

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

Kansas Corporation Commission

Before Commissioners:

Shari Feist Albrecht, Chair
Jay Scott Emler
Dwight D. Keen

NOV 19 2018

Office of General Counsel

In the Matter of the Application of Brian L. Birk) DOCKET No. 19-CONS-3106-CUIC Merritt #10
dba Birk Petroleum for a Permit to Authorize the) & DOCKET No. 19-CONS-3107-CUIC Merritt #5
Disposal of Saltwater into the Merritt #5 and the) CONSERVATION DIVISION
Merritt #10, located in Coffey County, Kansas) License NO. 31280

**PROTESTANT'S MOTION TO DENY THE PERMITS TO AUTHORIZE THE DISPOSAL OF SALTWATER
IN DOCKETS No. 19-CONS-3106-CUIC (Merritt#10) and No. 19-CONS-3107-CUIC (Merritt #5)
LOCATED IN COFFEY COUNTY, KANSAS, AND CLOSE THE DOCKET IN BOTH MATTERS**

Protestant Susan Royd-Sykes comes before the State Corporation Commission of the State of Kansas (Commission) and files the following Protestant's Motion to Deny the Permits in Docket No. 19-CONS-3106-CUIC (Merritt# 10) and No. 19-CONS-3107-CUIC (Merritt #5) located in Coffey County, Kansas, and Close the Docket in Both Matters

on the grounds that legally improper ex parte communications have taken place between Operator Birk and presiding prehearing officer, Michael J. Duenes, and that failure to properly docket or properly serve has taken place on the parts of Birk and Duenes.

In support of her motion, Protestant Royd-Sykes provides the following:

Initial history of the Merritt #10 and #5 docket matters:

1. Notice was filed Aug. 23, 2018 by Brian L. Birk dba Birk Petroleum in the Coffey County Republican Newspaper for "Application for a permit to authorize the disposal of saltwater into the Merritt #5 and Merritt #10, located in Coffey County, Kansas..." Per the Commission's Order Setting Procedural Schedule, on August 31, 2018, Brian L. Birk dba Birk Petroleum (Operator) filed an application to authorize the injection of saltwater into the Kansas City formation at its Merritt # 10 well in Coffey County, Kansas.

2. Protestant followed suit and filed a singular letter of protest on Aug. 27, 2018 regarding both the Merritt #5 and Merritt #10 and followed this protest by filing a singular request for hearing on Sept. 12, 2018, for both the Merritt #5 and Merritt #10 wells.

Although the published notice referred to application for both wells, after the filing of Protestant's joint Protests and joint Requests for Hearings, at the point in which Commission staff docketed the Merritt #5 and Merritt #10 matters, Commission staff docketed these wells separately as Docket No. 19-CONS-3106-CUIC (Merritt #10) and No. 19-CONS-3107-CUIC (Merritt #5).

3. On Oct. 2, 2018, the Commission followed the separate docketing by filing two separate orders, Order Designating Prehearing Officer and Setting Prehearing Conference for Docket No. 19-CONS-3106-CUIC (Merritt #10) which also set a Prehearing Conference Call for that Docket at 9:30am on Oct. 25, 2018; and Order Designating Prehearing Officer and Setting Prehearing Conference for No. 19-CONC-3107-CUIC (Merritt #5) which also set a Prehearing Conference Call for that Docket at 10:30am on Oct. 25, 2018. Both of these Orders also determined that the prehearing officer in both of these matters “shall be Michael J. Duenes, Assistant General Counsel, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS.....” (see Commission Docket for Oct. 2, 2018, Order Designating Prehearing Officer and Setting Prehearing Conference for Docket No. 19-CONS-3106-CUIC (Merritt #10) Pg. 2, A and Oct. 2, 2018 Order Designating Prehearing Officer and Setting Prehearing Conference for Docket No. 19-CONC-3107-CUIC (Merritt #5) Pg. 2, A.)

Occurrence of ex parte communications, improper handling:

On Monday, Oct. 22, 2018 at 1:34pm Protestant received a group e-mail from Prehearing Officer Duenes regarding Docket No. 19-CONS-3106-CUIC (Merritt #10) and stating that Birk had had e-mail communications with Duenes on two dates: Oct. 18 and 19, 2018. In his e-mail, Duenes notes that “as far as I can tell you did not send the same emails to Commission Conservation Staff (i.e. Lauren Wright; although it appears you mailed your attachments to Renee Stucky, and the Protestant in this matter, Susan Royd-Sykes..... I have not forwarded your attachments to Staff or Ms. Royd-Sykes at this point, I have not passed them along to the Commission for their Consideration.... as the Prehearing Officer, I would ask that you not communicate with me unless you also include in your communications all the parties to the docket.” (exhibit 1 Duenes’ group e-mail notice of ex-parte communications)

For the record Royd-Sykes states that Birk did not serve copies of those Oct. 18 and 19, 2018 e-mails on her. Since Birk did not provide or serve these e-mails on any parties to the proceedings except for presiding officer Duenes, under both K.S.A. 77-525 and K.S.A. 77-545 which define and govern ex parte communications, these e-mails must be considered ex parte communications and handled as such. She also states that Duenes did not attach copies to the group e-mail, nor did he file them in either of the Merritt #10 or #5 well dockets, nor did he serve them on her.

K.S.A. 77-525 Ex parte communications designates that a) A presiding officer serving in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending, with any party or participant, with any person who has a direct or indirect interest in the outcome of the proceeding or with any person who has served in an investigatory or prosecutorial capacity or presided at a previous state of the proceeding, without notice and opportunity for all parties to participate in the communication.

K.S.A. 77-545 (b)(1) addresses commission procedure more specifically and states that “after the commission has determined and announced that a hearing should be held, and prior to the issuance of a final order, no parties to the proceeding, or their counsel, shall discuss the merits of the matter or proceeding with the presiding officer unless reasonable notice is given to all parties who have appeared to enable the parties to be present at the conference.

(2) After the commission has determined and announced that a hearing should be held, prior to the issuance of a final order, copies of any written communications from any party regarding the proceeding that are *directed to the presiding officer shall be served upon all parties of record and proof of service shall be furnished to the commission*. Communications requested by members of the commission staff from any party and any written communications received by members of the commission staff from any party shall be made a part of the file and the docket and shall be made available to all persons who desire to use them, provided that all commission requests for information from a part shall be served upon all parties of record.

(d) All letters and written communications that are received by the presiding officer from members of the general public, and that are in the nature of ex parte communications, shall be made a part of the file in the docket and shall be made available to all persons who desire to see them. *The deposit of such written communications and letters in the file shall not make them a part of the official record of the case.*"

In review of those governing statutes, logic then follows, that because of their ex parte nature these e-mails from Birk to Duenes, should have:

- 1) never have taken place
- 2) been served on Royd-Sykes by operator Birk
- 3) been served on Royd-Sykes by prehearing officer Duenes
- 4) been filed in the public docket for the Merritt #10 well by prehearing officer
Duenes
- 5) been considered only docketed information and as part of the official record in the
Merritt #10 well docket

Further, in his group e-mail regarding these ex parte communications from Birk, Duenes fails to state to Birk that these sorts of ex parte communications between a party (Birk) and the presiding prehearing officer are, by Kansas statutory law, considered illegal. Rather, Duenes only addresses the issue with Birk by stating, "as the Prehearing Officer, I would ask that you not communicate with me unless you also include in your communications all the parties to the docket."

For the record, Royd-Sykes again states that through the date and time of this filing neither Duenes or Birk has served any copies of these ex parte e-mail copies on her, nor has Duenes filed them in the docket records.

Additionally, regarding the related Docket No. 19-CONC-3107-CUIC (Merritt #5) that even though Birk did not file similar ex parte communication with Duenes or similar documents in the Merritt #5 docket, because both the Merritt #10 and Merritt #5 wells were originally published together in the legally required public notice, because both of the pre-hearing conference calls were merged and because the subsequent hearing date and pre-hearing deadlines were set to be simultaneous for both the Merritt #10 and #5 dockets, these ex parte e-mails from Birk to Duenes reflect on the Merritt #5 application and docket as well.

The reflection created from these ex parte e-mails and their related failure of legal docketing and legal service serve to color the actions of the operator, the presiding officer and

the application process of both dockets, including the Merritt #5 well, with the red flag of legal impropriety that cannot be supported in the hearing of these matters and cannot be supported under Kansas law. Under the "fruit of the poisonous tree" legal metaphor regarding evidence that is obtained illegally, the logic is that if the source (the "tree") of the evidence or evidence itself is tainted, then anything gained (the "fruit") from it is tainted as well.

For the record, Royd-Sykes states that if the Commission chooses to deny her Protestant's Motion to Deny the Permits in Docket No. 19-CONS-3106-CUIC (Merritt# 10) and No. 19-CONC-3107-CUIC (Merritt #5) located in Coffey County, Kansas, and Close the Docket in Both Matters, at the very least, the Commission must require presiding prehearing officer Duenes to recuse himself and the Commission should appoint a replacement pre-hearing officer to be installed. (The "fruit of the poisonous tree" doctrine was established in 1920 by the decision in *Silverthorne Lumber Co. v. United States*, and the phrase was coined by Justice Frankfurter in his 1939 opinion in *Nardone v. United States*.)

Prehearing conference calls:

1. At 9:25 am on Oct. 25, 2018, Royd-Sykes dialed in to the call que line to wait for the 9:30am Oct. 25, 2018 Prehearing Conference Call for Docket No. 19-CONS-3106-CUIC (Merritt #10) to begin.

2. While on hold in the call que, Royd-Sykes googled up the Commission website docket for the Merritt #10 well and discovered that documents entitled "Birk Petroleum's response to letter of protest filed by Ms. Susan Royd-Sykes. Oct. 25, 2018" had been filed into the docket. (She then also checked Docket No. 19-CONS-3107-CUIC (Merritt #5) for similar documents but found none listed.) With regard to Birk's "response" found on the Merritt #10 docket, Royd-Sykes obviously did not have time to download or review those documents before the 9:30am call began. (exhibits 2, 3 – docket fronticepieces)

For the record, Royd-Sykes states for that through the time and date of this filing, Birk did not and has not served any such "response" documents on her.

3. During the 9:30am Oct. 25, 2018 Prehearing Conference Call for Docket No. 19-CONS-3106-CUIC (Merritt #10), presiding prehearing officer Duenes called the conference call to order, took note of parties present, asked staff's opinion regarding notice being proper. Duenes then pointed out that the second Merritt call for No. 19-CONC-3107-CUIC (Merritt #5) was set to follow at 10:30am, that staff had a Commission Business Meeting at 10:00 am and asked if it would it be possible to combine the second Merritt Prehearing Call with this one for the purposes of scheduling. All parties agreed to combine the calls.

Then, rather than follow the general format of past conference calls in which Royd-Sykes has participated – which has been for the presiding officer to ask if there are any procedural matters to discuss before moving on to the matter of scheduling deadlines and the setting of a hearing date -- Duenes quickly and directly moved on to the matter of scheduling.

At that point, Royd-Sykes made several attempts to interject and say that she had procedural matters to discuss before moving on related to ex parte e-mails and failure of service on the part of the operator. Rather than just regroup to address these procedural issues, Duenes threatened to end the call if Royd-Sykes did not "stop speaking over him" as she was being forced

to do in order to be heard. Royd-Sykes then stated that she felt the threat was an effort to sidestep discussion of these procedural issues and that she objected to moving on to scheduling before the issues of the ex parte e-mails, Birk's "response" and related issues of non-service were addressed.

Commission staff member Lauren Wright then interjected that staff had received a packet of "response" documents from Birk and had docketed them as such. Duenes then did back up and address the e-mails to the extent that he had received them, noticed the parties via e-mail, noted that he had not shared them with staff and did not know if they were the same as the "response" documents that Birk had filed.

Royd-Sykes then asked if staff was going to require Birk to utilize proper, legal service requirements in the future. Neither staff nor Birk responded. Royd-Sykes added that she would be filing a motion regarding these issues.

4. Parties then proceeded to work out a schedule for both dockets to have the same procedural deadline dates and to have both dockets heard at the same time and date of Jan. 24, 2019, 10:00 a.m. Duenes further determined that the hearings should be held at the Commission office at 266 Main, Suite 220, Wichita, Kansas 67202. Royd-Sykes asked for explanation of the location change (all hearings that Royd-Sykes has been involved with to date have been held in Topeka), explained that she has limited distance driving ability and that Wichita is twice as far for her to travel. Royd-Sykes stated she would file a motion asking for Topeka to be the hearing site.

5. In concluding the call, Duenes also noted that Royd-Sykes "had experience in settling these matters prior to the need for a hearing" and encouraged the parties to consider settlement. Royd-Sykes stated that she would consider settlement, but that Birk would need to present a workable offer.

For the record, Royd-Sykes states, that as of the time and date of this filing, Birk has not approached her with any type of settlement offer.

Protestant's document review:

1. After close of the merged Oct. 25, 2018 Prehearing Conference Calls for Dockets No. 19-CONS-3106-CUIC (Merritt #10) and No. 19-CONC-3107-CUIC (Merritt #5), Protestant Royd-Sykes filed a KORA request with the Commission for copies of the ex parte e-mails from Birk to Duenes and for any other such communications between Birk and Commission staff. Royd-Sykes also went back to the Commission docket listing and downloaded Birk's "response" documents listed for the Merritt #10 and reviewed them. (exhibit 4 KORA request)

2. On Oct. 30, 2018, in response to her KORA request, Royd-Sykes received copies of Birk's Oct. 18 and 19 ex parte e-mails to Duenes which she immediately compared to Birk's "response" documents filed in the Merritt #10 docket, and found, that with the exception of e-mail headings and Duenes group e-mail notice regarding the ex parte communication which were included in the KORA, but not on Birk's "response" docket filing, the e-mails and the "response" documents filed in the docket do appear to be the same. (exhibit 5 Birk's filed "response" documents) (exhibit 6 KORA completion)

Upon review and comparison of both groups of documents, it is Birk's attached letter to Duenes (dated Oct. 10, 2018), that, since it was included in the original ex parte e-mail

communications with Duenes, and referring back to the “fruit of the poisonous tree” discussion, only serves to run up incredibly large red flags of impropriety. The tone and attitude of the closing line of Birk’s letter implies that Birk believes that ex parte communications with the presiding hearing officer are acceptable practice, and that the application will, no doubt, be approved: ***“I look forward to the approval of the applicant wells and a quick resolution to this issue.”*** (exhibit 7 Birk’s ex parte letter to Duenes)

Royd-Sykes must reiterate her contention that if Commission chooses to deny her motion to deny her Protestant’s Motion to Deny the Permits in Docket No. 19-CONS-3106-CUIC (Merritt# 10) and No. 19-CONC-3107-CUIC (Merritt #5) located in Coffey County, Kansas, and Close the Docket in Both Matters, at the very least, the Commission must require presiding prehearing officer Duenes to recuse himself and the Commission should appoint a replacement pre-hearing officer to be installed.

In conclusion:

1. Ex parte communications via e-mail raising the red flag of legal impropriety took place on two occasions, Oct. 18 and 19, 2018, between the Operator Brian L. Birk dba Birk Petroleum and the presiding prehearing officer in both of these Merritt well matters, Michael J. Duenes.

Birk failed to serve these ex parte e-mails on Protestant Royd-Sykes at the time they were sent to Duenes and has not served them on Royd-Sykes as of the time of this filing.

Further, Duenes, as presiding prehearing officer, was required by law to post the e-mails into the docket which he did not do (sending out a group e-mail stating that the ex parte communications had happened without the e-mails themselves attached, does not meet the legal posting criteria required by law. Duenes should, at the least, be required to recuse himself from both Merritt well dockets and the Commission should appoint a replacement presiding prehearing officer.

2. As ex parte communications with the presiding prehearing officer, by law, these e-mails must be excluded from the official record of the Merritt dockets; further, because the Birk’s response documents filed in the docket appear to be copies of those ex parte e-mails, which, as of the time of this filing, Birk has failed to provide service of his “response” documents on Royd-Sykes, these Birk “response” documents should not be considered part of the official record of either of the Merritt dockets.

3. This oil industry-related application process established by Kansas statutory law and, by Kansas law, also designated to be overseen by the Commission whose mission statement declares that “the mission of the Kansas Corporation Commission is to serve the people of Kansas by regulating the State’s energy infrastructure, oil and gas production, and commercial trucking to ensure public safety” must be above any red flag raising implications of illegal impropriety that could lead one to think that collusion is taking place between oil operators and Commission staff, especially a presiding prehearing officer. How can anyone possibly dismiss such red flags when the closing paragraph of Operator Birk’s letter ex parte e-mailed letter states ***“I look forward to the approval of the applicant wells and a quick resolution to this issue”*** and whose tone and attitude imply

that ex parte communications are acceptable practice in these application matters, and that the application will, no doubt, be approved?

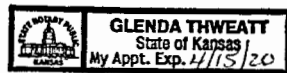
Wherefore, Protestant Royd-Sykes, now comes before the Commission and asks that the Commission grant her Protestant's Motion to Deny the Permits in Docket No. 19-CONS-3106-CUIC (Merritt# 10) and No. 19-CONC-3107-CUIC (Merritt #5) located in Coffey County, Kansas, and Close the Docket in Both Matters, on the grounds stated above that legally improper ex parte communications have taken place between operator Birk and presiding prehearing officer Michael J. Duenes, that Birk and Duenes have both failed to legally serve or docket documents related to both of these dockets, and that these actions have worked together to raise red flags of collusion that cannot be allowed to color these legally set forth processes.

Susan Royd-Sykes
504 S. 6th St.
Burlington, KS 66839

VERIFICATION

STATE OF KANSAS)
)
County of Coffey) ss.

Susan Royd-Sykes, of lawful age, being first duly sworn upon oath, deposes and states: that she is responsible for the testimony to which this verification is attached, that she has read the above and foregoing and that the statements therein contained are true and correct according to her knowledge, information and belief.



Susan Royd-Sykes
Susan Royd-Sykes

Subscribed and sworn to before me this 16th day of November, 2018.

My appointment expires: 4/15/2020

Glenda Thweatt
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2018, the above
PROTESTANT's MOTION TO DENY THE PERMITS TO AUTHORIZE THE DISPOSAL OF SALTWATER
IN DOCKETS No. 19-CONS-3106-CUIC (Merritt#10) and No. 19-CONS-3107-CUIC (Merritt #5)
LOCATED IN COFFEY COUNTY, KANSAS, AND CLOSE THE DOCKET IN BOTH MATTERS
was electronically served (with hard copies following in the US Mail) on:

Lynn Retz and Michael Duenes
KCC Litigation Department
1500 SW Arrowhead Rd.
Topeka, KS 66604-4027

Kansas Corporation Commission
Conservation Division Staff
266 N. Main St., Ste. 220

and via hard copy through the US Mail on:

Brian L. Birk dba Birk Petroleum
874 12th Rd.
Burlington, KS 66839

Susan Royd-Sykes
Susan Royd-Sykes, Protestant

Protestant's Motion to Deny the Permits in Docket No. 19-CONS-3106-CUIC (Merritt# 10) and No. 19-CONC-3107-CUIC located in Coffey County, Kansas, and Close the Docket in Both Matters
(exhibit 1 Duenes' e-mail notice of ex-parte communications)



susan sykes <moondrummer88@gmail.com>

RE: Docket No. 19-CONS-3106-CUIC

1 message

Michael Duenes <m.duenes@kcc.ks.gov>

Mon, Oct 22, 2018 at 1:34 PM

To: Brian Birk <blbpetro@gmail.com>, Lauren Wright <l.wright@kcc.ks.gov>

Cc: "moondrummer88@gmail.com" <moondrummer88@gmail.com>

Mr. Birk,

You sent separate emails with attachments to me on October 18th and 19th. As far as I can tell, you did not send the same emails to Commission Conservation Staff (i.e., Lauren Wright; although it appears you mailed your attachments to Rene Stucky), and the Protestant in this matter, Susan Royd-Sykes.

Although the Commission has not yet determined and announced that a hearing should be held in this matter, as the Prehearing Officer, I would ask that you not communicate with me unless you also include in your communications all the parties to the docket. I have not forwarded your attachments to Staff or Ms. Royd-Sykes at this point. I have also not passed them along to the Commission for their consideration.

If you have questions, please do not hesitate to let me know, and again, make sure you communicate with all of the emails listed on this email.

Yours,

Michael J. Duenes, *Assistant General Counsel*

Office of General Counsel

Kansas Corporation Commission

1500 SW Arrowhead Road | Topeka, KS | 66604-4027

Phone (785) 271-3181 | <http://kcc.ks.gov/>

Fax (785) 271-3314 (Advisory)

This message is from the Office of General Counsel of the Kansas Corporation Commission and is intended only for the addressee. This transmission, email, and any files transmitted with it, may be (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential under federal or state law. Unauthorized forwarding, printing, copying, distributing, or using such information is strictly prohibited and may be unlawful. If you have received this transmission in error, notify the sender (only) and delete the message. This message may also be subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 *et seq.*

From: Brian Birk [mailto:blbpetro@gmail.com]
Sent: Thursday, October 18, 2018 4:36 PM
To: Michael Duenes <m.duenes@kcc.ks.gov>
Subject: Docket No. 19-CONS-3106-CUIC

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

Please see attached re: the upcoming Prehearing Conference.

Thank you

Protestant's Motion to Deny the Permits in Docket No. 19-CONS-3106-CUIC (Merritt# 10) and No. 19-CONC-3107-CUIC located in Coffey County, Kansas, and Close the Docket in Both Matters (exhibits 2, 3 docket fronticepieces)



Docket 19-CONS-3106-CUIC

Docket Documents

6 documents [Show All](#) [Print Results](#)









	Document Type	Description	Date Filed	Filed By
	Filing	Letter of Protest with Acknowledgement - Susan Royd-Sykes Files:	8/28/2018	
	Filing	Application Files:	8/31/2018	
	Filing	Affidavit of Publication - The Coffey County Republican Files:	9/13/2018	
	Filing	Letter Requesting Hearing - Susan Royd-Sykes Files:	9/13/2018	
	Order	Order Designating Prehearing Officer and Setting Prehearing Conference Files:	10/2/2018	
	Filing	Birk Petroleum's response to letter of protest filed by Ms. Susan Royd-Sykes Files:	10/22/2018	<i>Not served to me</i>

These web links contain scanned images of legal filings with the Kansas Corporation Commission. Printed copies from these links should not be considered official copies.

Website questions or problems contact 785-271-3300.

[Site Map](#) | [Accessibility](#) | [Contact Us](#)

19-CONS-3107-CUIC

	<u>Document Type</u>	<u>Description</u>	<u>Date Filed</u>	<u>Filed By</u>
	Filing	Letter of Protest with Acknowledgement - Susan Royd-Sykes Files: 	8/28/2018	
	Filing	Application Files: 	8/31/2018	
	Filing	Affidavit of Publication - The Coffey County Republican Files: 	9/13/2018	
	Filing	Letter Requesting Hearing - Susan Royd-Sykes Files: 	9/13/2018	

Protestant's Motion to Deny the Permits in Docket No. 19-CONS-3106-CUIC (Merritt# 10) and No. 19-CONC-3107-CUIC located in Coffey County, Kansas, and Close the Docket in Both Matters (exhibit 4 KORA request)

STATE OF KANSAS



CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

PHONE: 785-271-3100
FAX: 785-271-3354
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

October 25, 2018

Susan Royd-Sykes
504 S 6th St
Burlington, Kansas 66839

RE: Request for records under the Kansas Open Records Act

Dear Susan Royd-Sykes:

Your request for records under the Kansas Open Records Act has been received and is being processed. Because the Kansas Corporation Commission houses voluminous records covering various areas of regulation and physical locations, your request may not be completed immediately. You may expect follow-up correspondence detailing the expected time and cost to complete your request.

Record requests that can be provided at less than 2 hours of staff time or consist of 100 pages or fewer will be provided at no charge. If charges are necessitated by the scope of your request, **the Kansas Corporation Commission must receive payment prior to preparing or releasing any records.**

If you have any questions please do not hesitate to contact the Custodian of Records at 785-271-3170 or open_records_group@kcc.ks.gov.

These are the parameters that were submitted:

Name: Susan Royd-Sykes
Address: 504 S 6th St
City: Burlington
State: Kansas
Zip Code: 66839
Daytime Phone: 6208032172
E-mail: moondrummer88@gmail.com

Description of records requested:

Pursuant to the Kansas Open Records Act, K.S.A. 45-215, et. seq., please provide any and all documents maintained by the Kansas Corporation Commission regarding:

1) e-mails sent to KCC Staff Attorney and designated Pre-hearing Officer Michael Duennes by Brian L. Birk dba Birk Petroleum with regards to Docket 19-CONS-3106-CUIC and Docket 19-CONS-3107-CUIC, specifically over the dates of Oct. 18 and 19, 2018

2) any additional records of other communications between KCC Staff Attorney and designated Pre-hearing Officer Michael Duennes by Brian L. Birk dba Birk Petroleum with regards to Docket 19-CONS-3106-CUIC and Docket 19-CONS-3107-CUIC

3) e-mails and or any additional records of other such communications between any and all KCC Staff and Brian L. Birk dba Birk Petroleum with regards to Docket 19-CONS-3106-CUIC and Docket 19-CONS-3107-CUIC that do not appear on the Public Docket for either of those Docket Numbers.

If you choose to deny any or all parts of this request, please state each specific KORA exemption and the justification used for your refusal to release this requested information.

Thank you, Susan Royd-Sykes

Protestant's Motion to Deny the Permits in Docket No. 19-CONS-3106-CUIC (Merritt# 10) and No. 19-CONC-3107-CUIC located in Coffey County, Kansas, and Close the Docket in Both Matters
(exhibit 5 Birk's filed "response" documents)

DIRK PETROLEUM

874 12th Rd, BURLINGTON, KS 66839
620-364-1311

Received
KANSAS CORPORATION COMMISSION
OCT 22 2018
CONSERVATION DIVISION
WICHITA, KS

10/15/2018

Michael J. Duenes
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Ks 66604-4027

RE: Docket No. 19-CONS-3106-CLIC.

Dear Mr. Duenes,

I am writing this in response to the letter of protest filed by Ms. Susan Royd-Sykes and to address the issues that will be brought at the Prehearing Conference.

First, I would like to state that I have been a licensed operator in the State of Kansas since 1990 and have a well established record of compliance with the Kansas Corporation Commission. The vast majority of Kansas operators are small independent producers, including myself. We are also farmers and ranchers, members of our communities, employers and parents. We contribute to our local economies and the state economy. I am a 4th generation and life-long resident of Coffey County where the application wells are located so I have a direct interest in following good operating practices. The Kansas Corporation Commission has implemented rules and regulations governing the operations of the oil and gas industry in Kansas. As you know, waste water comes with the production of crude oil. It is proven that the best way to limit pollution to our surface water and environment is to dispose or inject the waste water back into the ground at depths that keep the surface water protected. The KCC has established regulations concerning the depths, pressures, and rates for disposal and injection wells. The applicant wells have had mechanical integrity tests performed as per regulations and have been approved by District staff. The applicant wells meet the existing regulations and should be approved.

Ms. Royd-Sykes sites concerns about earthquakes being caused by "heavy saltwater disposal". I believe that concern is unfounded in this instance and most other instances in Eastern Kansas. The application wells have a maximum operating pressure of 300 psi and a maximum injection rate of 100 bbls/day and well #5 is already permitted at a max operating pressure of 100 psi and maximum injection rate of 50 bbls/day and has had no issues. According to information obtained from the Kansas Geological Survey the most recent earthquakes recorded in Kansas have been at a depth of 5 km or more, or over 16,404 feet and have been between magnitudes of 2.0 – 3.5 on the Richter Scale and were located in south

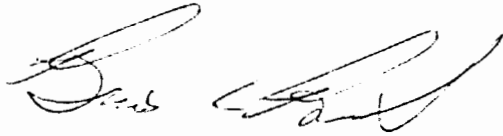
central Kansas. The USGS states that "Earthquakes with magnitude of about 2.0 or less are usually called microearthquakes; they are not commonly felt by people and are generally recorded only on local seismographs." The applicant wells are at a depth of 650-700 feet. It seems unlikely that disposal at the depths and rates requested would be capable of causing earthquakes.

Ms. Royd-Sykes claims damage to her home from earthquakes located in Oklahoma. It should be noted that County records show her home was built in 1885. A structure that is 133 years old may have other issues that affect it besides earthquake activity being the main cause of any damage.

It appears your office is in receipt of the Application to Amend the injection permit and I have enclosed a copy of the completed mechanical integrity test for well #10 that was witnessed and signed by district staff. Please also find copies of data acquired from the KGS, USGS and Coffey County attached.

I look forward to the approval of the applicant wells and a quick resolution to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian L Birk", followed by a horizontal line and another signature.

Brian L Birk, dba Birk Petroleum

Cc: Rene Stucky, Kansas Corporation Commission

Received
KANSAS CORPORATION COMMISSION

OCT 22 2018

CONSERVATION DIVISION
WICHITA, KS

CASING MECHANICAL INTEGRITY TEST

DOCKET# D-32724Disposal Well ☐ Enhanced Recovery:Repressuring ☐Flood ☐Tertiary ☐

Date injection started

API #15- 031-9151-00-00NESWSW, Sec 7, T 23, S, R 15 EW

GPS

Feet from South Section Line

Feet from East Section Line

Lease

Merritt

Well #

10

County

CoffeyOperator: Birk PetroleumOperator License# 31280

Name &

Address 874 12th Rd SWContact Person Brian BirkBurlington KS 66839Phone 620 3641311Max. Auth. Injection Press 300 Psi; Max Inj. Rate 50 bbl/d;

If Dual Completion - Injection above production

Injection below production

Conductor

Surface

Production

List Received
KANSAS CORPORATION COMMISSION

Tubing

Size

8.6253.5

Size

Set at

40724

Set at

Cement Top

SurfaceSurface

OCT 22 2018

Type

" Bottom

40724CONSERVATION DIVISION
WICHITA, KS

DV/Perf.

TD (and plug back)

724

ft. depth

Packer type

Size

Set at

Zone of injection

ft. to ft.

1066

Perf. or open hole

Perf

Type MIT:

Pressure:

☒

Radioactive Tracer Survey:

☐

Temperature Survey:

☐F Time: Start 20 Min 40 Min 60 Min

SCANNED

I

E Pressures: 260 260 260 Set up 1 System Pres. during test 7 200

L

D Set up 2 Annular Pres. during test

D

D Set up 3 Fluid loss during test bbls.

A

T Tested: Casing ☒ or Casing - Tubing Annulus ☐

A

The bottom of the tested zone in shut in with

Test Date 9/11/10 Using BAB Company Tools Company's EquipmentThe operator hereby certifies that the zone between 0 feet and 1066 feet

was the zone tested

Signature

Title

The results were Satisfactory ☒ Marginal ☐ Not Satisfactory ☐State Agent: Mike Wofford Title: ECRS Witness: YES ☒ NO ☐REMARKS: Annular 20' from Surface 666-20 = 646-00 = 576 X .43 = 256.28☐ Origin. Conservation Div.:☐ KDHE/T: mf☐ Dist. Office

SEP 17 2018

☐ Computer UpdateIs there Chemical Sealant or a Mechanical Casing patch in the annular space? (Y/N) ☐GPS Lat 38.05629GPS Long 095.80947(If YES please describe in REMARKS)
KCC Form U-7

[Kansas Web Page Links](#)[Kansas Geological Survey](#)

Topics...

[Home](#)[Resources on Seismicity](#)[Public Information Circular
on Earthquakes](#)[Kansas Earthquake History](#)[Seismometer Network Data](#)["Earthquake Highlights"
newsletter](#)[Kansas Earthquake
Database](#)[Oklahoma Geological
Survey Earthquake
Information](#)

Most Recent Quakes from the Survey's Network

ID: 1001454210
UTC Date: 2018-10-14 12:10:27
Local Date: OCT-14-2018, 07:55:27 AM
Latitude: 37.079
Longitude: -97.812
Magnitude: 2.5
County: Harper

ID: 1001454206
UTC Date: 2018-10-14 06:10:10
Local Date: OCT-14-2018, 01:21:10 AM
Latitude: 37.092
Longitude: -97.809
Magnitude: 2
County: Harper

ID: 1001454205

Received
KANSAS CORPORATION COMMISSION
OCT 22 2018
CONSERVATION DIVISION
WICHITA, KS

USGS Notifications

The following data are from alerts sent from the [U.S. Geological Survey](#) Earthquake Hazards Program. If you feel an earthquake you can report it to the USGS using the "Did You Feel It?" link on the page for the earthquake you felt. Reporting the quake helps the USGS get a more complete description of what people experienced, the effects of an earthquake, and the extent of damage.

Most Recent Earthquake

Oct. 11, 2018

Date: 10/11/2018, 5:30:27 AM
Latitude: 37.061
Longitude: -97.846
Depth (km): 5.0
Magnitude: 2.7
More info: [us1000hax](#)
Location: 3.1 km (1.9 mi) ESE of Bluff City, Kansas

Most Recent Earthquakes

Oct. 3, 2018

Date: 10/3/2018, 2:36:41 AM
Latitude: 38.336
Longitude: -96.826
Depth (km): 5.0
Magnitude: 3.5
More info: [us1000h656](#)
Location: 4.8 km (3.0 mi) W of Runnymede, Kansas

Date: 10/3/2018, 7:40:46 PM
Latitude: 37.364
Longitude: -97.983
Depth (km): 5.0
Magnitude: 2.4
More info: [us1000h6q2](#)
Location: 8.5 km (5.2 mi) WNW of Clements, Kansas

Received
KANSAS CORPORATION COMMISSION
OCT 22 2018
CONSERVATION DIVISION
WICHITA, KS

Most Recent Earthquakes

Sept. 30, 2018

Date: 09/30/2018, 3:39:08 AM
Latitude: 37.175
Longitude: -97.478
Depth (km): 5.0
Magnitude: 2.6
More info: [us1000h4jy](#)
Location: 2.4 km (1.5 mi) E of Perth, Kansas

Date: 09/30/2018, 7:33:23 PM
Latitude: 37.186
Longitude: -97.442
Depth (km): 5.8
Magnitude: 3.0
More info: [us1000h4tp](#)
Location: 5.7 km (3.6 mi) ENE of Perth, Kansas

Kansas Geological Survey, Exploration Services

Updated Oct. 13, 2018

Comments to webadmin@kgs.ku.edu

The URL for this page is <http://www.kgs.ku.edu/Geophysics/Earthquakes/index.html>



U.S. Geological Survey

The Severity of an Earthquake

The severity of an earthquake can be expressed in terms of both *intensity* and *magnitude*. However, the two terms are quite different, and they are often confused.

Intensity is based on the observed effects of ground shaking on people, buildings, and natural features. It varies from place to place within the disturbed region depending on the location of the observer with respect to the earthquake epicenter.

Magnitude is related to the amount of seismic energy released at the hypocenter of the earthquake. It is based on the amplitude of the earthquake waves recorded on instruments which have a common calibration. The magnitude of an earthquake is thus represented by a single, instrumentally determined value.

Earthquakes are the result of forces deep within the Earth's interior that continuously affect the surface of the Earth. The energy from these forces is stored in a variety of ways within the rocks. When this energy is released suddenly, for example by shearing movements along faults in the crust of the Earth, an earthquake results. The area of the fault where the sudden rupture takes place is called the *focus* or *hypocenter* of the earthquake. The point on the Earth's surface directly above the focus is called the *epicenter* of the earthquake.



San Fernando, California, 1971. Highway interchange heavily damaged by the magnitude 6.5 earthquake

[Click on image for a larger view]

Received
KANSAS CORPORATION COMMISSION

OCT 22 2018

CONSERVATION DIVISION
WICHITA, KS

The Richter Magnitude Scale

Seismic waves are the vibrations from earthquakes that travel through the Earth; they are recorded on instruments called seismographs. Seismographs record a zig-zag trace that shows the varying amplitude of ground oscillations beneath the instrument. Sensitive seismographs, which greatly magnify these ground motions, can detect strong earthquakes from sources anywhere in the world. The time, location, and magnitude of an earthquake can be determined from the data recorded by seismograph stations.

The Richter magnitude scale was developed in 1935 by Charles F. Richter of the California Institute of Technology as a mathematical device to compare the size of earthquakes. The magnitude of an earthquake is determined from the logarithm of the amplitude of waves recorded by seismographs. Adjustments are included in the magnitude formula to compensate for the variation in the distance between the various seismographs and the epicenter of the earthquakes. On the Richter Scale, magnitude is expressed in whole numbers and decimal fractions. For example, a magnitude of 5.3 might be computed for a moderate earthquake, and a strong earthquake might be rated as magnitude 6.3. Because of the logarithmic basis of the scale, each whole number increase in magnitude represents a tenfold increase in measured amplitude; as an estimate of energy, each whole number step in the magnitude scale corresponds to the release of about 31 times more energy than the amount associated with the preceding whole number value.



Van Norman Dam, San Fernando, California, 1971. Earthquake-induced liquefaction of the earth-filled dam resulted in a landslide that caused partial collapse

[Click on image for a larger view]

At first, the Richter Scale could be applied only to the records from instruments of identical manufacture. Now, instruments are carefully calibrated with respect to each other. Thus, magnitude can be computed from the record of any calibrated seismograph.

Earthquakes with magnitude of about 2.0 or less are usually called microearthquakes; they are not commonly felt by people and are generally recorded only on local seismographs. Events with magnitudes of about 4.5 or greater--there are several thousand such shocks annually--are strong enough to be recorded by sensitive seismographs all over the world. Great earthquakes, such as the 1964 Good Friday earthquake in Alaska, have magnitudes of 8.0 or higher. On the average, one earthquake of such size occurs somewhere in the world each year. Although the Richter Scale has no upper limit, the largest known shocks have had magnitudes in the 8.8 to 8.9 range. Recently, another scale called the moment magnitude scale has been devised for more precise study of great earthquakes.

The Richter Scale is not used to express damage. An earthquake in a densely populated area which results in many deaths and considerable damage may have the same magnitude as a shock in a remote area that does nothing more than frighten the wildlife. Large-magnitude earthquakes that occur beneath the oceans may not even be felt by humans.



(Top) San Francisco, California, 1906. Collapse of City Hall after the 8.3 magnitude earthquake. Most of the property destruction was caused by the fire that raged after the earthquake.



(Bottom) Anchorage, Alaska, 1964. Much of the damage after this magnitude 8.6 earthquake was due to huge landslides, such as this one under Government Hill elementary School.

[Click on image for a larger view]

Received
KANSAS CORPORATION COMMISSION
OCT 22 2018
CONSERVATION DIVISION
WICHITA, KS

The Modified Mercalli Intensity Scale

The effect of an earthquake on the Earth's surface is called the intensity. The intensity scale consists of a series of certain key responses such as people awakening, movement of furniture, damage to chimneys, and finally--total destruction. Although numerous intensity scales have been developed over the last several hundred years to evaluate the effects of earthquakes, the one currently used in the United States is the Modified Mercalli (MM) Intensity Scale. It was developed in 1931 by the American seismologists Harry Wood and Frank Neumann. This scale, composed of 12 increasing levels of intensity that range from imperceptible shaking to catastrophic destruction, is designated by Roman numerals. It does not have a mathematical basis; instead it is an arbitrary ranking based on observed effects.

The Modified Mercalli Intensity value assigned to a specific site after an earthquake has a more meaningful measure of severity to the nonscientist than the magnitude because intensity refers to the effects actually experienced at that place. After the occurrence of widely-felt earthquakes, the Geological Survey mails questionnaires to postmasters in the disturbed area requesting the information so that intensity values can be assigned. The results of this postal canvass and information furnished by other sources are used to assign an intensity value, and to compile isoseismal maps that show the extent of various levels of intensity within the felt area. The maximum observed intensity generally occurs near the epicenter.



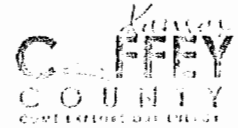
(Top) Mindanao, Phillippines, 1976. Apartment building destroyed by a magnitude 7.9 earthquake.



(Bottom) Long Beach, California, 1933. Exterior walls collapsed onto parked cars after this magnitude 6.3 earthquake (photo by Southern California Earthquake Pictures).

[Click on image for a larger view]

The lower numbers of the intensity scale generally deal with the manner in which the earthquake is felt by people. The higher numbers of the scale are based on observed structural damage. Structural engineers usually contribute information for assigning intensity values of VIII or above.



This database was last updated on 10/15/2018 at 5:27 AM

[Return to County Website](#) | [Log Out](#)

Parcel Details for 016-138-27-0-40-10-001.00-0 - Printer Friendly Version

Quick Reference #: r5207

Owner Information [X]	
Owner's Name (Primary):	ROYD-SYKES, SUSAN M
Mailing Address:	504 S 6th St Burlington, KS 66839
Property Address [X]	
Address:	504 S 6th St Burlington, KS 66839
Property Characteristics [X]	
Property Class:	Residential - R
Living Units:	1
Zoning:	R-1
Neighborhood:	002
Taxing Unit:	001-BURLINGTON CITY
Document Information [X]	
Document #	Document Link
176-98	View Deed Information
175-374	View Deed Information
174-41	View Deed Information
172-184	View Deed Information

Received
KANSAS CORPORATION COMMISSION
OCT 22 2018
CONSERVATION DIVISION
WICHITA, KS

Neighborhood / Tract Information	
Neighborhood:	002 Block: 081 Lot: 1, 2 AND
Tract:	Section: Township: Range:
Legal Description:	BURLINGTON CITY, BLOCK 081, Lot 1, 2 AND, E 35' OF LOT 3
Acres:	0.00
Market Acres:	0.00

Land Based Classification System	
Function:	Single family residence (detached)
Activity:	Household activities
Ownership:	Private-fee simple
Site:	Developed site - with buildings

Neighborhood Data			
Topography:	Above Street - 2	Parking Type:	On and Off Street - 3
Utilities:	All Public - 1	Parking Quantity:	Adequate - 2
Access:	Paved Road - 1; Alley - 7	Parking Proximity:	On Site - 3
Fronting:	Residential Street - 4	Parking Covered:	
Location:	Neighborhood or Spot - 6	Parking Uncovered:	

Assessed Values				
Tax Year	Property Class	Land	Building	Total
2018	Residential - R	5,490	179,610	185,100

Plot Method Information					
Type	Method	Area or Acres	Eff. Frontage	Depth	Est. Value
Regular Lot - 1	Frontage and Depth		120	135	5,490
Influence #1:	Influence #2:	Influence Override:			
Factor:	Factor:	Depth Factor: 0.9600			

Received
KANSAS CORPORATION COMMISSION
OCT 22 2018
CONSERVATION DIVISION
WICHITA, KS

Essential Information

Building #: 1

Dwelling Information

Residence Type: Residential/Agricultural - 1

Quality: GD

Year Built: 1885

Effective Year:

MS Style: 2

LBGS Structure: Detached SFR unit

of Units:

Total Living Area:

Calculated Area: 2,698

Main Floor LA: 1,848

Upper Floor LA %: 46.0

CDU: GD

Phys / Func / Econ: AV / N/A / N/A

Ovr % Good / RCN: /

Remodel:

% Complete:

Assessment Class:

MU Class #1 / %: / MU Class #2 / %: / MU Class #3 / %: /

Residential Components

Code / Description	Units	Percentage	Quality	Year
Wood Deck (SF) with Roof	112		GD	
Frame, Siding, Vinyl		100		
Composition Shingle		100		
Total Basement Area (SF)	432			
Raised Subfloor (% of SF)	2,698			
Warmed & Cooled Air		100		
Plumbing Fixtures (#)	8			
Plumbing Rough-ins (#)	1			
Single 1-Story Fireplace (#)	1			
Automatic Floor Cover Allowance				
Wood Deck (SF)	56			
Open Slab Porch (SF)	360			
Slab Porch (SF) with Roof	236			
Wood Deck (SF) with Roof	145			

Received
KANSAS CORPORATION COMMISSION
OCT 22 2018
CONSERVATION DIVISION
WICHITA, KS

Sketch Vector Information

Building #: 1 Sketch Vector : Sketch Vector Not Available

Conservation Information (Information Not Available)

Other Building Improvement Information

Occup	MS	Class	Rank	Quantity	Year	Effective	LBGS	Area	Perim	Hgt	Dimensions	Phys	Cond	Func	Econ	Ovr %	Reason	RCN	%	MS
Residential Garage - Detached	D	AV		1	1975			884	120	8	34 x 26	1	AV	AV			2020	9	2020	

Components

Code	Units	Percentage %	Area	Other	Rank	Year
------	-------	--------------	------	-------	------	------

Additional Information (Information Not Available)

This printout was last updated on 10/15/2018 at 6 am.

© 2014 Coffey County, Kansas
Version: 2.0.0.48 : 04/14/2015

Protestant's Motion to Deny the Permits in Docket No. 19-CONS-3106-CUIC (Merritt# 10) and No. 19-CONC-3107-CUIC located in Coffey County, Kansas, and Close the Docket in Both Matters (exhibit 6 KORA completion)

STATE OF KANSAS

CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027



Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.
SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT ENLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

October 30, 2018

Susan Royd-Sykes
504 S 6th St
Burlington, KS 66839
moondrummer88@gmail.com

Re: 10/25/2018 Kansas Open Records Act Request #1540495252

Ms. Royd-Sykes,

Please find enclosed the documents you requested pursuant to the Kansas Open Records Act, K.S.A. 45-215 *et seq.* This constitutes the completion of your request. Any additional request received within one calendar year from the date of this request may be billed at the cost of complying with such request.

Respectfully,

A handwritten signature in black ink that reads "Lynn M. Retz".

Lynn M. Retz
Official Custodian of Records
Secretary to the Commission

Michael Duenes

From: Brian Birk <blbpetro@gmail.com>
Sent: Thursday, October 18, 2018 4:36 PM
To: Michael Duenes
Subject: Docket No. 19-CONS-3106-CUIC
Attachments: pdf_0733.pdf

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

Please see attached re: the upcoming Prehearing Conference.

Thank you

BIRK PETROLEUM

874 12th Rd, BURLINGTON, KS 66839
620-364-1311

10/15/2018

Michael J. Duenes
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Ks 66604-4027

Dear Mr. Duenes,

I am writing this in response to the letter of protest filed by Ms. Susan Royd-Sykes and to address the issues that will be brought at the Prehearing Conference.

First, I would like to state that I have been a licensed operator in the State of Kansas since 1990 and have a well established record of compliance with the Kansas Corporation Commission. The vast majority of Kansas operators are small independent producers, including myself. We are also farmers and ranchers, members of our communities, employers and parents. We contribute to our local economies and the state economy. I am a 4th generation and life-long resident of Coffey County where the application wells are located so I have a direct interest in following good operating practices. The Kansas Corporation Commission has implemented rules and regulations governing the operations of the oil and gas industry in Kansas. As you know, waste water comes with the production of crude oil. It is proven that the best way to limit pollution to our surface water and environment is to dispose or inject the waste water back into the ground at depths that keep the surface water protected. The KCC has established regulations concerning the depths, pressures, and rates for disposal and injection wells. The applicant wells have had mechanical integrity tests performed as per regulations and have been approved by District staff. The applicant wells meet the existing regulations and should be approved.

Ms. Royd-Sykes sites concerns about earthquakes being caused by "heavy saltwater disposal". I believe that concern is unfounded in this instance and most other instances in Eastern Kansas. The application wells have a maximum operating pressure of 300 psi and a maximum injection rate of 100 bbls/day and well #5 is already permitted at a max operating pressure of 100 psi and maximum injection rate of 50 bbls/day and has had no issues. According to information obtained from the Kansas Geological Survey the most recent earthquakes recorded in Kansas have been at a depth of 5 km or more, or over 16,404 feet and have been between magnitudes of 2.0 – 3.5 on the Richter Scale and were located in south

central Kansas. The USGS states that "Earthquakes with magnitude of about 2.0 or less are usually called microearthquakes; they are not commonly felt by people and are generally recorded only on local seismographs." The applicant wells are at a depth of 650-700 feet. It seems unlikely that disposal at the depths and rates requested would be capable of causing earthquakes.

Ms. Royd-Sykes claims damage to her home from earthquakes located in Oklahoma. It should be noted that County records show her home was built in 1885. A structure that is 133 years old may have other issues that affect it besides earthquake activity being the main cause of any damage.

It appears your office is in receipt of the Application to Amend the injection permit and I have enclosed a copy of the completed mechanical integrity test for well #10 that was witnessed and signed by district staff. Please also find copies of data acquired from the KGS, USGS and Coffey County attached.

I look forward to the approval of the applicant wells and a quick resolution to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian L. Birk". The signature is fluid and cursive, with a large, stylized initial "B".

Brian L Birk, dba Birk Petroleum

Cc: Rene Stucky, Kansas Corporation Commission

Michael Duenes

From: Michael Duenes
Sent: Monday, October 22, 2018 1:35 PM
To: 'Brian Birk'; Lauren Wright
Cc: 'moondrummer88@gmail.com'
Subject: RE: Docket No. 19-CONS-3106-CUIC

Mr. Birk,

You sent separate emails with attachments to me on October 18th and 19th. As far as I can tell, you did not send the same emails to Commission Conservation Staff (i.e., Lauren Wright; although it appears you mailed your attachments to Rene Stucky), and the Protestant in this matter, Susan Royd-Sykes.

Although the Commission has not yet determined and announced that a hearing should be held in this matter, as the Prehearing Officer, I would ask that you not communicate with me unless you also include in your communications all the parties to the docket. I have not forwarded your attachments to Staff or Ms. Royd-Sykes at this point. I have also not passed them along to the Commission for their consideration.

If you have questions, please do not hesitate to let me know, and again, make sure you communicate with all of the emails listed on this email.

Yours,

Michael J. Duenes, *Assistant General Counsel*
Office of General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road | Topeka, KS | 66604-4027
Phone (785) 271-3181 | <http://kcc.ks.gov/>
Fax (785) 271-3314 (Advisory)

This message is from the Office of General Counsel of the Kansas Corporation Commission and is intended only for the addressee. This transmission, email, and any files transmitted with it, may be (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential under federal or state law. Unauthorized forwarding, printing, copying, distributing, or using such information is strictly prohibited and may be unlawful. If you have received this transmission in error, notify the sender (only) and delete the message. This message may also be subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 *et seq.*

From: Brian Birk [mailto:blbpetro@gmail.com]
Sent: Thursday, October 18, 2018 4:36 PM
To: Michael Duenes <m.duenes@kcc.ks.gov>
Subject: Docket No. 19-CONS-3106-CUIC

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

Please see attached re: the upcoming Prehearing Conference.

Thank you

Michael Duenes

From: Brian Birk <blbpetro@gmail.com>
Sent: Friday, October 19, 2018 12:55 PM
To: Michael Duenes
Subject: Docket No. 19-CONS-3106-CUIC
Attachments: pdf_0734.pdf

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

Please see attachments regarding the above Docket.
Thank you,

CASING MECHANICAL INTEGRITY TEST
Disposal Well ☐ Enhanced Recovery:
Repressuring ☐
Flood ☐
Tertiary ☐
NW NP
Date injection started
API #15- 031-19151-00-00

DOCKET# D-32724

NE SWSW 1/4, Sec 7, T 23, S, R 15 E W
GPS
1/762 Feet from South Section Line
4319 Feet from East Section Line
Lease Merritt Well # 10
County Coffey

Operator: Birk Petroleum Operator License# 31280
Name & Address 874 12th Rd SW Contact Person Brian Birk
Burlington KS 66839 Phone 620 3641311

Max. Auth. Injection Press 300 Psi; Max Inj. Rate 50 bbl/d;
If Dual Completion - Injection above production _____ Injection below production _____
Conductor Surface Production Liner Tubing
Size 8.625 3.5
Set at 40 724
Cement Top Surface Surface
" Bottom 40 724
DV/Perf. TD (and plug back) 724 ft. depth
Packer type Size Set at
Zone of injection 6666 ft. to ft. 724 Perf. or open hole Perf

Type MIT: Pressure: ☒ Radioactive Tracer Survey: ☐ Temperature Survey: ☐

F Time: Start 20 Min 40 Min 60 Min
I
E Pressures: 260 260 260 Set up 1 System Pres. during test 7 2010
L
D Set up 2 Annular Pres. during test
D Set up 3 Fluid loss during test bbls.
A
T Tested: Casing ☒ or Casing - Tubing Annulus ☐
A

SCANNED

The bottom of the tested zone in shut in with
Test Date 9/11/10 Using B&B Company Tools Company's Equipment
The operator hereby certifies that the zone between 0 feet and 6666 feet
was the zone tested
Signature Title

The results were Satisfactory ☒ Marginal _____ Not Satisfactory _____
State Agent: Mike Duffer Title: ECRS Witness: YES ☒ NO _____
REMARKS: Ann. 20' from surface 666-20 = 646-50 = 596 X .43 = 256.28

☐ Origin. Conservation Div.: ☐ KDHE/T: ☐ Dist. Office SEP 17 2018
☐ Computer Update Is there Chemical Sealant or a Mechanical Casing Patch in the annular space? (Y/N) ☐

GPS Lat 38.05629 GPS Long 095.80947 (If YES please describe in REMARKS) KCC Form U-7

Kansas Earthquakes

Kansas Geological Survey



Topics...

[Home](#)

[Resources on Seismicity](#)

[Public Information Circular
on Earthquakes](#)

[Kansas Earthquake History](#)

[Seismometer Network Data](#)

["Earthquake Highlights"
newsletter](#)

[Kansas Earthquake
Database](#)

[Oklahoma Geological
Survey Earthquake
Information](#)

Most Recent Quakes from the Survey's Network

ID: 1001454210
UTC Date: 2018-10-14 12:10:27
Local Date: OCT-14-2018, 07:55:27 AM
Latitude: 37.079
Longitude: -97.812
Magnitude: 2.5
County: Harper

ID: 1001454206
UTC Date: 2018-10-14 06:10:10
Local Date: OCT-14-2018, 01:21:10 AM
Latitude: 37.092
Longitude: -97.809
Magnitude: 2
County: Harper

ID: 1001454205

USGS Notifications

The following data are from alerts sent from the [U.S. Geological Survey](#) Earthquake Hazards Program. If you feel an earthquake you can report it to the USGS using the "Did You Feel It?" link on the page for the earthquake you felt. Reporting the quake helps the USGS get a more complete description of what people experienced, the effects of an earthquake, and the extent of damage.

Most Recent Earthquake

Oct. 11, 2018

10/15/2018

KGS—Kansas Earthquakes

Date: 10/11/2018, 5:30:27 AM
Latitude: 37.061
Longitude: -97.846
Depth (km): 5.0
Magnitude: 2.7
More info: [us1000haix](#)
Location: 3.1 km (1.9 mi) ESE of Bluff City, Kansas

Most Recent Earthquakes

Oct. 3, 2018

Date: 10/3/2018, 2:36:41 AM
Latitude: 38.336
Longitude: -96.826
Depth (km): 5.0
Magnitude: 3.5
More info: [us1000h656](#)
Location: 4.8 km (3.0 mi) W of Runnymede, Kansas

Date: 10/3/2018, 7:40:46 PM
Latitude: 37.364
Longitude: -97.983
Depth (km): 5.0
Magnitude: 2.4
More info: [us1000h6q2](#)
Location: 8.5 km (5.2 mi) WNW of Clements, Kansas

Most Recent Earthquakes

Sept. 30, 2018

Date: 09/30/2018, 3:39:08 AM
Latitude: 37.175
Longitude: -97.478
Depth (km): 5.0
Magnitude: 2.6
More info: [us1000h4jy](#)
Location: 2.4 km (1.5 mi) E of Perth, Kansas

Date: 09/30/2018, 7:33:23 PM
Latitude: 37.186
Longitude: -97.442
Depth (km): 5.8
Magnitude: 3.0
More info: [us1000h4tp](#)
Location: 5.7 km (3.6 mi) ENE of Perth, Kansas

Kansas Geological Survey, Exploration Services

Updated Oct. 13, 2018

Comments to webadmin@kgs.ku.edu

The URL for this page is <http://www.kgs.ku.edu/Geophysics/Earthquakes/Index.html>



The Severity of an Earthquake

The severity of an earthquake can be expressed in terms of both *intensity* and *magnitude*. However, the two terms are quite different, and they are often confused.

Intensity is based on the observed effects of ground shaking on people, buildings, and natural features. It varies from place to place within the disturbed region depending on the location of the observer with respect to the earthquake epicenter.

Magnitude is related to the amount of seismic energy released at the hypocenter of the earthquake. It is based on the amplitude of the earthquake waves recorded on instruments which have a common calibration. The magnitude of an earthquake is thus represented by a single, instrumentally determined value.

Earthquakes are the result of forces deep within the Earth's interior that continuously affect the surface of the Earth. The energy from these forces is stored in a variety of ways within the rocks. When this energy is released suddenly, for example by shearing movements along faults in the crust of the Earth, an earthquake results. The area of the fault where the sudden rupture takes place is called the *focus* or *hypocenter* of the earthquake. The point on the Earth's surface directly above the focus is called the *epicenter* of the earthquake.



San Fernando, California, 1971. Highway interchange heavily damaged by the magnitude 6.5 earthquake

[Click on image for a larger view]

The Richter Magnitude Scale

Seismic waves are the vibrations from earthquakes that travel through the Earth; they are recorded on instruments called seismographs. Seismographs record a zig-zag trace that shows the varying amplitude of ground oscillations beneath the instrument. Sensitive seismographs, which greatly magnify these ground motions, can detect strong earthquakes from sources anywhere in the world. The time, location, and magnitude of an earthquake can be determined from the data recorded by seismograph stations.

The Richter magnitude scale was developed in 1935 by Charles F. Richter of the California Institute of Technology as a mathematical device to compare the size of earthquakes. The magnitude of an earthquake is determined from the logarithm of the amplitude of waves recorded by seismographs. Adjustments are included in the magnitude formula to compensate for the variation in the distance between the various seismographs and the epicenter of the earthquakes. On the Richter Scale, magnitude is expressed in whole numbers and decimal fractions. For example, a magnitude of 5.3 might be computed for a moderate earthquake, and a strong earthquake might be rated as magnitude 6.3. Because of the logarithmic basis of the scale, each whole number increase in magnitude represents a tenfold increase in measured amplitude; as an estimate of energy, each whole number step in the magnitude scale corresponds to the release of about 31 times more energy than the amount associated with the preceding whole number value.



Van Norman Dam, San Fernando, California, 1971. Earthquake-induced liquefaction of the earth-filled dam resulted in a landslide that caused partial collapse

[Click on image for a larger view]

At first, the Richter Scale could be applied only to the records from instruments of identical manufacture. Now, instruments are carefully calibrated with respect to each other. Thus, magnitude can be computed from the record of any calibrated seismograph.

Earthquakes with magnitude of about 2.0 or less are usually called microearthquakes; they are not commonly felt by people and are generally recorded only on local seismographs. Events with magnitudes of about 4.5 or greater--there are several thousand such shocks annually--are strong enough to be recorded by sensitive seismographs all over the world. Great earthquakes, such as the 1964 Good Friday earthquake in Alaska, have magnitudes of 8.0 or higher. On the average, one earthquake of such size occurs somewhere in the world each year. Although the Richter Scale has no upper limit, the largest known shocks have had magnitudes in the 8.8 to 8.9 range. Recently, another scale called the moment magnitude scale has been devised for more precise study of great earthquakes.

The Richter Scale is not used to express damage. An earthquake in a densely populated area which results in many deaths and considerable damage may have the same magnitude as a shock in a remote area that does nothing more than frighten the wildlife. Large-magnitude earthquakes that occur beneath the oceans may not even be felt by humans.



(Top) San Francisco, California, 1906. Collapse of City Hall after the 8.3 magnitude earthquake. Most of the property destruction was caused by the fire that raged after the earthquake.



(Bottom) Anchorage, Alaska, 1964. Much of the damage after this magnitude 8.6 earthquake was due to huge landslides, such as this one under Government Hill elementary School.

[Click on image for a larger view]

The Modified Mercalli Intensity Scale

The effect of an earthquake on the Earth's surface is called the intensity. The intensity scale consists of a series of certain key responses such as people awakening, movement of furniture, damage to chimneys, and finally--total destruction. Although numerous intensity scales have been developed over the last several hundred years to evaluate the effects of earthquakes, the one currently used in the United States is the Modified Mercalli (MM) Intensity Scale. It was developed in 1931 by the American seismologists Harry Wood and Frank Neumann. This scale, composed of 12 increasing levels of intensity that range from imperceptible shaking to catastrophic destruction, is designated by Roman numerals. It does not have a mathematical basis; instead it is an arbitrary ranking based on observed effects.

The Modified Mercalli Intensity value assigned to a specific site after an earthquake has a more meaningful measure of severity to the nonscientist than the magnitude because intensity refers to the effects actually experienced at that place. After the occurrence of widely-felt earthquakes, the Geological Survey mails questionnaires to postmasters in the disturbed area requesting the information so that intensity values can be assigned. The results of this postal canvass and information furnished by other sources are used to assign an intensity value, and to compile isoseismal maps that show the extent of various levels of intensity within the felt area. The maximum observed intensity generally occurs near the epicenter.



(Top) Mindanao, Phillippines, 1976. Apartment building destroyed by a magnitude 7.9 earthquake.



(Bottom) Long Beach, California, 1933. Exterior walls collapsed onto parked cars after this magnitude 6.3 earthquake (photo by Southern California Earthquake Pictures).

[Click on image for a larger view]

The lower numbers of the intensity scale generally deal with the manner in which the earthquake is felt by people. The higher numbers of the scale are based on observed structural damage. Structural engineers usually contribute information for assigning intensity values of VIII or above.

CASING MECHANICAL INTEGRITY TEST

DOCKET# D-32724Disposal Well ☐ Enhanced Recovery:Repressuring ☐Flood ☐Tertiary ☐

Date injection started

API #15- 031-19151-00-00NESWSW Sec 7 T 23 S, R 15 EW

GPS

Feet from South Section Line

Feet from East Section Line

Lease MerrittWell # 10County CoffeyOperator: Birk PetroleumOperator License# 31280

Name &

Address 874 12th Rd SWContact Person Brian BirkBurlington KS 66839Phone 620 3641311Max. Auth. Injection Press 300 Psi; Max Inj. Rate 50 bbl/d;

If Dual Completion - Injection above production

Injection below production

	Conductor	Surface	Production	Liner		Tubing
Size		<u>8.625</u>	<u>3.5</u>		Size	
Set at		<u>40</u>	<u>724</u>		Set at	
Cement Top		<u>Surface</u>	<u>Surface</u>		Type	
" Bottom		<u>40</u>	<u>724</u>			
DV/Perf.					TD (and plug back)	<u>724</u> ft. depth
Packer type					Size	
Zone of injection	<u>6666</u>	ft. to ft.	<u>724</u>	Perf. or open hole	<u>Perf</u>	

Type MIT: Pressure: ☒ Radioactive Tracer Survey: ☐ Temperature Survey: ☐F Time: Start 20 Min 40 Min 60 Min

SCANNED

E Pressures: 266 260 260 Set up 1 System Pres. during test 7 2010

L Set up 2 Annular Pres. during test

D Set up 3 Fluid loss during test bbls.

T Tested: Casing ☒ or Casing - Tubing Annulus ☐

A

The bottom of the tested zone in shut in with

Test Date 9/11/10 Using B&B Company Tools Company's EquipmentThe operator hereby certifies that the zone between 0 feet and 6666 feet

was the zone tested

Signature

Title

The results were Satisfactory ☒ Marginal ☐ Not Satisfactory ☐State Agent: Mike Duffin Title: ECRS Witness: YES ☒ NO ☐REMARKS: Annular 20' from surface 666-20 = 646-50 = 596 X .43 = 256.28☐ Origin. Conservation Div.:☐ KDHE/T: mf

Dist. Office

SEP 17 2018

☐ Computer UpdateIs there Chemical Sealant or a Mechanical Casing Patch in the annular space? (Y/N) ☐GPS Lat 38.05629GPS Long 095.80947(If YES please describe in REMARKS)
KCC Form U-7

10/15/2018

ks367.cicohosting.com/webportal/appraiser/PrinterFriendly.aspx



This database was last updated on 10/15/2018 at 5:27 AM

[Return to County Website](#) | [Log Out](#)

Parcel Details for 016-138-27-0-40-10-001.00-0 - Printer Friendly Version

Quick Reference #: r5207

Property Information	
Owner's Name (Primary):	ROYD-SYKES, SUSAN M
Mailing Address:	504 S 6th St Burlington, KS 66839
Property Address	
Address:	504 S 6th St Burlington, KS 66839
Physical Property Information	
Property Class:	Residential - R
Living Units:	1
Zoning:	R-1
Neighborhood:	002
Taxing Unit:	001-BURLINGTON CITY
Document History	
Document #	Document Link
176-96	View Deed Information
175-374	View Deed Information
174-41	View Deed Information
172-184	View Deed Information

Highly Influenced - Year to Date values

Neighborhood: 002 Block: 081 Lot: 1, 2 AND
Tract: Section: Township: Range:
Legal Description: BURLINGTON CITY, BLOCK 081, Lot 1, 2 AND, E 35' OF LOT 3
Acres: 0.00
Market Acres: 0.00

Lot Characteristics - System

Function: Single family residence (detached)
Activity: Household activities
Ownership: Private-fee simple
Site: Developed site - with buildings

Physical Features

Topography: Above Street - 2 **Parking Type:** On and Off Street - 3
Utilities: All Public - 1 **Parking Quantity:** Adequate - 2
Access: Paved Road - 1; Alley - 7 **Parking Proximity:** On Site - 3
Fronting: Residential Street - 4 **Parking Covered:**
Location: Neighborhood or Spot - 6 **Parking Uncovered:**

Appraised Value

Tax Year	Property Class	Land	Building	Total
2018	Residential - R	5,490	179,610	185,100

Market Value Information

Type	Method	Area or Acres	Eff. Frontage	Depth	Est. Value
Regular Lot - 1	Frontage and Depth		120	135	5,490
Influence #1:	Influence #2:	Influence Override:			
Factor:	Factor:	Depth Factor: 0.9600			

Parcel Record Information

Building #: 1

Dwelling Information

Residence Type: Residential/Agricultural - 1
 Quality: GD
 Year Built: 1885
 Effective Year:
 MS Style: 2
 LBCS Structure: Detached SFR unit
 # of Units:
 Total Living Area:
 Calculated Area: 2,698
 Main Floor LA: 1,848
 Upper Floor LA %: 46.0
 CDU: GD
 Phys / Func / Econ: AV / N/A / N/A
 Ovr % Good / RCN: /
 Remodel:
 % Complete:
 Assessment Class:

Component Sales Information

Architectural Style: Old Style - 09
 Basement Type: Partial - 3
 Total Rooms: 7
 Bedrooms: 4
 Family Rooms: 1
 Full Baths: 2
 Half Baths:
 Garage Capacity:
 Foundation: Stone - 4

MU Class #1 / %: / MU Class #2 / %: / MU Class #3 / %: /

Residential Components

Code / Description	Units	Percentage	Quality	Year
Wood Deck (SF) with Roof	112		GD	
Frame, Siding, Vinyl		100		
Composition Shingle		100		
Total Basement Area (SF)	432			
Raised Subfloor (% or SF)	2,698			
Warmed & Cooled Air		100		
Plumbing Fixtures (#)	8			
Plumbing Rough-ins (#)	1			
Single 1-Story Fireplace (#)	1			
Automatic Floor Cover Allowance				
Wood Deck (SF)	56		FR	1991
Open Slab Porch (SF)	360		GD	2008
Slab Porch (SF) with Roof	236			
Wood Deck (SF) with Roof	145			

Sketch Vector Information

Building #: 1 Sketch Vector : Sketch Vector Not Available

Occupancy Information (Automatically Not Available)

Other Building Improvement Information

Occup	MS Class	Rank	Quantity	Year Built	Effective Year	LBCS	Area	Perim	Hgt	Dimensions (L x W)	Stories	Phys Cond	Func	Econ	Ovr %	Reason	RCN	% Good	MS Value
Residential Garage - Detached	D	AV	1	1975			884	120	8	34 x 26	1	AV	AV				2020	9	2020
Components																			
Code							Units	Percentage %		Area	Other		Rank		Year				

Aerial and other photos (Information Not Available)

This parcel record was last updated on 10/15/2018 at 6 am.

Protestant's Motion to Deny the Permits in Docket No. 19-CONS-3106-CUIC (Merritt# 10) and No. 19-CONC-3107-CUIC located in Coffey County, Kansas, and Close the Docket in Both Matters
(exhibit 7 Birk's ex parte letter to Duenes)

PIRA PETROLEUM

874 12th Rd, BURLINGTON, KS 66839
620-364-1311

10/15/2018

Michael J. Duenes
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Ks 66604-4027

Dear Mr. Duenes,

I am writing this in response to the letter of protest filed by Ms. Susan Royd-Sykes and to address the issues that will be brought at the Prehearing Conference.

First, I would like to state that I have been a licensed operator in the State of Kansas since 1990 and have a well established record of compliance with the Kansas Corporation Commission. The vast majority of Kansas operators are small independent producers, including myself. We are also farmers and ranchers, members of our communities, employers and parents. We contribute to our local economies and the state economy. I am a 4th generation and life-long resident of Coffey County where the application wells are located so I have a direct interest in following good operating practices. The Kansas Corporation Commission has implemented rules and regulations governing the operations of the oil and gas industry in Kansas. As you know, waste water comes with the production of crude oil. It is proven that the best way to limit pollution to our surface water and environment is to dispose or inject the waste water back into the ground at depths that keep the surface water protected. The KCC has established regulations concerning the depths, pressures, and rates for disposal and injection wells. The applicant wells have had mechanical integrity tests performed as per regulations and have been approved by District staff. The applicant wells meet the existing regulations and should be approved.

Ms. Royd-Sykes sites concerns about earthquakes being caused by "heavy saltwater disposal". I believe that concern is unfounded in this instance and most other instances in Eastern Kansas. The application wells have a maximum operating pressure of 300 psi and a maximum injection rate of 100 bbls/day and well #5 is already permitted at a max operating pressure of 100 psi and maximum injection rate of 50 bbls/day and has had no issues. According to information obtained from the Kansas Geological Survey the most recent earthquakes recorded in Kansas have been at a depth of 5 km or more, or over 16,404 feet and have been between magnitudes of 2.0 — 3.5 on the Richter Scale and were located in south

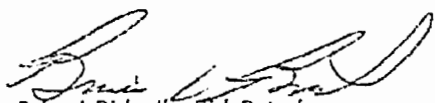
central Kansas. The USGS states that "Earthquakes with magnitude of about 2.0 or less are usually called microearthquakes; they are not commonly felt by people and are generally recorded only on local seismographs." The applicant wells are at a depth of 650-700 feet. It seems unlikely that disposal at the depths and rates requested would be capable of causing earthquakes.

Ms. Royd Sykes claims damage to her home from earthquakes located in Oklahoma. It should be noted that County records show her home was built in 1885. A structure that is 133 years old may have other issues that affect it besides earthquake activity being the main cause of any damage.

It appears your office is in receipt of the Application to Amend the injection permit and I have enclosed a copy of the completed mechanical integrity test for well #10 that was witnessed and signed by district staff. Please also find copies of data acquired from the KGS, USGS and Coffey County attached.

I look forward to the approval of the applicant wells and a quick resolution to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian L. Birk". The signature is fluid and cursive, with a large, sweeping "B" and "L".

Brian L. Birk, dba Birk Petroleum

Cc: Rene Stucky, Kansas Corporation Commission