

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF A PERMANENT)
RULEMAKING OF THE)
OKLAHOMA CORPORATION COMMISSION)
AMENDING OAC 165:5, RULES OF)
PRACTICE)

CAUSE NO. RM 201800001

FILED
FEB 26 2018

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OF OKLAHOMA

PUBLIC COMMENT OF JEFFREY P. SOUTHWICK

Thank you for the opportunity to make public comment and participate in the Commission's rulemaking process. My comment goes to OAC 165:5-3-1(b)(1)(S) regarding fees on operators. Mr. Baker was kind enough to take time off from his busy schedule to provide me with a breakdown of the category of operators by number of wells being operated by each operator. Not surprisingly, 1,835 operators fall in the 1-25 wells category. Not including operators that are non-active the 1-25 well operators comprise 68.91% of all operators. Well operators that fall in the category of 26-100 wells operated total 605. The 26-100 wells are 22.72% of the total operated wells. Between the two classes (1-25 and 26-100), right at 90% of the "Operator fee" falls on these smaller operators. I have no issue with operators paying their fair share, however, I think the proposed rules disproportionately imposes the operator fee on the smaller, less financially able operators. I would suggest that instead all operators pay a fee of \$25.00 per well to compensate the Commission for the time and cost of regulating all operators and help defray the costs of the Oil and Gas Division in regulating the oil and gas community.



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Statement By

Continental Resources

In the Matter of a Permanent Rulemaking of the Oklahoma Corporation Commission

OAC 165:5 Rules of Practice – Cause No. RM 201800001

OAC 165:10 Oil and Gas Conservation – Cause No. RM 201800002

February 28, 2018

Continental Resources appreciates the efforts of the Oklahoma Corporation Commission and its Staff in the development of the proposed language for OAC 165:5 Rules of Practice and OAC 165:10 Oil and Gas Conservation. Thank you for the opportunity to provide the following comments.

Continental cannot support the massive fee increases proposed in OAC 165:5-3-1(b)(1). As you are aware, the industry has seen increasing tax rates in recent Legislative Sessions and expects to face additional attacks for even higher taxes in the current Session. On its face, this could be considered a proposal for fees in lieu of taxes.

The oil & gas industry already is responsible for nearly 25% of all tax collections by the State, which includes the Gross Production Tax. In the Fiscal Year 2016-2017 OK Tax Commission Report, the OCC received industry tax revenue from the Petroleum Excise Tax for Oil & Gas in the amount of \$1.26 Million for the Plugging Fund and \$2.7 Million for the Oil & Gas Division Revolving Fund.¹ It is interesting to note in that same Tax Commission report that Gross Production (Severance) Tax is also apportioned to non-oil & gas programs such as; the Community Water Infrastructure Fund, the Conservation Commission Infrastructure Revolving Fund, and the Tourism & Recreation Capital Expenditure Revolving Fund -- to a total collective amount of \$6.4 Million. In total, the O&G Excise and GPT generated approximately \$442 Million. With all the above in mind, CLR believes there is clearly more than adequate tax revenue already available to fully fund the Commission's oil & gas regulatory program, prior to apportionment to other State program needs. However, CLR remains open to a discussion for a reasonable fee increase proposal.

Continental appreciates and supports the proposed changes to the land application rules in OAC 165:10-7-19(b) and 165:10-7-26(b) to incorporate single pads containing multiple wells. We believe this will bring greater efficiency, accuracy and environmental accountability to this permitting process.

Thank you again for the opportunity to provide comments on this proposed rulemaking.

¹ <https://www.ok.gov/tax/documents/AR2017.pdf>



MEMO

TO: Chair Dana Murphy, Oklahoma Corporation Commission
Vice Chair Todd Hiett, Oklahoma Corporation Commission
Commissioner Bob Anthony, Oklahoma Corporation Commission

CC: Tim Baker, Director of Oil & Gas Conservation Division; Susan Conrad, Deputy General Counsel

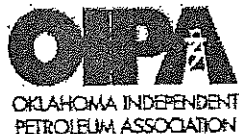
FROM: Bud Ground, OKOGA Regulatory & Environmental Consultant

DATE: March 5, 2018

SUBJECT: Comments on OCC Draft Amendments to OAC 165:5, Rules of Practice and OAC 165:10, Oil & Gas Conservation as of January 23, 2018 – Cause NO. RM 201800001

This memorandum is submitted by the Oklahoma Oil & Gas Association (“OKOGA”) in response to the proposed rules found in OCC Draft Amendments to OAC 165:5, Rules of Practice, and OAC 165:10, Oil & Gas Conservation (dated January 23, 2018). The Oklahoma Oil & Gas Association appreciates the Oklahoma Corporation Commission extending the public comment deadline due to the adverse weather impacting the final technical conference. While OKOGA has been involved and has worked diligently on this rule making process, we do not have a final document to submit at this time. OKOGA will be submitting detailed comments prior to the en banc hearing.

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MEMORANDUM

TO: Chair Dana Murphy, Oklahoma Corporation Commission
Vice Chair Todd Hiatt, Oklahoma Corporation Commission
Commissioner Bob Anthony, Oklahoma Corporation Commission
Tim Baker, Director of Oil & Gas Conservation Division

CC: Virginia Hullinger, Technical Manager; Susan Conrad, Deputy General Counsel;
Brenda Loggins

FROM: Chad Warmington, President of OKOGA and Tim Wigley, President of OIPA

DATE: March 20, 2018

SUBJECT: Comments on OCC Permanent Rulemaking OAC 165:5, Rules of Practice
Cause No. RM 201800001

This joint memorandum is submitted by the Oklahoma Oil & Gas Association ("OKOGA") and Oklahoma Independent Petroleum Association ("OIPA") in response to the proposed rules found in OCC Permanent Rulemaking OAC 165:5, Rules of Practice, (dated January 23, 2018 and March 14, 2018).

The Oklahoma Oil & Gas Association, founded in 1919, is the oldest energy trade association in the United States. Nearly a century later, the association remains dedicated to the advancement and improvement of the oil and natural gas industry within the state of Oklahoma and throughout the nation. It is a non-profit association composed of oil and gas producers, operators, purchasers, pipelines, transporters, processors, refiners, marketers and service companies which represent a substantial sector of the oil and natural gas industry within Oklahoma. The activities of OKOGA include support for legislative and regulatory measures designed to promote both the well-being and best interests of the citizens of this state and a strong and vital petroleum industry within the State of Oklahoma and throughout the United States. OKOGA's membership represents the most active drillers in the state with individual company investment ranging from \$800 million to \$1.5 billion over the next year.

Many OKOGA member companies have focused 60 percent to some having 100 percent of their capital investment focused on operations in Oklahoma.

Founded in 1955, the Oklahoma Independent Petroleum Association represents more than 2,500 individuals and companies from Oklahoma's oil and natural gas industry. Established by independent oil and natural gas producers hoping to provide a unified voice for the industry, the OIPA is the state's largest oil and natural gas association and one of the industry's strongest advocacy groups

OKOGA and OIPA jointly submits these comments for the Commission's consideration.

OAC 165: 5 – Rules of Practice

Proposed Fees and Fee Increases for Oil and Gas: OKOGA and OIPA appreciates the tremendous effort and professionalism that the Oil and Gas Conservation Division ("OGCD") staff consistently exhibits in continuing to regulate the oil and gas industry in Oklahoma despite recent significant budget cuts. We are in agreement with the OCC that currently available funds are not sufficient to fully staff the OGCD, the Judicial and Legislative Services ("JLS") staff and to invest in needed internal process reforms and information system upgrades.

However, it is important to note that the industry has seen increasing tax rates in recent Legislative Sessions and expects to face additional attacks for even higher taxes in the current Session. On its face, this could be considered a proposal for fees in lieu of taxes.

The oil & gas industry already is responsible for nearly 25% of all tax collections by the State, which includes the Petroleum Excise Tax and the Gross Production Tax. In the Fiscal Year 2016-2017 OK Tax Commission Report, the OCC received industry tax revenue from the Petroleum Excise Tax for Oil & Gas in the amount of \$1.26 Million for the Plugging Fund and \$2.7 Million for the Oil & Gas Division Revolving Fund.¹ It is ironic that the Petroleum Excise Tax was at one time fully dedicated to the Commission's efforts but is now being significantly diverted to General Revenue Fund purposes. In that same Tax Commission report the Gross Production (Severance) Tax is also apportioned to non-oil & gas programs such as; the Community Water Infrastructure Fund, the Conservation Commission Infrastructure Revolving Fund, and the Tourism & Recreation Capital Expenditure Revolving Fund -- to a total collective amount of \$6.4 Million. In total, the O&G Excise and GPT generated approximately \$442 Million. Therefore,

¹ <https://www.ok.gov/tax/documents/AR2017.pdf>

OKOGA and OIPA believes there is clearly tax revenue available that can be redirected to fully fund the Commission's oil & gas regulatory program together with a reasonable level of fees.

With the above in mind, OKOGA/OIPA support for the below enumerated proposed fees and fee increases is targeted in part to fund the following:

1. Hire five (5) additional OGCD Staff:
 - Two (2) Oil and Gas Specialists working Intents To Drill
 - Two (2) Oil and Gas Specialists working in Technical Review
 - One (1) Field Inspector
2. To assist in funding the existing Induced Seismicity Department of the OGCD.
3. Hire three (3) additional JLS Staff:
 - One (1) Administrative Law Judge
 - Two (2) Court Reporters
4. To implement much needed internal process reforms and Information Technology ("IT") upgrades over the next twelve (12) to eighteen (18) months.

In this regard, OKOGA and OIPA support the following changes to the Schedule of filing fees in 165:5-3-1 (b), beginning on page 8 as follows:

(b) Schedule of filing fees.

(1) Oil and gas fees.

- (A) Commercial disposal well application - \$1,500.00.
- (B) Commercial earthen pit application - \$1,250.00
- (C) Commercial soil farming site application - \$1,250.00
- (D) Commercial recycling facility application - \$1,000.00
- (E) Noncommercial injection or disposal well application – Form 1015 - \$250.00
- (F) Commercial facilities annual fee:

- (i) Commercial earthen pit facility - \$750.00
 - (ii) Commercial soil farming facility - \$750.00
 - (iii) Commercial recycling facility - \$750.00
- (G) Conservation docket and pollution docket base applications - \$200.00
- (H) Emergency application on the conservation or pollution docket - \$250.00
- (I) Protest Fee on the conservation or pollution docket - \$1,000.00
- (J) Appeal Fee on the conservation or pollution docket - \$1,000.00
- (K) Permit to drill -Form 1000:
- (i) Directional well - \$350.00
 - (ii) Horizontal well - \$350.00
 - (iii) Multiunit well - \$500.00
 - (iv) Vertical well - \$350.00
- (L) ~~Emergency walk thru~~ Expedited permit to drill -Form 1000:
- (i) Directional well - \$600.00
 - (ii) Horizontal well - \$600.00
 - (iii) Multiunit well - \$750.00
 - (iv) Vertical well - \$600.00
- (M) Temporary permit to drill – Form 1000:
- (i) Directional well - \$350.00
 - (ii) Horizontal well - \$350.00
 - (iii) Multiunit well - \$600.00
 - (iv) Vertical well - \$350.00
- (N) Permit for one-time land of application of ~~water based fluids~~ materials – Form 1014S - \$100.00 \$150.00
- (O) ~~Emergency walk-through of~~ Expedited permit for one-time land application ~~water based fluids~~ of materials – Form 1014S- \$250.00
- (P) Tax exemption application filed pursuant to OAC 165:10-21 - \$100.00

- (Q) Transfers of well operatorship - Forms 1073 and 1073I – single well -
\$25.00
- (R) Transfers of well operatorship - Forms 1073IMW and 1073MW – multiple
wells - \$250.00
- (S) Notification of intent to plug – Form 1001 - \$25.00
- (T) Operator agreement—annual fee-Form 1006B—based on the number of
unplugged wells for which the operator is responsible according to
Commission records:
- (i) No wells being operated - \$100.00
 - (ii) From 1-100 wells - \$500.0
 - (iii) From 101-200-500 wells - \$750.00
 - (iv) Over 500 wells - \$1,000.00
- (U) Form 1012A
- (i) Commercial (per well annually) - \$1,000.00
 - (ii) Non-Commercial (per well annually) - \$25.00
 - (iii) Greater than 100 wells (annually) - \$2,500.00
- (V) Permit to use earthen pit, noncommercial disposal or enhanced recovery
well pit for temporary storage of saltwater, and pit associated with
commercial disposal well surface facility-Form 1014:
- (i) Capacity of pit less than or equal to 10,000 barrels-\$250.00
 - (ii) Capacity of pit greater than 10,000 barrels-\$1,000.00
- (W)Application for temporary exemption from well plugging-Form 1003A-
\$50.00

OKOGA and OIPA appreciate the opportunity to provide these joint comments on this proposed rulemaking.

Contact Information:
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Executive Director
(405) 659-8881



Legislative Consultants:
Longacre, Inc.
Jami Longacre
(405) 206-8829

"Working together to protect the rights of Oklahoma's Surface and Mineral Owners through the legislative and legal process."

March 19, 2018

TO: Chair Dana Murphy, Oklahoma Corporation Commission
Vice Chair Todd Hiatt, Oklahoma Corporation Commission
Commissioner Bob Anthony, Oklahoma Corporation Commission
Tim Baker, Director of Oil & Gas Conservation Division

RE: Response to OIPA/OKOGA Memorandum of 3/20/2018
Comments on OCC Permanent Rulemaking OAC 165:5,
Rules of Practice Cause No. RM 201800001

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MAR 19 2018

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CORPORATION COMMISSION
OF OKLAHOMA

I have received a copy of the above referenced Memorandum from OIPA/OKOGA concerning an offer to support an alternative fee increase (one other than the fees proposed in the current Commission Staff recommendation) in Cause No. RM 201800001. First, Coalition of Oklahoma Surface and Mineral Owners (COSMO),¹ supports a fee increase inasmuch as it is obvious the current fee structure is insufficient to support the necessary level regulation and service necessary for the oil and gas industry; but, COSMO is not in a position to determine if the amount of fees should be as proposed by the Commission Staff or that proposed by OIPA/OKOGA. However, while not in the Commission Staff's proposal, **OIPA/OKOGA has proposed two new fees that COSMO cannot support and strongly opposes, those fees are the: "(I) Protest Fee on the conservation or pollution docket - \$1,000.00" and "(J) Appeal Fee on the conservation or pollution docket - \$1,000.00"**. It would appear that these proposed punitive fees are an attempt by OIPA/OKOGA to discourage landowners and mineral owners from exercising their constitutional right to be heard,² and implementation of such fees would be a deprivation of Constitutionally guaranteed Due Process.

Remember, it is the Applicant that is seeking to invoke the police powers of the State. If the current costs of filing the application is insufficient to cover the costs of possible protests and appeals, then the fee charged the Applicant to file the Cause should be increased. If OIPA/OKOGA's goal is really, as I suspect is the case, to discourage Respondents from protesting Causes, and limit the right of Respondent's to be heard by this Commission (*i.e.*, an appeal), unless you "purchase" that right, the proposed fees would be an unconstitutional deprivation of Due Process. To illustrate the point, would this Commission ever consider charging a utility customer or advocacy group a fee to protest a utility rate case? Of course not. Or would the Commission start charging an admission fee to attend rule making cases, and raise issues with proposed rules? Of course not. I believe the absurdity is obvious in these hypotheticals, as it should also be for OIPA/OKOGA's proposed fees (I) & (J).

"Federal constitutional jurisprudence teaches that an opportunity to be heard is an essential element of due process." *Shamblin v. Beasley*, 1998 OK 88, fn 33, 967 P.2d 1200.

¹ COSMO is a royalty owner organization representing the rights of Oklahoma mineral owners and its members include the two state-wide royalty organizations, OK-NARO (the Oklahoma affiliate of the National Association of Royalty Owners) and the Oklahoma Mineral Owners Association (OMOA), as well as other mineral owners and mineral owner advocates.

² I believe the Commission has heard this argument before in previous rule makings urging the Commission to adopt similar fees to curtail the number of protest and appeals and speed up the process.



“Minimum standards of due process require that administrative proceedings, which may directly and adversely affect legally protected interests, be preceded by notice calculated to provide knowledge of the exercise of adjudicative power and an opportunity to be heard.” [Emphasis added.] *DuLaney v. Oklahoma State Dept. of Health*, 1993 OK 113, 868 P.2d 676. Due process requires that the mineral interest owner be given notice and an opportunity to contest the permit at the administrative level.” [Emphasis added.] *Id.* Further, consider:

The United States Constitution guarantees that no person may be deprived of life, liberty, or property without due process of law. Similarly, the Oklahoma Constitution provides that no person shall be deprived of life, liberty, or property, without due process of law. The United States Supreme Court and this Court [Oklahoma Supreme Court] have both held that the state’s participation in any proceeding, the result of which may be the significant restriction of a person’s liberty, **requires that the person be afforded the protections of due process. Before any deprivation can occur a fundamental requirement of due process must be satisfied: the opportunity to be heard in a meaningful time and in a meaningful manner. . . . [A]nd we will not hesitate to provide remediation whenever docket management offends fundamental fairness, due process, and the right to a speedy and certain remedy.** [Emphasis added.]

Flandermeyer v. Bonner, 2006 OK 87, ¶9, 10 & 15, 152 P.3d 195.

In deciding whether to appear at the hearing to defend against issues presented for resolution or default and suffer the consequences, one **must** at every critical stage of the proceedings be provided with (1) notice at a meaningful time and in a meaningful manner, (2) a realistic opportunity to appear and be heard, and (3) the opportunity meaningfully to participate in the proceedings. [Emphasis added.]

Booth v. McKnight, 2003 OK 49, ¶21, 70 P.3d 855.

Minimum standards of due process require administrative proceedings that may directly and adversely affect legally protected interests be preceded by notice calculated to provide knowledge of the exercise of adjudicative power and **an opportunity to be heard**. No less than economic prosperity, aesthetic and environmental well-being are important essential ingredients of the quality of life in our society. This Court has the responsibility to exercise both the will and the wisdom to conserve the good earth. A decision which would allow redress for constitutionally protected interests only after those rights were irreparably damaged would not reflect that responsibility. **Both mineral interest owners and property owners whose residences may be affected by a solid waste management disposal facility have legally protected rights sufficient to require the application of due process privileges guaranteed by the United States and Oklahoma Constitutions.** However, in reaching the



conclusion that mineral interest owners and adjacent landowners are entitled to notice and an opportunity to be heard, we recognize that the Oklahoma Constitution, in itself, provides bona fide, separate, adequate and independent grounds upon which to rest our holding. [Emphasis added.]

DuLaney v. Oklahoma State Dept. of Health, 1993 OK 113, 868 P.2d 676

Also consider the Administrative Procedures Act, 75 O.S. § 309 (A) & (C):

In an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice.

....

Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. [Emphasis added.]

“A realistic opportunity to appear and be heard”, “the opportunity meaningfully to participate in the proceedings”, and an “opportunity . . . to respond and present evidence and argument on all issues involved” cannot be accomplished if a Respondent is required to pay a \$1,000 fee in order to participate and be heard by this Commission.

Despite OIPA/OKOGA’s desire to thwart unwanted protests and appeals, when companies elect to invoke the Police Powers of this Commission, **Due Process (and good public policy) demands that any Respondent be entitled to participate in the proceedings and have an opportunity to be heard by this Commission; they should not, and cannot, be required to purchase that right!**

While COSMO supports the Commissions’ need to raise fees to the level determined appropriate to sustain the necessary level of services, **COSMO OPPOSES OIPA/OKOGA’S UNCONSTITUTIONAL POTEST AND APPEAL FEES!**

Respectfully submitted,

Terry L. Stowers
Executive Director