

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

FILED
MAY 12 2016

APPLICANT: ROBYN STRICKLAND, DIRECTOR,)
PETROLEUM STORAGE TANK)
DIVISION, OKLAHOMA)
CORPORATION COMMISSION)
RESPONDENTS: MARK GOODSON; DEBRA)
GOODSON)
RELIEF SOUGHT: JUDICIAL DETERMINATION OF)
TANK OWNERSHIP AND)
RESPONSIBILITY FOR TANK)
REMOVAL)

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CORPORATION COMMISSION
OF OKLAHOMA

CAUSE NO.
PSD 201600003

REPORT OF THE ADMINISTRATIVE LAW JUDGE

This cause comes on for hearing before Michael Norris, Administrative Law Judge of the Oklahoma Corporation Commission ("Commission") on the March 11, 2016 at 8:30 a.m. in the Commission's Courtroom C, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

At the time of the hearing, Jeffrey Southwick, Deputy General Counsel, Travis N. Weedn, Assistant General Counsel, and Mark A. Willingham, Senior Attorney, appearing as Attorneys for Applicant, Robyn Strickland, Director, Petroleum Storage Tank Division, Oklahoma Corporation, and Respondent Mark Goodson appeared *pro se*.

The Administrative Law Judge proceeded to hear the cause and filed this report herein.

SUMMARY

Applicant Robyn Strickland, Director of the Petroleum Storage Tank Division ("PSTD"), Oklahoma Corporation Commission ("Commission") made a determination that Mark and Debra Goodson (hereafter collectively "Respondents") are tank owners regulated by the Commission and Respondents are responsible for removal of the tank system at the captioned site. As a result of Applicant's ownership determination contrary to Respondents' interests, this cause was filed.

Darryl Cole, Environmental Compliance Analyst for the Petroleum Storage Tank Division ("PSTD") of the Corporation Commission ("Commission") advised the ALJ of his familiarity with the facts and circumstances surrounding this Cause. Mr. Cole stated that this cause was a companion case to EN201500156. Mr. Cole advised the ALJ that from Hughes County records it was determined that Respondents obtained title to the property on a Hughes County tax re-sale deed dated August 18, 2014. Mr. Cole then advised the ALJ that on June 19, 2015 Commission staff sent a letter to the Respondents advising Respondents that access to

Respondents' property was required for a sampling event. Mr. Cole stated that on July 28, 2015, the analyticals were performed on the soil and groundwater samples from Respondents property. The analyticals reflected both soil and groundwater contamination in excess of Commission action levels. Mr. Cole testified that on September 16, 2015, Commission staff sent a letter to Respondents informing Respondents that a confirmed release case had been established on their property and confirmed release case number 064-3998 was assigned to this facility.

Mr. Cole testified that on October 27, 2015, Respondents conveyed by warranty deed the subject property to the Dulworths. Mr. Cole stated that in a letter he sent Respondents dated November 24, 2015, he provided them with information regarding a substantial compliance deficiency, recommended a fine of \$500.00, and if the Respondents removed the tanks the fine proposed for the deficiency would be waived. Mr. Cole testified at the time (7/28/15) a discovery of a release was determined on Respondents' property. Mr. Cole further stated to his way of thinking and past Commission cases involving tank ownership, the responsibilities imposed on tank owner and operators rested with Respondents as provided by 17 O.S. § 309(A). Mr. Cole testified that the regulation of storage tank systems had been with the EPA since 1984 and the Commission since 1989. Mr. Cole advised the ALJ that many news reports, television specials, and newsprint had established the environmental dangers of underground storage tanks.

Mr. Cole stated that, in his opinion, enough time had elapsed between dissemination of information regarding underground storage tank regulation that people who acquired property which had or might have had storage tank systems on the property, had been put on inquiry notice. Mr. Cole agreed the Respondents were not the registered tank owners. Mr. Cole went on further discussing the definition of tank owner (17 O.S. § 303(22)(a)). Mr. Cole advised the ALJ that the tank system was a trade fixture as set forth in statute (60 O.S. § 334). When the definition of "Owner" was coupled with a trade fixture, Mr. Cole stated that only Respondents could be tank system owners at this facility. Mr. Cole elaborated that the environmental responsibilities established by the Commission in determining a confirmed release case could not be assigned, deeded or transferred away in accordance with 17 O.S. § 309(E). Mr. Cole went onto state that by Commission rule (OAC 165:25-2-135) tank systems such as these that were out of service for more than 12 months had to be removed. Mr. Cole recommended to the ALJ that the Respondents be determined to be the tank owners and responsible for tank removal. The ALJ inquired of Mr. Cole what corrective action had been performed at the facility and Mr. Cole advised that no corrective action had been performed, the parties were waiting on what the Commission decides.

On cross examination by Mr. Goodson, Mr. Cole was asked why it had taken so long to pursue tank system removal and, secondly, why didn't the Commission pursue the bank that foreclosed it and the County who acquired the property for unpaid back taxes? Mr. Cole replied that there are thousands of tanks out there in the same situation, and because of an EPA grant staff addressed many sites that were in the same situation. Mr. Goodson further inquired why staff didn't go after other sites in Wetumka that were in the same situation, to which Mr. Cole replied that there are a variety of reasons that others were not pursued, for example the tank systems Mr. Goodson were referring to could be removed, or could be properly placed in a temporary out of use ("TOU") status. Mr. Cole added that the sampling event required in tank closure had already been done, and the Respondents could close in place the tank system. Mr.

Cole added that tank closure required two pieces of paper, a Commission scheduling form, and tank closure report. The ALJ stated that for the record, Respondents could not pursue any type of private action against the former property owners at the Commission, instead that would be a District Court action.

Mark Goodson testified on behalf of Respondents. Mr. Goodson asked the ALJ to incorporate this testimony into companion case EN201500156. Mr. Goodson advised the ALJ that when he and his wife acquired the facility it was in gross disrepair, i.e., all of the glass was broken out, air conditioner unit and copper piping stolen and overgrown with weeds as tall as the building. Mr. Goodson reiterated that the facility had been closed since 2004 and he was visibly concerned that the former facility owners who, like him, never registered the tanks, and had not been approached for registration and tank removal. Mr. Goodson confirmed that he and his wife bought the facility from the County. Mr. Goodson remarked that he and his wife only owned the facility for a short period of time, from August of 2014 to June of 2015, when they first made arrangements to sell the property to the Dulworths. Mr. Goodson admitted the property did not actually change hands until the date of the warranty deed. Mr. Goodson testified that when he bought the property from the County, there was no disclosure of the presence of the underground storage tank system.

Mr. Goodson testified that he visited with staff after receiving the ownership letter, but did not remember who he talked with. Mr. Goodson further testified that, in his opinion, he was not the tank owner, nor had he ever sold or stored any fuel in the tank system. Further, Mr. Goodson stated that he and his wife were not the cause of the release. Mr. Goodson stated that the release should have been discovered 13 months after the tank system was taken out of use instead of 11 years later. Mr. Goodson testified that he advised the Dulworths that he would stand good for the \$1,000.00 co-pay that Quinton Graham, the Commission licensed Environmental Consultant performing the EPA grant sampling, stated he and his wife would be out. Mr. Goodson admitted that he was not aware of the tanks on the property or of the presence of contamination. Mr. Goodson asked that the ALJ take into consideration his testimony here and in the companion case, EN201500156. Mr. Goodson advised the ALJ that Quinton Graham advised them that he would give a tank removal estimate after the order issued in this case.

The ALJ prefaced his ruling with a statement that everyone at the Commission, ALJs, PSTD staff, hated these types of cases, but have to follow the law. The ALJ determined that Respondents are in fact and in law, the tank owners. The ALJ concurred with the recommendations of staff concerning ownership and explained to the Respondents that he had to follow the law as painful as that might be. The ALJ then advised Respondents of their right to seek a report or a final order. The ALJ advised the Respondents that from an issued report, Respondents can review the same and determine if they want to seek exceptions to the report. The ALJ further advised that, in layman terms, exceptions are like an appeal. The ALJ further explained that if Respondents desire to file exceptions, they must do so within 10 days of the date the report issues, and if no exceptions are taken the matter goes to final order. The ALJ admitted any Exhibits presented and closed the record.

FINDINGS

1. Any finding of fact stated herein which should properly be included as a conclusion of law is so included.
2. Respondents, by and through their ownership of the real property, are the tank owners. The tank system was in use after November 8, 1984. As a result, the tank owners who discover a release of regulated substances have an environmental obligation to perform corrective action. Moreover, the Respondents made application to the Indemnity Fund as property owners and tanks owners.
3. The storage tank system located at 110 East Highway 9, Wetumka, Oklahoma, has been out of service for more than 12 months, and by Commission rule, must be removed.
4. The Commission has a statutory and regulatory duty to address storage tanks that have been out of service for more than 12 months that might pose a threat to human health, safety the environment and the state economy.
5. Respondents as well as the former facility owners did not register the tank system.
6. Sufficient evidence regarding the perils of underground storage tank systems have been in the public domain for over 30 years, and the Respondents as well as prior owners should have been on inquiry notice of the problems associated with underground storage tank systems.
7. The Respondents have absolutely no past experience in the fuel storage/sales business. Respondents did not store or sell fuel at this facility.
8. Respondents did not cause the release.
9. Respondents should have 90 days from order date to investigate and remove the subject tank system.

CONCLUSIONS

1. Any conclusion of law stated herein which should properly be included as a finding of fact is so included.
2. The Oklahoma Corporation Commission has subject matter jurisdiction of this cause. 17 Okla. Stat. § 312.
3. Notice is proper and in conformance with statutory requirements. 17 Okla. Stat. § 310(C)(1).
4. The Commission may promulgate and enforce rules to implement the Act. 17 Okla. Stat. §§ 306(4) and (13)-(15) and 311(A).

5. The Commission has authority to determine tank system ownership and any issues involving environmental responsibility based on the facts and circumstances presented. 17 Okla. Stat. §§ 303(22), 309.

6. Tanks out of service for more than 12 months must be removed. OAC 165:25-2-135.

7. Underground storage tanks are trade fixtures pursuant to law. 60 Okla. Stat. § 334.

8. The Applicant is Indemnity Fund eligible by and through their Indemnity Fund Application and the release from the storage tank system. The Indemnity Fund can pay in whole or in part claims for reimbursement. 17 Okla. Stat. § 356.

RECOMMENDATION

After taking into consideration all of the facts, circumstances, evidence and testimony presented in this cause it is my recommendation that Mr. Mark Goodson and Mrs. Debra Goodson are the tank owners as defined by the Oklahoma statutes and the rules of the Oklahoma Corporation Commission.

RESPECTFULLY submitted this 12th day of May, 2016.


Michael Norris
Administrative Law Judge

xc: Mark and Debra Goodson
Jeffrey P. Southwick
Michael Decker, OAP Director
Oil-Law Records
Office of General Counsel