

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
SUPERVISOR OF WELLS**

THE PETITION OF PAUL BRADY AND AUGUST JYLA, TO)
CONTEST SPACING EXCEPTIONS GRANTED UNDER)
R 324.303 IN KALKASKA COUNTY, MICHIGAN, AND FOR) CAUSE NO. 01-2014
CREATION OF A SPACING ORDER FOR THE UTICA)
SHALE FORMATION AND THE COLLINGWOOD SHALE)
FORMATION)
_____)

ORDER DENYING REQUEST FOR REHEARING

The above-captioned matter was the subject of a contested case. On May 16, 2014, pursuant to Motions for Summary Disposition filed by Respondents, the Assistant Supervisor of Wells issued a final Opinion and Order that dismissed the case based on the Petitioners' lack of standing. On June 11, 2014, the Petitioners, through their counsel, Charles O. Houston II, requested a "rehearing and final agency decision" of the May 16th Opinion and Order.

OPINION AND ORDER

The request for rehearing filed by the Petitioners in the matter seeks a rehearing on the merits of this matter and a final agency decision on the Supervisor's May 16th final Opinion and Order. The Petitioners begin by challenging the Supervisor's interpretation of standing as set forth in Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.61501 et seq. As they did in their briefs in opposition to Respondents' Motions for Summary Disposition, they contend that the language of Part 615 confers on them standing to pursue their claim. They continue by arguing that they should be given the opportunity to examine the merits of their Petition, and criticizing the alleged ambiguity in the rules regarding well spacing. Finally, they again request a Uniform Spacing Order for the Utica/Collingwood Formation.

Although the Petitioners do not cite to the specific rule under which they are seeking rehearing, R 324.75 (Rule 75) controls requests for rehearing in contested cases before the Department of Environmental Quality:

(1) A request for rehearing shall be addressed to the administrative law judge, served on the parties, and shall state the grounds upon which

the moving party relies. A response to the motion shall not be filed, and there shall be no oral argument, unless the administrative law judge otherwise directs.

(2) Generally, and without restricting the discretion of the administrative law judge, a motion for rehearing or reconsideration which merely presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted. The moving party shall demonstrate a palpable error by which the tribunal and the parties have been misled and show that a different disposition must result from the correction of the error. A rehearing may be ordered on grounds there is newly discovered evidence that could affect the outcome of the case only if the lack of its discovery is not attributable to the moving party.

(3) The final decision maker may determine the record or a proposal for decision is inadequate for purposes of his or her review or for judicial review, or that evidence was improperly included or excluded, and remand the case to the administrative law judge for further consideration.

This rule is consistent with Michigan Court Rule 2.119(F)(3). In addition, the Administrative Procedures Act, which controls contested case hearings, provide for a rehearing “[w]here for justifiable reasons the record of testimony made at the hearing is found by the agency to be inadequate for purposes of judicial review, the agency on its own motion or on request of a party shall order a rehearing.” MCL 24.287(2).

If this is a request for hearing pursuant to Rule 75, the Petitioners’ request must not “merely represent[] the same issues previously ruled on,” and must “demonstrate a palpable error by which the tribunal and the parties must have been misled and show that a different disposition must result from the correction of the error.” The Petitioners’ request may also allege “newly discovered evidence that could affect the outcome of the case . . .” If this request is made pursuant to MCL 24.287(2), there must be allegations or evidence of an inadequate record for purposes of judicial review.

In the request for rehearing the Petitioners advance the same arguments they did in their briefs in opposition to the Motions for Summary Disposition. Further, they have not presented evidence demonstrating a palpable error, and have not alleged any newly discovered evidence that would satisfy the standard for the granting of a rehearing. A fair reading of the filing indicates that aside from their renewed argument that they have standing and, therefore, should be permitted to develop a record, the Petitioners have failed to provide any support for and/or allege an incomplete record. In fact, in the Summary Disposition stage of the contested case, the parties, including the Petitioners (through their counsel), filed extensive briefs with thorough factual and legal arguments and analyses. In their request for rehearing, they have done nothing more than reiterate their previously-argued positions. As a result, a rehearing is not appropriate.

In addition, it should be noted that the Petitioners requested "a final agency decision on the Supervisor's May 16th Final Order," and addressed the same to "Director Dan Wyant" of the Michigan Department of Environmental Quality. This language would suggest that they may be seeking an appeal to the Director under R 324.1212, which was promulgated under Part 615. MCL 324.61501, et seq. However, no mention is made of an appeal pursuant to this rule. R 324.1212 expressly allows "[a]n owner or producer may file an appeal to the director of the department of environmental quality pursuant to section 61503 of the act." In this matter, the Petitioners are not "owners" or "producers." Thus, they are not among the designated parties who may seek an appeal from the Director. The Petitioners, thus, fail to have standing to appeal to the Director if seeking an appeal pursuant to R 324.1212.

THEREFORE, IT IS ORDERED:

1. The request for rehearing fails to allege a proper basis that would allow for the granting of the relief sought; therefore, the request for rehearing is denied.
2. The Petitioners lack standing to appeal to the Director and, therefore, any purported appeal to the Director is denied.
3. The Petitioners' request for a Uniform Spacing Order for the Utica/Collingwood Formation will be addressed in a separate Order.

Dated: July 24, 2014



HAROLD R. FITCH
ASSISTANT SUPERVISOR OF WELLS
Office of Oil, Gas, and Minerals
P. O. Box 30256
Lansing, MI 48909-7756