed a protest to the application. The nature of their protest concerned two unrelated wells located on their property, approximately ½-mile from the proposed injection wells.

3. On September 26, 2014, Terry and Alana Groshong, landowners in the NW/4 of Section 8, filed a letter in protest of several unrelated applications by multiple operators,

¹ An amendment filed November 5, 2014, changes a typographical error in the original application from 100 psi to 400 psi. The published notices of application contained the correct 400 psi.

² Lester Town's prefiled testimony contains a map of the area that is very helpful to understanding this matter.

including the present application. The nature of the Groshong protest was described as “serious concern, as to the adverse effect, and/or, reaction/environmental damage.” The protest baldly alleged that these wells would “potentially extract the natural resources from our property.” The Groshong property is located more than ½-mile to the south of the proposed wells.

4. On October 2, 2014, the Commission issued its Order Designating Prehearing Officer and Setting Prehearing Conference.

5. On October 28, 2014, the parties attended a one-hour prehearing conference.

6. On October 30, 2014, the Prehearing Officer scheduled this matter for hearing on January 15, 2015, setting procedural deadlines for prefiled direct testimony.

7. On November 19, 2014, applicant filed its Motion to Dismiss Protests. Reasons for the dismissal include: 1) the protests were not timely filed; 2) the Enright’s protest is moot because the wells of which they complain have been plugged; 3) the Groshongs’ concerns are moot or inapplicable to this injection application; and 4) the Groshongs have not complied with K.A.R. 82-3-135b by providing specific allegations as to the manner in which these injection wells will cause waste, violate correlative rights, or cause pollution.

**II. STAFF SUPPORTS THE MOTION TO DISMISS
BECAUSE THE PROTESTS ARE WITHOUT MERIT.**

8. The protests should be dismissed because the Enright’s and Groshongs do not have a valid interest in this proceeding. K.A.R. 82-3-135b(a) states: “A protest may be filed by any person having a valid interest in the application.” (Underlining added). The Enright’s state that their protest is due to their having two unplugged wells on their property. These two wells are not within the ¼-mile area of review performed by Staff pursuant to the permitting factors in K.A.R. 82-3-403(a)(5). Further, KCC records indicate the two wells were plugged on November 5, 2014, after the Enright’s filed their protest. The Groshongs’ acreage is located over ½-mile

from the proposed injection wells, which is well outside the ¼-mile area of review that is a permitting factor pursuant to K.A.R. 82-3-403(a)(5). Neither party has a valid interest in this proceeding, and their protests should be dismissed.

9. Requiring the applicant to attend a hearing on these meritless protests constitutes economic waste. K.S.A. 55-1003 provides that the Commission, in permitting disposal of saltwater, “shall determine that the proposed method of disposal: (1) [w]ill not result in the loss or waste of gas or petroleum resources; and (2) is a feasible method to be employed in protecting the water resources of the state from preventable pollution.” K.S.A. 55-601 prohibits waste and states that waste is unlawful. K.S.A. 55-602 defines waste as including “in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, waste of reservoir energy, and the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands.” (Underlining added). Attending a hearing on an application due to credible protests is a cost of doing business for the applicant. However, an applicant should not be required to attend a hearing to defend against meritless protests; this constitutes economic waste. Further, the Commission’s costs of a proceeding based on meritless claims are passed to the regulated industry and constitute additional economic waste.

10. The protests to this application should be summarily dismissed, but if the Commission determines that the protests may proceed, the Commission should require the protestants to prefile expert testimony by a geologist or petroleum engineer. The protestants have no expertise in these areas, and any opinion testimony by them will be inadmissible and subject to a motion to strike. At that point, the applicant will have wasted substantial resources to attend a hearing where there is no admissible evidence that is adverse to the grant of the application. If the protestants fail to provide expert testimony, they should be found in default.

III. THE PROTESTS SHOULD BE DISMISSED BECAUSE THEY WERE NOT PROPERLY FILED.

11. The protests should be dismissed because neither protesting party has complied with K.A.R. 82-3-135b(a) by including “ clear and concise statement of the direct and substantial interest of the protester in the proceeding, including specific allegations as to the manner in which the grant of the application will cause waste, violate correlative rights, or pollute the water resources of the state of Kansas.” This is a requirement for an acceptable protest. The Enright’s mention of unplugged wells (which, again, are now plugged) located on their property addresses neither waste, correlative rights, nor pollution. The Groshongs’ wholly-unsupported “serious concern, as to the adverse effect, and/or, reaction/environmental damage” is not clear and concise, and states nothing regarding their direct and substantial interest in wells over ½-mile away. The Groshongs’ statement that these remote injection wells will somehow steal their minerals is speculative and unsupportable by any credible evidence. The protests should be dismissed for failure to comply with this regulatory requirement.

12. The protests should be dismissed because they were not timely filed. K.A.R. 82-3-135b(c)(1)(A) states: “The protest shall be filed with the conservation division according to the following deadlines: (B) for each protest of environmental matters, within 30 days after publication of the notice of the application required in K.A.R. 82-3-135a.” (Underlining added). K.A.R. 82-3-402(c) states: “Objections or complaints shall be filed within 30 days after the notice is published.” (Underlining added). K.A.R. 82-3-135a(d), titled “publication of notice” describes publication in the official county newspaper for environmental matters. It is undisputed that the notice was published on August 14, 2014, which is more than 30 days before the protests were filed. The protests were not timely filed by the deadline in K.A.R. 82-3-135b and -400(c) and should be summarily dismissed.

13. Staff understands that the protesting parties are acting pro se. If the protesting parties had a colorable interest in this matter, Staff might support relaxed procedures to enable them to try to protect their interests. But in this case neither of the protestants has even an arguable claim that they will be the least bit affected by the proposed injection activities, the primary reason for this conclusion being that their properties are ½-mile away. Because the protests are wholly without merit, Staff does not support relaxed procedures in this matter.

14. Staff has reviewed these injection applications and will likely testify, if necessary, that the wells' construction will protect usable water, the wells will be required to demonstrate mechanical integrity before the permit is issued and every five years thereafter, and the area of review analysis either supports injection or will result in requirements within the ¼-mile radius before injection can occur. If Staff's review discovers problems in these areas, the application will not be granted administratively. The meritless protests do not impact this review.

Wherefore, the Commission Staff respectfully requests that the Commission grant the Applicant's Motion to Dismiss Protests in this matter. Alternatively, Staff requests the Commission require the protestants to prefile expert testimony that is adverse to the application as a condition to proceeding to hearing. If the protestants do not prefile expert testimony, they should be held in default of these proceedings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on 11/20/14, I caused a true and correct copy of the foregoing response to be served by placing the same in the United States mail, postage prepaid, and properly addressed to the following:

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And delivered by hand to:

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/s/ Lane R. Palmateer
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