



SEP 4 1996

COMPLAINT AND REQUEST FOR PUBLIC
HEARINGS BEFORE THE OGCC AND WQCD

1.62

SEPTEMBER 3, 1996

To: Assistant Attorney General Lori Coulter

STATUTES Re: OGCC JURISDICTION & AUTHORITY

My 5-page letter to you of August 5 along with the text of comprehensive and specific statutory citations makes it clear that OGCC had jurisdiction in 1960 to *issue* the ORDER and has jurisdiction in 1996 to *enforce* that ORDER. The testimony from the 1960 Hearings are clear that PSCo voluntarily submitted to OGCC jurisdiction. In 1995, PSCo also voluntarily consented to the authority of OGCC by immediately following an order by Director Griebeling to retest #31 in October 1995.

For your convenience I have enclosed a copy of the 1960 REPORT OF THE COMMISSION, FINDINGS AND ORDER. Provided in the FINDINGS is the following language at item number 2. "*That the Commission has jurisdiction over the subject matter embraced in said notice, and of the parties interested therein, and jurisdiction to promulgate the hereinafter prescribed order.*"

I have also enclosed C.R.S. 34-60-104.5 which mandates that the OGCC director "shall" implement and administer orders issued by the commission. In addition, C.R.S. 34-60-105 provides that, "The *commission has jurisdiction* over all persons... necessary to enforce the provisions of this article and has the power to make and enforce ...orders pursuant to this article."

C.R.S. 34-60-124 provides that the OGCC has jurisdiction to issue an order requiring a "responsible party" to perform mitigation, particularly when the gas operation is performed "... in a manner which is in contravention of any then-applicable order of the commission ... that threatens to cause, or actually causes a significant adverse environmental impact on any ... water, soil or biological resource."

Please note that only the "threat" of an adverse environmental impact is required. In my case, PSCo has admitted in writing that their gas is in my groundwater supply and that I should not drill water wells on my property because of the gas. It is also clear that their gas is in my water supply because they are violating the 1960 OGCC ORDER which requires that they operate below hydrostatic pressure.

PSCo's admission that I should not drill water wells because their gas is leaking into that same water supply and that the gas is contaminating and polluting the aquifer should suggest enough urgency for your office and the OGCC to take action immediately against PSCo. But when both you and the OGCC know that PSCo is violating an ORDER of the State OGCC (by operating above hydrostatic pressure and leaking gas), it seems that action from your office would be without hesitation.

C.R.S. 34-60-109 requires the OGCC to bring suit if it only "appears" that there has been a violation of an OGCC order. In this case, there is written documentation from PSCo itself which confirms that they are in violation of an OGCC order. It does not merely appear that there is a violation in this case. The statute reads in part, "If it appears that any person fails to comply with an order ... the commission, through the attorney general, *shall* bring suit in the name of the state..."

CONFLICT OF INTEREST

C.R.S. 34-60-105 provides that, "The attorney general shall be the legal advisor of the commission and it is his duty to represent the commission in all court proceedings and all proceedings before it..."

C.R.S. 34-60-106 provides OGCC with the authority to "... protect public health, safety and welfare..." I am a member of the public whose property and "welfare" is damaged to the point of being uninsurable as I told you in my August 5 letter. In addition, there are other public citizens with private property who are yet to come forward whose property will most certainly be subject to the same consequences.

As attorney and legal counsel for the OGCC, it appears that in this case there will be significant conflicts of interest for you. Your client (OGCC) has five of its seven members whose livelihood is dependent upon the oil and gas industry. Is this same client supposed to fairly and impartially regulate one of its own (PSCo)? How can the office of the attorney general be the legal representative for both the OGCC and for the public - when there exists a claim by a member of the public against a company (PSCo) in the same gas business the OGCC is supposed to regulate (for the benefit of public health, safety and welfare)? I am not aware of any exception which allows the same attorney to represent opposing parties.

Also, it appears that Director Griebing, Ron Schmela and a Mr. Kerr of the OGCC will be witnesses who will provide testimony adverse to PSCo at the hearings? How will these inherent conflicts be handled? How can Griebing vote on OGCC matters for which he is a witness? With your power to subpoena witnesses and administer oaths, how will conflicts be resolved if you request documents from PSCo about which these three OGCC witnesses as well as PSCo witnesses may testify under oath? At the hearings, will I or my attorneys be prohibited by you or the OGCC from submitting extensive questions to PSCo and OGCC witnesses and/or cross-examining PSCo witnesses while they are under oath?

Based upon my August 5 and August 27 letters to you with enclosures along with all other documentation on file at the OGCC (all of which are incorporated herein by reference), and pursuant to C.R.S. 34-60-105 and 34-60-108, I request that the attorney general and the OGCC initiate immediate public proceedings upon two issues:

1. whether OGCC has jurisdiction over underground gas storage and whether OGCC has authority to pursue legal remedies against PSCo,
2. to prevent further damage to private property of all landowners near PSCo gas storage and enforce the OGCC ORDER of 1960 against PSCo to enjoin and restrain them from continuing violations of the ORDER.

You may consider this my complaint and petition requesting a public hearing before the OGCC on these matters. It is important that these conflicts of interest and the damages to me caused by PSCo be disclosed in a public forum as soon as possible and PSCo personnel be required to respond while under oath so that this issue becomes public record.

If you advise the OGCC not to pursue action against PSCo, it is my understanding that after I have notified the OGCC in writing of PSCo violations or threats of violations, that I have the right under 34-60-114 to bring suit in district court to prevent any further violations. If the court holds that injunctive relief should be granted, then the OGCC will be made a party and substituted for me and the injunction issued as if the OGCC had been the complaining party.

C.R.S. 34-60-109 does not require the OGCC to provide a bond so, in view of the fact that it is common knowledge that PSCo has violated the OGCC ORDER, it seems likely that a court would issue an injunction against an admitted violator. If an injunction is not issued, it is also my understanding that I may seek a ruling from a District Court in the form of a declaratory judgment regarding whether the OGCC has authority over PSCo.

WQCD JURISDICTION & AUTHORITY

Without going into the detail required for the OGCC, I also request that you consider this letter my petition and complaint against PSCo, that you also set this matter for public hearing before the WQCD and that you invoke your authority under C.R.S. 37-92-501 for "preservation of the priority system of water rights." I have ground water rights which are senior to those of PSCo. PSCo has no rights whatsoever to my groundwater. PSCo is causing material injury to my senior water rights. Section 502 requires the state engineer to order the discontinuance of any diversion which "... is causing or will cause material injury to such water rights having senior priorities."

In view of the fact that PSCo has admitted in writing (see McClung letters attached to my August 5 letter to you & Griebing) that withdrawal of groundwater from my property will damage their gas storage facility, I believe it is clear that PSCo is causing material damage to my property. In addition, they also admit that their gas is in the aquifer. C.R.S. 25-8-103 defines "pollution" as a "... man-induced alteration of the physical, chemical, biological ... integrity of water" and that the definition of state waters includes "...subsurface waters..."

C.R.S. 25-8-102 provides that it is the policy of the State of Colorado to prevent injury to beneficial uses made of state waters, to conserve ... and to protect, maintain and improve ... the quality thereof for industrial uses ... and no pollutant be released into any state water.

I believe that it is clear that gas leaking into the aquifer from the Leyden gas storage facility is not improving or conserving the waters of this state but is in fact polluting the aquifer according to Section 103. PSCo is also illegally diverting my senior water rights and making that water unusable by me.

According to 34-60-115, the statute of limitations for action against PSCo by the attorney general on behalf of the OGCC and/or WQCD will expire near the end of December 1996. OGCC confirmed that PSCo gas was leaking in about late December 1995. As referred to in my August 27 letter to you, I request that notice be given by your office to PSCo. I also now repeat my request that these matters be set for public hearing as soon as possible.

If there are any procedural matters which I have overlooked, would you please notify me so that I may comply with those requirements.

Yours truly,

Richard Loesby
Richard Loesby
President, NRR

September 3, 1996

Filing Fee for Hearings before the Commission

Date Received 09/16/96

Applicant Natural Resource Recovery, Inc.

Respondant _____
(Protester)

Intervenor _____

Date of Check 09/13/96

Check No. 3294 Amt. _____

Maker of Check Natural Resource Recovery, Inc.

Bank issued on First Interstate Bank
N.R. Englewood, Co.