

**BEFORE THE OIL AND GAS COMMISSION
STATE OF OHIO**

BROOKFIELD CITIZENS AGAINST)
INJECTION WELLS,)
)
and)
)
GLORIA DOUGLAS,)
195 Brook Drive)
Brookfield, Ohio 44403)
)
and)
)
WILLIAM SAWTELLE,)
6690 Merwin Chase Road)
Brookfield, Ohio 44403)
)
Appellants.)
)
vs.)
)
DIVISION OF OIL AND GAS)
RESOURCES MANAGEMENT)
OHIO DEPARTMENT OF NATURAL)
RESOURCES)
2045 Morse Road, Bldg. F)
Columbus, OH 43229-6693)
)
Appellee.)

RECEIVED
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OIL & GAS COMMISSION

CASE NO.

NOTICE OF APPEAL

NOTICE OF APPEAL

Pursuant to O.R.C. § 1509.36, Appellants, Brookfield Citizens Against Injection Wells, Gloria Douglas, and William Sawtelle, by and through their undersigned counsel, hereby file this Notice of Appeal to the Oil and Gas Commission from the appealable decision of the Appellee, Chief of the Division of Oil and Gas Resources Management (the “Chief” or “Division”), issuing a Permit to Inject Brine or Other Waste Substances Pursuant to Ohio Revised Code Section

1509.22(D) (hereinafter the “Permit”). This Permit issued to Highland Field Services, LLC, was issued and signed on October 24, 2018, and is attached hereto as Exhibit 1.

I. Summary

1. Appellants object to the decision of the Chief’s issuance of a Permit to Inject Brine or Other Waste Pursuant to Ohio Revised Code Section 1509.22(D) to Highland Field Services, LLC (hereinafter “Highland”) for the Highland Brookfield No. 5 Well (hereinafter the “#5 well”) in Trumbull County, Brookfield Township, Ohio. Appellants contend that Chief’s issuance was unreasonable and unlawful.

2. Appellants reserve the right to amend this Notice of Appeal to add additional grounds for review and assignments of error as more information becomes available to them during the discovery process of this Appeal.

II. Parties

3. Appellant Brookfield Citizens Against Injection Wells has an interest that is or may be adversely affected by the issuance of the Permit authorizing injection. Brookfield Citizens Against Injection Wells is an organization made up of citizens of Brookfield Township, and whose primary purpose is to organize and advocate for protections for the citizens of Brookfield Township against the adverse impacts of Class II injection wells, including impacts related to groundwater and surface water pollution, air emissions and pollution, seismic activity and earthquakes, noise, and diminished property values. Appellant Brookfield Citizens Against Injection Wells has members who reside and own property within a short distance of the Highland Brookfield # 5 injection well, and have already been adversely affected, and will continue to be adversely affected, by the Permit unless the relief requested in this Appeal is granted.

4. Appellant Gloria Douglas resides at 195 Brook Drive, Brookfield, Ohio 44403. Gloria Douglas lives within approximately 150 feet from the site of the five permitted Highland injection wells, and just approximately 800 feet from the #5 well. Appellant Gloria Douglas is a member of Brookfield Citizens Against Injection Wells, and has an interest that is, and may be, adversely affected by the Chief's issuance of the Permit. The construction of wells at the site of the Brookfield injection wells has already impacted Gloria Douglas by subjecting her to loud and harmful noise at all hours of the day and night, by causing constant vibrations in her home, and by subjecting her to odors and air pollutants. The injection authorized at the Highland Brookfield # 5 well will impact Ms. Douglas by subjecting her to continued air emissions and pollutants, it puts her property at risk of seismic activity and earthquakes, it has the potential to impact her water supply, it will result in continued unreasonable and harmful noise, and it will impact the value of her home and property. These adverse impacts have caused Ms. Douglas experience emotional distress, and have injured the enjoyment and safety she had previously experienced on her property.

5. Appellant William Sawtelle is a member of Brookfield Citizens Against Injection Wells. Mr. Sawtelle resides at 6690 Merwin Chase Road, Brookfield, Ohio 44403, within a few hundred feet from the injection well site. Mr. Sawtelle has an interest that is, and may be, adversely affected by the Chief's issuance of the Permit. The injection authorized at the Highland Brookfield # 5 well will impact Mr. Sawtelle by subjecting him to air emissions and pollutants, it puts his property at risk of seismic activity and earthquakes, it has the potential to impact his water supply, it will result in continued unreasonable and harmful noise, and it will impact the value of his home and property.

6. The Ohio Department of Natural Resources, Division of Oil and Gas Resources Management is the agency of the State of Ohio that has the duty to carry out and enforce O.R.C. Chapter 1509 and the regulations adopted thereunder.

III. Procedural Background

7. Sometime in the early months of 2017 the Division starting receiving Applications from Highland to drill wells for the purposes of disposal of oil and gas waste by injecting brine, flowback fluids, drilling fluids, and other wastes from oil and gas well operations.

8. On or about June 21, 2017, the Division issued a Permit to Highland to drill the Highland # 5 injection well for the purpose of injecting brine, flowback fluids, drilling fluids, and other wastes from oil and gas well operations. The permit noted that Highland still needed separate authorization from the Division before beginning injection.

9. During the comment period for the Applications, local residents and organizations raised a number of public health and safety issues to the chief and the Division, including that injection poses a risk of earthquakes and seismic activity, that valuable resources such as wetlands will be at risk, that the waste and injection poses a risk to nearby drinking and groundwater, and that no permit standard adequately guards against these risks. Commenters additionally requested a hearing pursuant to O.A.C. § 1501:9-3-06(H)(2)(c).

10. On or about March of 2017, the Division published responses to some, but not all, of the comments and issues raised by local residents. The Division never granted the requested public hearing as required by O.A.C. § 1501:9-3-06(H)(2)(c).

11. On October 24, 2018, without any notice to the public, the Chief of the Division of Oil and Gas Resources Management issued an Order permitting the injection of oil and gas waste at the Highland Brookfield #5 Well.

IV. Factual Background

12. The Permit authorizes Highland to operate the #5 well as a saltwater injection well. "Saltwater" is defined by ODNR regulations to mean any and all nonpotable water resulting, obtained, or produced from the exploration, drilling, or production of oil and gas. O.A.C. § 1501:9-3-01(E). This oil and gas wastewater is known to contain high levels of a wide range of harmful and toxic pollutants, including radioactivity, chlorides, organic compounds, and heavy metals.

13. The Permit authorizes injection at pressures of up to 1750 pound-force per square inch (psi). Increased pressure that is caused by storing oil and gas wastewater inside geologic formations raises the risk of induced seismicity. This risk of induced seismicity significantly increases with the volume and rate of wastewater being injected.

14. The #5 well is located directly adjacent to a residential community, containing approximately 242 homes. There are approximately 2,000 residential homes within a 1-mile radius of the well site. The only road entrance to the well site is State Route 7, which is a narrow two-lane road that was not built to withstand the industrial truck traffic that Highland's injection well operation requires. In addition, the Brookfield Fire Department is located just ¼ of a mile south of the well site on State Route 7. The significant increase in traffic coupled with the increased possibility of an accident shutting down State Route 7 poses a serious risk that the Fire Department could be hindered during serious emergencies. The Township supervisors have

opposed the approval of injection at the #5 well site because of the significant danger it presents to the local community and the local environment.

15. Prior to the widespread development of injection wells, Ohio has had very few earthquakes in its recorded history, a number estimated to be just over 200. Since the widespread development of injection wells and hydraulic fracturing however, Ohio has experienced over 1,000 earthquake events, virtually all of which were induced by hydraulic fracturing or injection of oil and gas waste. Because Ohio has historically very rarely experienced earthquakes, homes and other structures are not built to withstand significant seismic activity.

16. Eastern Ohio is known to have numerous strike-slip faults in the pre-Cambrian basement formation, and these faults have been activated by injection wells already in the area. Trumbull County in particular already contains at least 20 permitted injection wells, and has already had a number of incidents detrimental to public health and safety from injection wells. By way of example, approximately 10 miles away from the Highland #5 well, The Northstar 1 injection well caused a number of seismic events, and was shut down in December of 2011, and was followed by a magnitude 4.0 earthquake shortly after due its induced seismic activity. This earthquake caused damage to homes and structures. In addition, in 2014 two injection wells in Weathersfield, Ohio, just 10.5 miles from the Brookfield injection well site, had to be shut down by the Division because at least one of the wells was the likely cause of a number of seismic events that were increasing in magnitude. There are other injection wells permitted in close proximity to the Brookfield #5 well, including injection wells in Vienna, Ohio within 5 miles of the well site.

17. Relatively small human-induced earthquakes of just a magnitude 1 or 2 can trigger larger and damaging earthquakes. Even if wastewater only directly affects a low-hazard

fault, the smaller seismic events can trigger an event on a larger fault nearby. Recent studies have found that injecting fluids into sedimentary rock, such as the formation that the #5 is permitted to inject into, can cause larger, more distant earthquakes than injecting into the underlying basement rock. Findings show that injection creates elastic stress in the formation, which puts pressure on faults at a distance without actually injecting waste into those faults, and that injections can cause earthquakes up to 20 miles away. In addition, fluid injection can cumulatively increase pore pressure regionally, potentially causing earthquakes at even greater distances. Given the magnitude of injection-induced earthquakes in the vicinity of the #5 well, the large number of other injection wells in the county, the formation proposed for injection and the possibility of nearby faults, and the amount of permitted injection and pressure, the #5 well poses a risk of causing damaging earthquakes with magnitudes of 5.0 or greater.

18. A local Brookfield school recently opened in 2011, and has experienced issues with subsidence and rock shifting underneath of it. The school is located within 2 miles of the Brookfield #5 injection well. Induced seismic activity has the potential to exacerbate these issues and cause serious damage to the school, and put the school's community at risk.

19. The Permit authorizes oil and gas waste to be stored in tanks on site. These tanks have been known to leak, and spills have occurred on sites in Ohio storing oil and gas waste for injection. This waste has the potential to contaminate underground and surface water supplies, and is toxic and lethal to wildlife plant and animal species in the environment. Injection wells in Trumbull County were shut down in 2015 after a leak contaminated wetland and pond areas.

20. In addition, the injection well site, including the Brookfield #5 well, is located on a known abandoned mine area. There are numerous underground mines located in the southeastern portion of Brookfield Township. These mines compound the risk of potential

damage due to induced seismic and earthquake activity, and compound the chances of the toxic wastes and fluids migrating into the groundwater system.

V. Grounds For Review

21. Pursuant to O.R.C. § 1509.22(A), “no person shall place or cause to be placed in ground water or in or on the land or discharge or cause to be discharged in surface water brine, crude oil, natural gas, or other fluids associated with the exploration, development, well stimulation, production operations, or plugging of oil and gas resources that causes or could reasonably be anticipated to cause damage or injury to public health or safety or the environment.” In addition, an application for brine injection must be denied if “the application does not comply with the requirements of Chapter 1501:9-3 of the Administrative Code, is in violation of law, jeopardizes public health or safety, or is not in accordance with good conservation practices.” O.A.C. § 1501:9-3-06(2)(H)(2)(b) and (d). The issuance of the Permit violated these laws in the following ways:

- a. The Chief unlawfully and unreasonably approved the Permit because the wastes permitted to be injected could reasonably be anticipated to cause damage or injury to public health, safety, or the environment.
- b. The Chief unlawfully and unreasonably approved the Permit without determining whether there are any unknown faults in the area, thereby endangering the public health and safety of thousands of Ohio residents.
- c. The Chief unlawfully and unreasonably approved the Permit by permitting the injection well in an area with a high potential for induced seismic activity, thereby endangering the public health and safety of thousands of Ohio residents.

- d. The Chief unlawfully and unreasonably approved the Permit without adequately considering or calculating the cumulative seismic impact of injection wells already permitted and in operation.
- e. The Chief unlawfully and unreasonably approved the Permit without requiring measures to ensure that spills or leaks from storage and transportation of oil and gas waste will not occur, thereby endangering the public health and safety of citizens and endangering local groundwater, surface water, and the environment.
- f. The Chief unlawfully and unreasonably approved the Permit in a manner that does not protect underground sources of drinking water in violation of federal and state requirements governing the injection of oil and gas waste liquids.

22. Pursuant to O.R.C. § 1509.22(D)(3), “the chief shall not issue a permit for the injection of brine or other waste substances resulting from, obtained from, or produced in connection with oil or gas drilling, exploration, or production unless the chief concludes that the applicant has demonstrated that the injection will not result in the presence of any contaminant in ground water that supplies or can reasonably be expected to supply any public water system, such that the presence of the contaminant may result in the system’s not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.”

- a. The Chief unlawfully and unreasonably approved the Permit because the geologic zone where the wastes are permitted to be injected for disposal do not adequately confine the wastes and therefore the applicant did not demonstrate that injection will not result in the presence of contaminants in

groundwater that may result in exceedences of primary drinking water regulations or adversely affect the health of persons.

- b. The Chief unlawfully and unreasonably approved the permit without ensuring that geologic strata where the wastes would be injected for disposal adequately confine the wastes, thereby failing to demonstrate that the well would not result in an adverse effect on human health and/or contamination to ground water protected by R.C. Chapter 1509 and the federal Safe Drinking Water Act.

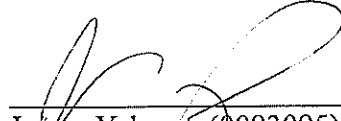
23. The Ohio Constitution ensures that all people “have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.” Oh. Const. Art. I, § 1. The Constitution further states that private property “shall ever be held inviolate, but subservient to the public welfare.” Oh. Const. Art. I, §19. The issuance of the Permit is unlawful because it infringes on local Ohio residents’ inalienable rights of enjoying life and liberty, and infringes on their happiness and safety. In addition, the issuance of the Permit has injured local Ohio residents’ private property, and the issuance of the Permit is conflict with the public health, safety, and welfare of Ohio citizens.

VI. Prayer For Relief

Wherefore, the Appellants respectfully request the following relief:

- a. Find that the Chief’s decision and order issuing the Permit was unreasonable and unlawful, and vacate the Permit and remand the matter to the Chief with instructions to follow the law.
- b. Any other relief to which Appellants are entitled under law.

Respectfully submitted,



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Attorneys for Appellants

PROOF OF SERVICE

I hereby certify and confirm that on November 19, 2018 a true and correct copy of the foregoing was served on the persons and in the manner listed below:

By certified U.S. mail, return receipt requested
ODNR
Chief, Division of Oil and Gas Resources Management
2045 Morse Road, Building F-2
Columbus, OH 43229

Date: November 19, 2018

By: _____

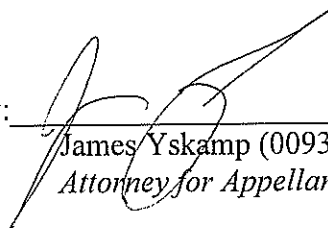

James Yskamp (0093095)
Attorney for Appellants

Exhibit 1



Ohio Department of Natural Resources

JOHN R. KASICH, GOVERNOR

JAMES ZEHRINGER, DIRECTOR

Richard J. Simmers, Chief
Division of Oil and Gas Resources Management
2045 Morse Road – Bldg. F
Columbus, OH 43229-6693
Phone: (614) 265-6922, Fax: (614) 265-6910

October 22, 2018

ORDER NO. 2018-286

TO: Highland Field Services LLC
5800 Corporate Drive, Suite 300
Pittsburgh, PA 15237

RE: API # 34-155-2-4099-00-00
Highland Brookfield No. 5 Well
SWIW No. 37
Trumbull County, Brookfield Township

SUBJECT: Permit to Inject Brine or Other Waste Substances Pursuant to Ohio Revised Code 1509.22(D)

Pursuant to Ohio Revised Code Section 1509.22 and Ohio Administrative Code 1501:9-03-06(H), the Chief of the Division of Oil and Gas Resources Management (“Chief” or “Division”) makes the following Findings and issues the following Orders:

FINDINGS

- (1) Pursuant to R.C. 1509.05, 1509.06, and R.C. 1509.22(D), on June 21, 2017 the Division issued to Highland Field Services LLC API #34-155-2-4099-00-00 granting authorizing to drill the Highland Brookfield No. 5 Well as a saltwater injection well.
- (2) On October 15, 2018, the Division received written notification from Highland Field Services LLC that the company was prepared to commence injection operations at the Highland Brookfield No. 5 saltwater injection well, pursuant to Construction Condition No. 16 in API #34-155-2-4099-00-00.
- (3) The Highland Brookfield No. 5 saltwater injection well complies with the requirements of R.C. 1509.22 and Ohio Adm.Code 1501:9-3, is not in violation of law, does not jeopardize public health or safety, and is in accordance with good conservation practices.

ORDER

IT IS HEREBY ORDERED:

Pursuant to R.C. 1509.22(D) and Ohio Adm. Code 1501:9-03-06(H)(3), Highland Field Services LLC is authorized to operate the Highland Brookfield No. 5 saltwater injection well in accordance with all of the following operational conditions:

- (1) No liquids or waste matter from any source other than saltwater, as that term is defined in Ohio Adm.Code 1501:9-3-01(E), may be injected into this well.
- (2) All fluids must be stored in approved tanks and allowed to settle before injection.
- (3) Surface injection pressure shall not exceed 1750 psi.
- (4) A Murphy Switch or other cut-off switch device must be in-line with the injection pump and set at the maximum allowable surface injection pressure of 1750 psi, so that the pump will automatically shut-down upon exceeding 1750 psi.
- (5) The annulus between the injection tubing and the 7" production casing must be monitored continuously as described in paragraph (6) of this Order. If such monitoring indicates a leak in the casing, tubing, or packer, the well must be immediately shut down and the applicable Division inspector and the Division's Underground Injection Control ("UIC") section must be notified at (614) 265-6922.
- (6) All injection pressures and annulus pressures must be continuously recorded on a tamper-proof continuous recording device such as a two-pen recorder or other digital recording device. These monitoring records shall be available to the Division, upon request.
- (7) Injection pressures and volumes must be monitored on a daily operational basis with average and maximum injection pressures and volumes compiled and recorded on a monthly basis and filed annually with the Division.
- (8) Results of the monitoring required in paragraphs (5) and (7) above must be filed with the Division annually on Form 204. This report is due no later than April 15th of the following calendar year.
- (9) Any proposed changes in the operational conditions authorized by this Order must be requested in writing to the Division's UIC section.
- (10) Upon discontinuance of injection operations, the owner/operator must apply for a permit to plug and abandon the well as set forth in Ohio Adm.Code 1501:9-3-07(K).

- (11) The fee levied under R.C. 1509.22(H) (1) shall be paid to the Division no later than 30 days after the end of each quarter of a calendar year.
- (12) The owner or operator of the Highland Brookfield No. 5 saltwater injection well immediately shall suspend operations at the well upon receipt of a notification from the Chief that the Chief has determined that the well may be related to seismic activity or pose a risk of creating or increasing seismic activity.
- (13) The owner or operator of the Highland Brookfield No. 5 saltwater injection well lawfully shall dispose of all wastes resulting from the operations, including filter media, and maintain records of any required testing for disposal or transport for disposal and manifests of final disposition of the wastes. The owner or operator shall provide the Division the records upon request of the Division.
- (14) The owner or operator of the Highland Brookfield No. 5 saltwater injection well shall monitor for seismicity in at least three locations approved by the Division, with equipment approved by the Division, until a time that the Chief finds that seismic monitoring can be discontinued. The owner or operator of the Highland Brookfield No. 5 saltwater injection well shall provide the Division with real-time access to the seismic data for the duration of the monitoring.
- (15) The owner or operator of the Highland Brookfield No. 5 saltwater injection well shall comply with all other requirements established in R.C. Chapter 1509 and Ohio Adm.Code 1501:9-3.

Date

10/24/18

Scott R. Kill Jr
Richard J. Simmers

RICHARD J. SIMMERS, Chief
Division of Oil and Gas Resources Management

Pursuant to R.C. 1509.224(B), addressee is hereby notified that this action is a preliminary order of the Chief and becomes a final order thirty (30) days after its issuance unless the person to whom the preliminary order is directed submits to the Chief a written request for an informal hearing before the Chief within that thirty (30)day period.

If no informal review is requested within thirty (30) days after the issuance of this order, this order is deemed final and effective and may be appealed pursuant to Sections 1509.36 and 1509.37 of the

Highland Field Services LLC
Authorization to Inject
Highland Brookfield No. 5 Well
Page 4 of 4

Chief's Order No. 2018-286

Ohio Revised Code. If the Order is appealed to the Ohio Oil and Gas Commission, the appeal must be in writing and must set forth the orders complained of and the grounds upon which the appeal is based. Such appeal must be filed with the Oil and Gas Commission within thirty (30) days after the date upon which the order becomes final and sent to the following address: Oil and Gas Commission, 2045 Morse Road, A-2, Columbus, Ohio 43229.

In addition, within three (3) days after the appeal is filed with the Oil and Gas Commission, notice of the filing of the appeal must be filed with Richard J. Simmers, Chief of the Division of Oil and Gas Resources Management, Building F-2, 2045 Morse Road, Columbus, Ohio 43229-6633.

CERTIFIED MAIL NO: 9489009000276060051767

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