

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

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

In the Matter of the Application of Midstates) Docket No: 18-CONS-3195-CUIC
Energy Operating, LLC to authorize injection of)
saltwater into the Squirrel formation at the Hadl) CONSERVATION DIVISION
#I-1 and Hadl #I-2 enhanced recovery wells,)
located in Section 36, Township 13 South,) License No. 35503
Range 20 East, Douglas County, Kansas.)

ORDER ON JUDITH L. WELLS' PETITION FOR PUBLIC COMMENT

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds the following:

BACKGROUND:

1. On October 12, 2017, Midstates Energy Operating, LLC (Midstates) filed an Application with the Commission seeking a permit to authorize the injection of saltwater into the Squirrel formation at the Hadl Lease, well numbers I-1 and I-2, located in Section 36, Township 13 South, Range 20 East, Douglas County, Kansas.¹

2. On April 19, 2018, the Commission issued its *Order on Midstates' Motion to Dismiss Protests*, finding that Judith L. Wells' protest "should be dismissed pursuant to K.A.R. 82-3-135b(d)."²

3. On May 4, 2018, Judith L. Wells, by and through her attorney, filed a Petition for Public Comment, asking the Commission to "permit her to make public comment at the evidentiary hearing scheduled on June 26, 2017."³

¹ Midstates Energy Operating, LLC, Application for Injection Well, p. 1 (Oct. 12, 2017) (Application).

² *Order on Midstates' Motion to Dismiss Protests*, ¶ 31 (Apr. 19, 2018).

³ Petition for Public Comment, p. 1 (May 4, 2018) (Petition).

4. On May 14, 2018, Commission Conservation Staff (Staff) filed a Response in Opposition to Petition for Public Comment, opposing Ms. Wells's Petition and requesting that it be denied.⁴

DISCUSSION:

5. Ms. Wells' Petition cited particular sections of the Safe Drinking Water Act (SDWA),⁵ as well as Environmental Protection Agency (EPA) regulations pertaining to state underground injection control (UIC) programs.⁶ Ms. Wells claimed that "[t]he Kansas UIC program, administered by the Commission, is . . . subject to the requirements in 40 C.F.R. § 144.1(b)."⁷ Ms. Wells argued that "[t]he federal regulations implementing the Safe Drinking Water Act, codified at 40 C.F.R. §§144, §145; and at parts §124.10, §124.11, and §124.12, mandate that State UIC programs allow for public comment and public hearing during the permitting process"⁸ in the manner specified by these regulations.⁹

6. Ms. Wells complained that the Commission's UIC regulations do not provide for public comment as required by the EPA regulations cited in the previous paragraph.¹⁰ Ms. Wells asserted that the Kansas Department of Health and Environment (KDHE), by contrast, does permit public comment consistent with the EPA regulations.¹¹ Thus, Ms. Wells argued that "[t]he Commission should construe its regulations as permitting public comment, in accordance with the federal regulations and KDHE regulations on the same subject."¹²

⁴ Staff's Response in Opposition to Petition for Public Comment, p. 2 (May 14, 2018) (Staff's Response).

⁵ See Petition, p. 1 (citing 42 U.S.C.A. §311h-1(b)(3); Public Law 93-523, 88 Stat 1660, Sec. 1401-1450 (December 16, 1974); and 42 U.S.C.A. 300f *et seq.*).

⁶ See Petition, pp. 1-6, 9 (citing 40 C.F.R. §§ 124, 144, 145, and 147).

⁷ Petition, p. 2.

⁸ Petition, p. 2.

⁹ Petition, pp. 2-5.

¹⁰ See Petition, pp. 5-6.

¹¹ See Petition, pp. 6-7.

¹² Petition, p. 7.

7. In addition, Ms. Wells stated that she did not file a protest in this docket,¹³ but “has consistently requested the opportunity to make public comment.”¹⁴ Ms. Wells argued that “[b]ecause [she] . . . is not a Protestant in this matter, [she] can only participate in this permit proceeding by making public comment,”¹⁵ which she has taken to mean as submission of public comment “at the evidentiary hearing, scheduled for June 26, 2018.”¹⁶

8. In response to Ms. Wells’ Petition, Staff argued that Ms. Wells should be denied her request for public comment because: (1) Ms. Wells is not a party to this docket, and therefore, has no standing for further participation;¹⁷ and (2) Ms. Wells has relied on inapplicable federal regulations.¹⁸

FINDINGS:

9. On February 8, 1984, the EPA “determined that the Kansas UIC program for Class II injection wells meets the requirements of Sections 1422 and 1425 of the SDWA,” and thereby, “approve[d] it.”¹⁹ The EPA stated that “*instead of meeting the Federal Regulations (40 CFR Parts 124, 144, 145) and related Technical Criteria and Standards (40 CFR Part 146)*, a State may demonstrate that its program meets the more general statutory requirements of section 1421(b)(1) (A) through (D) and represents an effective program to prevent endangerment of underground sources of drinking water.”²⁰ The EPA also stated that “[t]he requirements of this program include State statutes and regulations set forth at: *Kan. Stat. Ann.*, Chapter 55, Articles 1, 9 & 10 . . . and *Kan. Admin. Regs.* 82-3-100

¹³ Petition, pp. 7-9.

¹⁴ Petition, p. 7.

¹⁵ Petition, p. 9.

¹⁶ Petition, p. 9.

¹⁷ Staff’s Response, pp. 1-2.

¹⁸ Staff’s Response, p. 2.

¹⁹ Federal Register, v. 49, No. 27 at p. 4736 (49 FR 4736).

²⁰ 49 FR 4735. (Emphasis added).

through – 504 . . . (regulating salt water disposal and enhanced recovery wells).”²¹ Moreover, the EPA stated that its “action simply adopts as the Federal program the State laws and regulations already in effect.”²²

10. The Commission finds that although Ms. Wells quoted a portion of 40 C.F.R. § 147.851,²³ which notes that the Commission administers the Kansas UIC program for Class II wells, she did not account for the entirety of the regulation nor analyze it properly. The Commission agrees with Staff that, pursuant to the EPA’s approval of the Kansas UIC program under section 1425 of the SDWA, as summarized in the previous paragraph, the Commission is not “bound in any way by the various ‘requirements’ cited in [Ms. Wells’] petition.”²⁴ Staff correctly noted that Kansas’ UIC program for Class II wells, as regulated by the Commission, need not adhere to the provisions of 40 C.F.R. Parts 124, 144, 145 and 146.²⁵ The Kansas UIC program for Class II wells falls under the requirements of state statutes and Commission regulations,²⁶ and those statutes and regulations do not permit public comment at evidentiary hearings adjudicating UIC applications. Ms. Wells has conceded as much.²⁷

11. The Commission also finds that it need not administer its UIC program consistent with that of the KDHE, because the KDHE runs a separate program, under a separate application to the EPA, with a separate EPA approval.²⁸ Hence, the Commission rejects Ms. Wells’ contention that it should apply the same standards to its UIC program as those under the KDHE’s regulations.

²¹ 49 FR 4736.

²² 49 FR 4736.

²³ See Petition, p. 2.

²⁴ Staff’s Response, p. 2.

²⁵ Staff’s Response, p. 2.

²⁶ See 49 FR 4736.

²⁷ See Petition, pp. 5-6.

²⁸ See 49 FR 4736.

12. The Commission finds that, having failed to make a valid protest,²⁹ Ms. Wells has no standing to engage in further participation in this docket,³⁰ which forecloses her request to make public comment at the evidentiary hearing.

13. Based on the above, the Commission finds that Ms. Wells' Petition for Public Comment shall be denied.

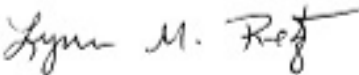
THEREFORE, THE COMMISSION ORDERS:

- A. Judith L. Wells' Petition for Public Comment is denied.
- B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).³¹
- C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 06/07/2018 _____



Lynn M. Retz
Secretary to the Commission

Mailed Date: 06/08/2018 _____

MJD

²⁹ See Petition, p. 9.

³⁰ See Docket No. 17-CONS-3689-CUIC, *Final Precedential Order*, ¶ 3 and Ordering Clause A (Apr. 5, 2018).

³¹ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

18-CONS-3195-CUIC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 06/07/2018.

KEITH A. BROCK, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
kbrock@andersonbyrd.com

JAMES BONDURANT
AND PATRICIA BONDURANT
1028 E 1901 Road
Eudora, KS 66025

MICHAEL DUENES, ASSISTANT GEN. COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
m.duenes@kcc.ks.gov

LAUREN WRIGHT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
Conservation Division
266 N. Main St. Ste. 220
WICHITA, KS 67202-1513
Fax: 316-337-6211
l.wright@kcc.ks.gov

JOHN T. BULLOCK
STEVENS & BRAND, LLP
P.O. Box 189
Lawrence, KS 66044
jbullock@stevensbrand.com

BRADLEY R. FINKELDEI
STEVENS & BRAND, LLP
P.O. Box 189
Lawrence, KS 66044
bfinkeldei@stevensbrand.com

Allison G. Kort
Kort Law Firm, LLC
204 W. Linwood Blvd.
Kansas City, MO 64111
Allison.kort@kortlawfirm.com
Attorney for Judith Wells

/S/ DeeAnn Shupe
DeeAnn Shupe