

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY

ORDER OF THE SUPERVISOR OF WELLS

IN THE MATTER OF:

THE PETITION OF WILLIAM T. FEHLIG, FOR A SPECIAL)
SPACING ORDER FROM THE SUPERVISOR OF WELLS)
WAIVING THE SPACING AND SETBACK PROVISIONS OF) CAUSE NO. 05-2009
R 324.301 AND ORDER NO. (A) 14-9-94, PART OF)
SECTION 34, T30N R 6E, WILSON TOWNSHIP, ALPENA)
COUNTY, MICHIGAN)

OPINION AND ORDER

This case involves the Petition of William T. Fehlig (Petitioner). The Petitioner proposes to drill and complete eight wells for oil and gas exploration (the Fehlig 1-34, Fehlig 2-34, Fehlig 3-34, , Fehlig 4-34, Fehlig 5-34, Fehlig 6-34, Fehlig 7-34, and Fehlig 8-34 wells) within a 79-acre drilling unit in the stratigraphic interval known as the Antrim Shale Formation. Under Order No. (A) 14-9-94, as amended, the drilling unit size for an Antrim Shale Formation well is 80 acres and well spacing is one well per 80 acres. Petitioner seeks an exception to the well spacing and location provisions of Order No. (A) 14-9-94, as amended (the Antrim Order), to drill 8 wells on a 79-acre drilling unit located in Alpena County, Michigan. As stated in the Notice of Hearing, the scope of this hearing was enlarged by the Supervisor to include an 80-acre tract consisting of the entire N 1/2 of NE 1/4 of Section 34, T30N, R6E, Wilson Township, Alpena County.

JURISDICTION

The development of oil and gas in this State is regulated under Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. MCL 324.61501 *et seq.* The purpose of Part 615 is to ensure the orderly development and production of the oil and gas resources in this State. MCL 324.61502. To that end, the Supervisor may establish drilling units. MCL 324.61513(2). The spacing of wells completed in the Antrim Shale Formation in Wilson Township, Alpena County is subject to the Antrim Order. Exceptions to the spacing requirements of the Antrim Order can only be effectuated after an evidentiary hearing. The evidentiary hearing is governed by the applicable provisions of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* See 1996 MR 9, 324 1203. The evidentiary hearing in these matters was held on April 30, 2009.

FINDINGS OF FACT

Petitioner specifically requests that the Supervisor issue an Order authorizing up to 8 Antrim Shale Formation wells on Petitioner's 79-acre property with the surface and bottom hole locations located no closer than 100 feet from the boundaries of Petitioner's property.

The Administrative Law Judge determined that the Notice of Hearing was properly served and published. Timely answers to the Petition were filed by BreitBurn Management Company, LLC (BreitBurn), the Michigan Department of Natural Resources (MDNR), Mr. Ronald Wintland, Mr. Craig Wintland, and Mr. Phillip Wintland. The Supervisor designated the hearing to be an evidentiary hearing pursuant to R 324.1205(1)(b) and directed evidence be presented in the form of oral testimony.

In support of its case, the Petitioner offered the testimony of Mr. William T. Fehlig; Mr. Charles Moskowitz, Petroleum Geology Consultant; and Mr. Steven P. Kohler, Petroleum Engineering Consultant. Mr. Moskowitz was recognized as an expert in the field of petroleum geology and Mr. Kohler was recognized as an expert in the field of petroleum engineering. BreitBurn was represented at the hearing by Mr. James R. Neal and presented no testimony but did present evidence on cross examination. Mr. Ronald Wintland offered no testimony or evidence but did make a statement on the record. Neither Mr. Craig Wintland nor Mr. Philip Wintland appeared at the hearing. No one appeared at the hearing on behalf of the MDNR. The MDNR filed its Answer in opposition to the Petition as an offsetting mineral owner. As owners of the remaining unleased, one acre parcel in the N 1/2 of the NE 1/4 of Section 34, the Wintland's were opposed to granting Petitioner's request for an exception to the 330 foot setback requirement.

DRILLING UNIT

The spacing of wells targeting the Antrim Shale Formation is governed by the Antrim Order. This Order establishes drilling units of 80 acres, more or less, consisting of two contiguous governmental surveyed quarter-quarter sections of land with one common boundary of approximately 1,320 feet, with allowances being made for the differences in the size and shape of sections.

Petitioner's proposed drilling unit consists of his property, being the N 1/2 of NE 1/4 of Section 34, less one acre, T30N, R6E, Wilson Township, Alpena County. The one acre not owned by Petitioner is owned by Mr. Ronald Wintland, Mr. Craig Wintland, and Mr. Philip Wintland.

I find if the Antrim Shale Formation is to be developed on Petitioner's property, the drilling unit shall be 80-acres, including all of the N 1/2 of NE 1/4 of Section 34, T30N, R6E, Wilson Township, Alpena County. I find that to protect unleased mineral interests, Petitioner shall pool any unleased mineral interests into the proposed 80-acre drilling unit.

WELL DENSITY

Mr. Fehlig testified that he could not reach agreement on terms to lease his 79 acres to Terra Energy, predecessor to BreitBurn, when approached by Terra in the late 1990s. In 2000 he became aware of several wells drilled by Terra surrounding his property. At that time Mr. Fehlig again tried, through his counsel, to negotiate a lease with Terra. Those negotiations were not successful and resulted in the filing of several petitions with the Supervisor.

Mr. Fehlig testified that he believes that gas has been drained from his property by wells now operated by BreitBurn without compensation and for this reason he should not be held to the 330 foot setback requirement for his eight proposed wells. In his opinion, a reasonable setback would be 100 feet. Mr. Fehlig stated that the only way to counter the drainage of his gas is to allow him to drill eight wells around the perimeter of his property. He also stated that even if drainage is not occurring, it is not financially feasible to drill only one well on his property, and presumably more wells will result in a more financially feasible project.

Mr. Fehlig's attorney argued that no one other than Mr. Fehlig should have a say in how many wells are drilled on his property. I find allowing more than one well results in an unfair advantage to Petitioner over adjacent producers and owners and may force them to drill additional wells to protect their interests. Furthermore, the decreased setback gives Petitioner an additional advantage over adjacent producers and owners.

Mr. Moskowitz testified that based on 2004 production data from the nearby Nadeau 7-34 well, he believes eight wells on the Fehlig property would yield an annual income of approximately \$470, 208.00 and result in ultimate recovery of gas from Petitioner's property. It is his opinion that this justifies 10-acre spacing. Mr. Moskowitz recanted his previous opinion stated in his Affidavit (Attachment G to the Petition) that Petitioner's property is being drained by surrounding wells. His current opinion is that an Antrim Shale Formation gas well in this area would not drain outside of a 10-acre drilling unit.

Mr. Kohler disagreed with Mr. Moskowitz on the area of drainage and testified that he believes Petitioner's acreage has been drained by four adjacent wells. He based his opinion on the fact that producing wells in the area around Petitioner's property were drilled on 160-acre spacing, with each well having a drainage area of 1,489 feet. Based on production to date, it is

Mr. Kohler's opinion that approximately 80.9 percent of the gas has been produced from the Ace of Hearts Antrim Unit and also from Petitioner's acreage.

Mr. Kohler testified drilling eight wells on Petitioner's property, not less than 100 feet from its boundaries, is the only way to prevent further drainage from the surrounding wells and provide a fair and equitable outcome for Petitioner. He stated drilling multiple wells would increase the possibility of finding a higher rate gas well or sweet spot that could be missed if Petitioner were only allowed to drill one well on his acreage. He further testified, Antrim gas wells are almost exclusively developed as a group of wells on a project basis rather than on an individual well basis and would include a common gas gathering system, a central production facility, and a facility and well for collection and disposition of formation water.

On cross examination, Mr. Kohler testified that he was aware that BreitBurn was willing to negotiate an agreement with Petitioner to process gas from a well on Petitioner's property and that in his opinion the rates offered to process Petitioner's gas and dispose of his brine are fair and reasonable. He further testified that he would recommend drilling one well on Petitioner's acreage with the flexibility to drill more depending on the results. When questioned about the economics of drilling eight wells on Petitioner's 79 acres, Mr. Kohler stated he is doubtful eight wells in this area would be justified. In Mr. Kohler's opinion, gas recoveries could be improved in some areas of the Antrim by allowing a more dense well spacing. While drilling wells may produce more gas, there is a point where it would not be economical to the operator to drill more wells. Mr. Kohler stated communication between the proposed multiple wells is possible due to the extensive fracture network present in the area but should not be presumed.

Petitioner uses the finding in the Antrim Order that an Antrim gas well is rarely economical when developed individually to justify his request to drill up to eight wells on a single Antrim drilling unit. The Antrim Order states that Antrim gas wells have been characteristically, but not exclusively, developed as a group of wells or on a project basis rather than on an individual well basis. The Antrim Order also describes an Antrim project as including 1) several Antrim gas wells; 2) a common gas gathering system; 3) a central production facility where all gas from the project wells is collected, separated, compressed, dehydrated, metered, and sold; and 4) a facility and well where all formation water from the project wells is collected and disposed. It is the need for items 2, 3, and 4 that makes an individual Antrim well not economical. In this particular instance, Respondent, BreitBurn has presented Petitioner with a facilities agreement, whereby BreitBurn would contract to process gas and dispose of produced water from Petitioner's 80-acre drilling unit at a rate that Petitioner's own witness testified was

reasonable. This would negate the need for Petitioner to acquire items 2, 3, and 4 above that the Antrim Order suggests are required for an Antrim project and would, therefore, increase the likelihood of a successful single Antrim gas well.

Part 615 provides that a drilling unit is the maximum area that may be efficiently and economically drained by one well. MCL 324.61513(2). In the Antrim Order the Supervisor found that drilling units less than 80 acres cause waste and the drilling of unnecessary wells, and that 80-acre spacing for Antrim Shale Formation wells would minimize both surface and underground waste. However, this Order also allows for exceptions to the spacing and location requirements after notice and hearing. I find that Petitioner has not presented compelling evidence to show that drilling up to eight wells on an 80-acre drilling unit is necessary to prevent waste, nor that 10 acres is the maximum area that can be efficiently and economically drained by one well in this area.

Part 615 states: "The owner of any tract that is smaller than the drilling unit established for the field shall not be deprived of the right to drill on and produce from that tract, if the drilling and production can be done without waste." MCL 324.61513(4). Provided he pools the Wintland one-acre tract, Petitioner may drill one well on the 80-acre tract. Petitioner will, therefore, not be deprived of his right to drill on and produce from his acreage. However, I find to drill up to eight wells as requested by Petitioner would create waste.

CONCLUSIONS OF LAW

Based on the findings of fact, I conclude, as a matter of law:

1. To prevent the drilling of unnecessary wells, the supervisor may establish a drilling unit for each pool. A drilling unit is the maximum area that may be efficiently and economically drained by one well. MCL 324.61513(2).
2. The drilling unit for Antrim Shale Formation wells in Alpena County is 80 acres per well as established by Order No. (A) 14-9-94, as amended.
3. Drilling eight wells within one Antrim Shale Formation drilling unit is unnecessary and would cause waste. MCL 324.61513(3).
4. The Supervisor has jurisdiction over the subject matter and the persons interested therein.

- 5 Due notice of the time, place, and purpose of the hearing was given as required by law and all interested persons were afforded an opportunity to be heard 1996 AACRS, R 324 1204.

DETERMINATION AND ORDER

Based on the Findings of Fact and the Conclusions of Law, the Supervisor determines that drilling eight wells within one 80-acre Antrim Shale Formation drilling unit is not necessary to protect correlative rights and will cause waste.

NOW, THEREFORE, IT IS ORDERED:

- 1 Petitioner's request for an exception to the Antrim Order for a 79-acre drilling unit is denied.
- 2 Petitioner's request for an exception to the Antrim Order for more than one well on a drilling unit is denied.
- 3 Petitioner's request to waive the set back requirements of R 324.301 and the Antrim Order is denied.
- 4 The Supervisor retains jurisdiction in this matter
- 5 This Order shall be effective immediately.

DATED: June 23, 2009



HAROLD R. FITCH
ASSISTANT SUPERVISOR OF WELLS
Office of Geological Survey
P.O. Box 30256
Lansing, MI 48909

STATE OF MICHIGAN
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SUPERVISOR OF WELLS

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at a session of the Department of Environmental Quality held
at Lansing, Michigan, Harold R. Fitch, Assistant Supervisor
of Wells, Presiding

ORDER OF ADJOURNMENT

Petitioner, William T. Fehlig, through his attorney, Philip R. Rosi, has requested an adjournment of the Supervisor of Wells hearing in this matter due to Mr. Rosi's illness. The hearing was scheduled for March 24, 2009, at 9:00 a.m.

NOW THEREFORE, IT IS ORDERED:

The Supervisor of Wells hearing on Cause No. 05-2009, is hereby adjourned and rescheduled for April 30, 2009, at 9:00 a.m. in the Stephen Nisbet Hearing Room, Atrium Level, South Tower, Constitution Hall, 525 West Allegan Street, Lansing, Michigan.

Dated: Mar. 24, 2009



HAROLD R. FITCH
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SUPERVISOR OF WELLS

IN THE MATTER OF

THE PETITION OF WILLIAM T. FEHLIG, FOR A SPECIAL)
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NOTICE OF HEARING

Take notice that a hearing will be held before the Supervisor of Wells (Supervisor) in the city of Lansing, Michigan, on the TWENTY-FOURTH DAY OF MARCH (MARCH 24) 2009, BEGINNING AT 9:00 A.M., AT THE DEPARTMENT OF ENVIRONMENTAL QUALITY, STEPHEN NISBET HEARING ROOM, ATRIUM LEVEL, SOUTH TOWER, CONSTITUTION HALL, 525 WEST ALLEGAN STREET, LANSING, MICHIGAN. The hearing will be conducted pursuant to Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.61501 et seq.; the administrative rules, 1996 AACS, 2001 MR 2, 2002 MR 23, R 324.101 et seq.; and the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.

The hearing is for the purpose of receiving testimony and evidence pertaining to the need or desirability of issuing an order in the matter of the petition of William T. Fehlig (Petitioner).

Petitioner seeks an order of the Supervisor as an exception to Order No. (A) 14-9-94, authorizing the drilling of eight wells in a drilling unit consisting of the N 1/2 of NE 1/4 of Section 34, less one acre, T30N, R6E, Wilson Township, Alpena County, Michigan. Also, Petitioner desires to locate his wells no closer than 100 feet from the boundaries of his property as an exception to the 330-foot well setback distance contained in R 324.301.

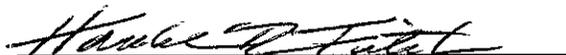
The scope of this hearing is hereby enlarged at the initiative of the Supervisor to include all of the N 1/2 of NE 1/4 of Section 34, T30N, R6E, Wilson Township, Alpena County, Michigan.

You can obtain a copy of the written petition by requesting it in writing from Mr. Philip R. Rosi, Counsel for Petitioner, Rosi & Gardner, P.C., 735 S. Garfield Avenue, Suite 202, Traverse City, Michigan, 49686, telephone number 231-941-5878.

Take note that if you wish to participate as a party in the hearing by presenting evidence or cross-examining witnesses, you shall prepare and mail or otherwise deliver to the Petitioner and Supervisor, not less than 5 days before the hearing date, an answer to the petition in the manner set forth in R 324.1204(6). Proof of mailing or delivering the answer shall be filed with the Supervisor on or before the date of the hearing. The answer shall state with specificity the interested person's position with regard to the petition. Failure to prepare and serve an answer in a timely manner shall preclude you from presenting evidence or cross-examining witnesses at the hearing. If an answer to the petition is not filed, the Supervisor may elect to consider the petition and enter an order without oral hearing. Mail the answer to the petition to Mr. Philip R. Rosi at the above address, and to the Supervisor in care of the Assistant Supervisor of Wells, Mr. Harold R. Fitch, Office of Geological Survey (OGS), Michigan Department of Environmental Quality, P.O. Box 30256, Lansing, Michigan 48909-7756.

Questions regarding the Notice of Hearing should be directed to Ms. Susan Maul, OGS, Michigan Department of Environmental Quality, P.O. Box 30256, Lansing, Michigan 48909-7756, telephone number 517-241-1552. Persons with disabilities needing accommodations for effective participation in this hearing should call or write Ms. Maul at least a week in advance of the hearing date to request mobility, visual, hearing, or other assistance.

Dated: *Feb. 3, 2009*


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