

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

In the Matter of the Application of RJ Energy LLC)
For a permit to Authorize the Enhanced Recovery) Docket No. 20-CONS-3231-CUIC
And to Commence Injection of Saltwater Into the)
Squirrel Formation From the Murray Twins #2i 3i) CONSERVATION DIVISION
4i 5i 6i 7i 9i 10i 11i 12i 13i 14i Wells and the)
Brewer # 1i 2i 3i 4i 5i 6i 7i 8i 9i 10i Located in) License No. 3728
Section 18, Township 23, Range 16 East, Coffey)
County, Kansas.)

**PROTESTANT CINDY HOEDEL’S REPLY TO APPLICANT’S MOTION TO DISMISS PROTESTS AND MOTION
TO ACCEPT PROTEST**

COMES NOW Cindy Hoedel, Protestant, who replies to a Motion to Dismiss Protests and respectfully
moves that her protest be accepted. In support of her motion, protestant states:

1. On January 23, 2020 RJ Energy LLC published a legal notice in the *Coffey County Republican*
seeking “Application for a permit to authorize recovery from the Murray Twins 2i 3i 4i 5i 6i 7i 9i 10i 11i
12i 13i 14i Brewer 1i 2i 3i 4i 5i 6i 7i 8i 9i 10i located in Coffey County, Kansas.” Further down the notice
stated that “RJ Energy LLC has filed an application to commence the injection of saltwater into the
squirrel formation at the Murray Twins...” “...with a maximum operation pressure of 700 psig and
maximum injection rate of 200 bbls per day.”

2. Protestant Cindy Hoedel filed a protest of such permit and a request for a hearing on
February 18, 2020; the protest was marked “received” by the Commission on Feb. 20, 2020, within the
time for filing protests prescribed by K.A.R. 82-3-135b and 82-3-402(c).

3. An Order Designating Prehearing Officer and Setting Prehearing Conference was filed on this
docket March 12, 2020.

4. A motion to dismiss protests in this docket was entered into the docket on March 16, 2020 by
counsel for applicant, Mr. Thomas M. Rhoads.

5. Applicant's legal notice published on January 23 December 6, 2018 in the *Coffey County Republican* is an instance of a constructive notice in which the party to whom notice is being served is the public of Coffey County, Kansas and "all persons interested or concerned..."

6. If the requirements for constructive notice have been met ample case law demonstrates that the parties to be notified have been properly served.

7. Section 3 of Mr. Rhoads' "Motion to Dismiss Protests" states "Hoedel states that she is familiar with Enhanced Oil Recovery wells, and therefore is presumably familiar with the enhanced recovery process, so her contended lack of knowledge and understanding of the nature of the applications is specious." This statement erroneously conflates Enhanced Oil Recovery with "enhanced recovery," which could be recovery of anything. It places an undue burden on the public, whom the notice is intended to inform, to make them conduct further investigation to discover the goal of the injection for which authorization is being sought. The notice does not meet the requirements for constructive notice when it fails to name what is the true purpose of injecting saltwater at these 22 wells. If the purpose is the recovery of oil, there is no reason to obscure that fact.

8. Section 3 of Mr. Rhoad's "Motion to Dismiss Protests" also states that "no evidence of Hoedel's direct and substantial interest in the pending application is provided, so she lacks standing to the application, and her protest must be dismissed." Protestant maintains that she has standing by virtue of being a member of the public for whom this public notice is given, specifically "all persons interested or concerned...." Issues of "standing" in this docket pertain by virtue of parties suffering harm as the result of a defective legal notice.

9. The harm suffered can be stated thus: protestants and the public cannot assess risk attendant to proposed activities of applicant; protestants and the public cannot locate regulations and statutes which may be applicable to applicant's proposed activities; protestants and the public are burdened by language which describes no contemplated, imagined or proposed, purpose for the activity of applicant.

10. We find relevant case law in *Genesis Health Club Inc LLC v. City of Wichita*, No. 97,486 (March 28,2008). In that case, the Kansas Supreme Court quotes K.S.A. 12-17-1749d (SYLLABUS BY THE COURT, p. 9, paragraph 2)

“Prior to issuing any revenue bonds for any business the property of which will be eligible for an exemption from ad valorem taxation, the governing body of any city, as the case requires, shall be required to: (b) conduct a public hearing on the granting of such exemption. Notice of the public hearing shall be published at least once seven days prior to the hearing in the official city or county newspaper, as the case requires, and shall indicate the purpose, time and place thereof. In addition to such publication notice, the city clerk shall notify in writing the governing body of any unified school district within which the property proposed for exemption is located.”

The court says of the above reference (SYLLABUS BY THE COURT, p.9, paragraph 5):

“In short, these requirements specifically are in addition to any notice given the general public through mere publication in the newspaper. Clearly, the legislature has decided that school districts are required to be well, and repeatedly, informed of a potential loss of revenue due to abatement of taxes on property within their boundaries. We are not in a position to doubt the legislature’s wisdom on the issue, for as was referenced when the court upheld the constitutionality of the Act in 1961: “An examination of the statute under which the challenged proceedings are being undertaken will reveal a number of restrictions which the legislature must have deemed sufficient to prevent the defendant city from abusing the corporate powers vested in it and the legislative wisdom on this subject is not open to judicial review.” *State ex rel. Ferguson v City of Pittsburg*, 188 Kan. 612, 623, 364, P. 2nd 71 (1961) (citing *State ex rel. Beck v. Kansas City*, 149 Kan. 252, 255, 86 P. 2nd 476 [1939]). We further note the presumption that the legislature does not intend to enact useless or meaningless legislation. *Hawley v. Kansas Dep’t of Agriculture*, 281 Kan. 603, 631, 132 P. 3d 870 (2006). The particular notice required under 12-1749c to be given to the affected school districts is the only action specifically required under the Act to be given before approval of the letter of intent. Accordingly, we conclude that this statute must have some utility and meaning.”

We may conclude from *Genesis* that: (1) the legislation which mandates public hearings in Class II injection wells is purposeful, (2) such legislation protects important subsequent proceedings, (3) such legislation envisioned an intimate relationship between proper notice and a meaningful opportunity for the public to be heard, and (4) when proper notice is disregarded, subsequent proceedings are a nullity.

11. On May 21, 2020, Protestant Hoedel filed into this docket "Protestant Cindy Hoedel's Settlement Offer in Response to Applicant's Motion to Dismiss Protestants." Section 4 of the offer states "Protestant is prepared to drop any and all protests of the wells in question if a correctly worded notice is published that clearly states the purpose of the authorization requested (i.e. "the enhanced recovery of oil," or whatever the true purpose of the activity is), and if proof of publication is provided to protestant and filed into the docket."

WHEREFORE, protestant respectfully requests the commission to deny applicant's motion to dismiss applicants and moves that this docket proceed to hearing by means of the scheduling order filed into this docket on March 12, 2020.

Respectfully submitted,



Cindy Hoedel
205 Mercer St.
Matfield Green, KS 66862

CERTIFICATE OF SERVICE:

On this 23rd day of May, 2020, a true and exact copy of the foregoing was sent electronically to: t.bryant@kcc.ks.gov,
k.marsh@kcc.ks.gov, j.myers@kcc.ks.gov, r.stucky@KCC.KS.GOV,
tmrhoads@sbcglobal.net, moondrummer88@gmail.com