

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: GARY S. WALKER, DIRECTOR  
PETROLEUM STORAGE TANK DIVISION  
OKLAHOMA CORPORATION COMMISSION

RESPONDENTS: DARYL WHEELER, ENERCON SERVICES, INC.

RELIEF SOUGHT: JUDICIAL DETERMINATION OF )  
CONDITIONS OF ACCESS AND ) CAUSE NO. PSD 200900031  
ORDER GRANTING ACCESS )

ORDER NO. **569519**

Facility Address:  
3820 Charles Page Blvd.  
Tulsa, OK

Facility No:  
72-05228

Case No:  
064-1180

HEARING: July 31, 2009  
Before the Honorable Michael Norris, Administrative Law Judge

APPEARANCES: Jeffrey P. Southwick, Deputy General Counsel, and Kathy L. Nelson, Assistant General Counsel, appeared for the Applicant.

Also in appearance: Gary Hale, Senior Project Manager for Enercon Services, Inc.

**FINAL ORDER OF THE COMMISSION**

This matter was filed on June 23, 2009, and upon opening the record the Administrative Law Judge ("ALJ") proceeded to hear the cause and make recommendations based on testimony presented.

This is the application of Gary S. Walker, Director of the Petroleum Storage Tank Division ("Applicant" or "PSTD") of the Oklahoma Corporation Commission ("Commission"), seeking an order and conditions of access regarding property known as 3801 Charles Page Boulevard, Tulsa, OK, owned by Respondent Daryl Wheeler, and located adjacent to a former service station located at 3820 Charles Page Blvd., Tulsa, OK, where a release had occurred. Unable to find a responsible person, PSTD assigned the case to the Leaking Underground Storage Tank Trust ("LUST"), and LUST, in turn, directed Enercon Services, Inc. ("Consultant"), a PSTD licensed environmental consultant, to perform corrective action on the captioned site to delineate and, if necessary, remediate the release of regulated substances that emanated from this site, and potentially migrated to the property owned by Respondent Wheeler ("Property Owner").

The Commission has jurisdiction over the subject matter and notice has been given as required by law and the rules of the Commission.

**FINDINGS OF FACT**

This petition for access filed in this matter arose out of a question of access to Property Owner's property to decommission a monitoring well located on Property Owner's property. Property Owner's property is adjacent to the facility where a confirmed release occurred at 3820 Charles Page Blvd., Tulsa, OK, a former service station, which caused the opening of PSTD Case No. 064-1180.

Counsel for Applicant called Gary Hale, Senior Project Manager for Enercon Services, Inc. Mr. Hale stated that a monitoring well had previously been installed on Property Owner's property. Mr. Hale further stated that the case is now closed and Consultant needs to plug the monitoring well located on Property Owner's property but has been denied access to do so by Property Owner. Mr. Hale informed the ALJ that the monitoring well is contaminated and per the rules of the Oklahoma Water Resources Board ("OWRB") must be decommissioned in accordance with OWRB standards.

Counsel for Applicant inquired of Mr. Hale if there were any businesses on Property Owner's property, and Mr. Hale replied that the property was currently vacant, but had previously been a muffler shop. Counsel for applicant advised the ALJ that Property Owner called him, and related that the property was unlocked. Property Owner also requested that he be provided with all documents submitted to PSTD concerning this release case, and asked that he be given notice both in writing and telephonically at least 2 weeks after the Order issues. Property Owner also provided his address and telephone number, as follows: 68 Haskell Street, Sand Springs, OK 74063, (918) 245-0845. Property Owner also asks that Counsel include a business card when the Order in this matter issues.

Counsel for Applicant further inquired of Mr. Hale of how Consultant was able to gain access to decommission the monitoring well. Mr. Hale stated that the property has a chain link fence around it and the gate has a padlock, but a neighboring business, Gary's Auto, has keys to the padlock. Counsel for Applicant recommended to the ALJ that if the Consultant was unable to obtain the keys from Gary's Auto that the lock be removed in order to gain the access needed to decommission the monitoring well, and a new lock be installed on the gate and new keys be provided to Property Owner and also to Gary's Auto. Counsel for Applicant also recommended that a copy of the Order to issue be provided to Gary's Auto as notice of access by Consultant. Counsel for Applicant inquired of Mr. Hale if there was an alternative method of access and Mr. Hale replied there was not.

Counsel for Applicant inquired of what recommendations would be appropriate taking into account Property Owner's concerns, and Mr. Hale replied that access should be in the least intrusive, least disruptive manner possible, and that two weeks notice by telephone and written notice be given to Property Owner before access to the property to decommission the monitoring wells. Mr. Hale stated that all sampling results and reports generated concerning this case, whether on Property Owner's property or not, would be provided to Property Owner at the same time they are submitted to the Commission. Mr. Hale further stated that the surface of the Property Owner's property will be restored back to its original condition as much as practicable.

The Administrative Law Judge concurred with the recommendations and closed the record.

## ORDER

IT IS THEREFORE ORDERED BY THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, as follows:

1. That Respondent Daryl Wheeler shall grant access to the property located adjacent to the property where the release was confirmed to Enercon Services, Inc. for the immediate purpose of decommissioning the monitoring well on the property and, that access shall always be in the least intrusive, least disruptive manner possible. That Enercon Services, Inc. give Property Owner 2 weeks notice both telephonically and by mail prior to entry.

2. That a copy of this Order be provided to Gary's Auto by Enercon Services, Inc. and that prior to entering Property Owner's property, Property Owner shall be given two weeks notice. That all reports related to case 064-1180 generated by Enercon Services, Inc., whether the reports generated on the case concern Property Owner's

property or not, shall be copied and forwarded by Enercon to Respondent Daryl Wheeler at the address set forth above.

3. That the surface of the Property Owner's property shall be restored back to its original condition to the extent practicable, and the monitoring wells located on the property shall be destroyed or decommissioned in a manner prescribed by the Oklahoma Water Resources Board.

4. That in the event the property is secured by a lock, Enercon Services, Inc. is hereby authorized to remove the lock, perform all necessary tasks to decommission the monitoring well and surface restoration, and secure the property with a good quality lock, providing Gary's Auto with a set of keys and mailing a set of keys to Property Owner by certified return receipt mail.

OKLAHOMA CORPORATION COMMISSION

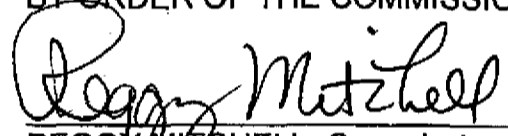
  
BOB ANTHONY, Chairman

  
JEFF CLOUD, Vice Chairman

  
DANA MURPHY, Commissioner

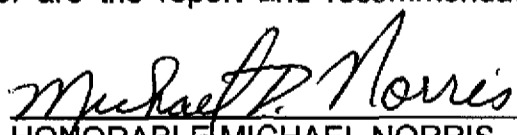
DONE AND PERFORMED THIS 6 DAY OF Aug., 2009.

BY ORDER OF THE COMMISSION:

  
PEGGY MITCHELL, Commission Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings and order are the report and recommendations of the Administrative Law Judge.

  
HONORABLE MICHAEL NORRIS  
Administrative Law Judge

8-4-09  
Date