



STATE OF INDIANA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

IN THE MATTER OF:

INFORMAL HEARING CONCERNING) Permit Numbers: 55858, 55859, 55860,
ISSUANCE OF DRILLING PERMITS TO) 55861, 55862, 55883, 55884 & 55885
PULSE ENERGY SYSTEMS, LLC)

FINDINGS OF FACT, LEGAL CONCLUSIONS, AND DECISION ON
INFORMAL HEARING UNDER 312 IAC 29-3-4

As provided in 312 IAC 29-3-4, the Department of Natural Resources ("DNR"), through its Division of Oil and Gas ("Division") conducted an informal hearing on June 30, 2020, concerning proposed wells to be drilled under permit numbers 55858, 55859, 55860, 55861, 55862, 55883, 55884 and 55885.

Having reviewed the entire record in this matter, and being duly advised, the Director of the Division issues the followings findings, legal conclusions and decision:

Findings of Fact

- 1. On June 30, 2020, the Division conducted an informal hearing outdoors in Greene-Sullivan State Forest, East Dugger Unit, at the intersection of County Road 450 East and 100 South in Sullivan County, Indiana.
2. The location of the outdoor informal hearing was in the general area of wells proposed to be drilled by Pulse Energy Systems, LLC, under applications it filed for permit numbers 55858, 55859, 55860, 55861, 55862, 55883, 55884 and 55885 ("the 8 proposed permits").
3. Notice about the date, time, and location of the informal hearing was provided as required by law to the parties attending and on the Division's website.

The DNR mission: Protect, enhance, preserve and wisely use natural, cultural and recreational resources for the benefit of Indiana's citizens through professional leadership, management and education.

www.DNR.IN.gov
An Equal Opportunity Employer

4. The Division received initial comments about and objections to the 8 proposed permits on January 22, 2020, and March 19, 2020. Written and oral comments to the 8 proposed permits were submitted and heard at the outdoor informal hearing held on June 30, 2020.

5. The Division Director advised those present that he would leave the informal hearing record open until July 15, for the submittal of additional written comments and allow 5 days for any responses to additional written comments.

6. Comments and concerns received initially, during the informal hearing on June 30, 2020, and during the open comment period subsequent to the informal hearing can be categorized as follows with the following corresponding responses:

- a. The Division of Forestry commented about the impact of the wells on its prescribed fire program, the visual impact and odor to recreation users (fishing, hiking, hunting, birdwatching, etc.) and any investment it might make in future recreation improvements.

Response by the Division

The Division does not have regulatory authority over usage and aesthetics of a property. The Division does not have regulatory authority over ambient air issues

- b. Concerns about the impacts on groundwater and surface water quality were also raised. The Division of Forestry indicated Bass and Duck Lakes are part of its musky stocking program and it had thousands of dollars invested in fisheries located just south of several wells. Other lakes could be impacted as well that have established fisheries which could in turn impact DNR revenue generated and the community. Comments by others indicated their belief that hydraulic fracturing and depressurizing could contaminate the water in old mine works, the groundwater and the water in surface ponds, lakes, and creeks, possibly for miles away from the initial well sites. Any permits should be conditioned to monitor ground and surface water quality and specify remedies to protect surface owners from any contamination of ground or surface water.

Response by the Division

A permittee is required to control surface fluids at the site per the Division's rules and thus prevent surface contamination. It is therefore unlikely that surface water will be contaminated. The wells will be constructed according to the regulatory requirements of the Division. These construction requirements are in place to prevent commination to underground sources of drinking water. It is unlikely that underground sources of drinking water will be contaminated. The well stimulation plan included with the submitted application states that the applicant is removing most of the stimulation fluids from the wellbore and not putting contaminants back in. The stimulation fluid should follow the preferred pathway through the wellbore. All stimulation fluids should be controlled and disposed of properly by the applicant. Hydraulic fracturing is a process that will increase and not decrease pressure on the formation. Thus, the act of hydraulic

fracturing is unlikely to depressurize the formation. The act of removing gas and fluids from the formation is unlikely to destabilize the underground old works since none of the wells target the previously permitted underground coal mine formations. The coal seams that are targeted lie within a deeper coal formation, thus not directly removing gas or water from the mined formations. There are other Coal Bed Methane (“CBM”) wells within the general area and no subsidence issues or problems have been reported to date.

- c. Concerns about possible subsidence were also raised since lakes have been known to drain into old mine works and subsidence at Greene-Sullivan State Forest has occurred from time to time due to the collapse of old underground mines. There was also a comment about surface owners having the absolute right to subjacent support and that CBM production will require hydraulic fracturing and depressurizing which could result in subsidence due to the loss of subjacent support. It was suggested that monitoring wells should be required to detect any sign of depressurization to include issuance of a cease and desist order and stipulation to compensate surface owners if pressure is reduced or subsidence occurs.

Response by the Division

As discussed above, there are already CBM wells operating in the general area and no subsidence issues or problems have been reported to date. Subsidence is not regulated by the Division and subsidence is not a required issue to be addressed in the Division’s permit process. Also, the applicant and Templeton Coal Company assert that they have the right to subside. However, if subsidence should in fact occur, I.C. 32-23-7-6(3) provides a legal remedy.

- d. Surface owners affected by the 8 proposed permits have not given anyone permission to conduct gas well drilling or related operations on their properties. This right of access was taken from the surface owners and given to the mineral rights owners by a recently passed Indiana law (I.C. 32-23-7-6). Prior to the foregoing law, mineral owners were required to acquire surface rights from property owners. This law needs to be contested as unconstitutional or repealed.

Response by the Division

Legislative enactments carry a presumption of constitutionality. The statute in question was initially passed in 2002 (P.L.2-2002, §8), amended in 2011 (P.L.140-2011, §25), and has been in effect for over 18 years now. There is no indication that it has ever been challenged or ruled as being improper or unconstitutional. The Division does not adjudicate property rights and the constitutional challenge to or repeal of an existing statute is not within the purview of the Division’s authority.

Legal Discussion and Authorities

7. Indiana Code (“I.C.”) 14-37-4-5 governs issuance of well permits by the Division and provides that a permit application requires the following information:

- (1) A plat of the land or lease upon which the well is to be located, together with all property and lease lines and the acreage within the tract.
- (2) The location of the proposed well as certified by a professional surveyor registered under IC 25-21.5.
- (3) The surface elevation of the proposed well and the method used for determining that elevation.
- (4) The depth of the proposed well.
- (5) The number and location of all other dry, abandoned, or producing wells located within one-fourth (1/4) mile of the proposed well.
- (6) The distance from the proposed well to the three (3) nearest boundary lines of the tract.
- (7) With respect to an application to drill within a city or town, a certified copy of the official consent by ordinance of the municipal legislative body.
- (8) Other information determined by the commission that is necessary to administer this article.

8. Under I.C. 14-37-4-8, unless the applicant is in violation of a permit or has shown a pattern of willful violation, a permit shall be issued when it complies with the statute and rules adopted pursuant to the statute.

9. Rule 4 of the Division's rules, found at 312 IAC 29-4-1, *et seq.*, contains the rules promulgated under I.C. 14-37-4-8 which further regulate the issuance of permits.

10. Rule 6 of the Division's rules, found at 312 IAC 29-6-1, *et seq.*, contains further requirements for CBM wells.

11. 312 IAC 29-4-7(a) requires the Division to issue a permit if the applicant complies with I.C. 14-37 and this rule except as provided in subsection (b) which states:

(b) The Division may deny a permit application if the applicant or if a person owning or controlling the applicant:

- (1) has been issued a notice of violation and failed to abate the violation within sixty (60) days after the deadline for abatement, unless the person has requested an administrative adjudication of the notice of violation, and a final determination has not been rendered by the commission;
- (2) controls or has controlled any well for oil and gas purposes and has demonstrated a pattern of violations of IC 14-37 or this article that have resulted in damage to the environment; or
- (3) has had a permit revoked under IC 14-37.

12. I.C. 14-37-4-8 and 312 IAC 29-4-7 specifically require that a drilling permit "shall issue" where all enumerated statutory and regulatory requirements have been complied with and the applicant has not otherwise had a history of non-compliance under prior permits.

13. 312 IAC 29-3-4(c) states in part that an informal hearing is to be conducted in a manner that will facilitate public participation and the gathering of information relevant to the matter under consideration. An informal hearing is not governed by the rules of evidence or discovery.

14. Based upon a review of all relevant comments and concerns submitted and the Division's responses thereto, the issues raised by the various parties do not apply to the permitting process of the Division.

15. The applicable Indiana Code and rules promulgated thereunder contain no requirement for the applicant to affirmatively demonstrate any of the items in the comments filed other than those contained in I.C. 14-37-4-5.

16. Some of the objections and comments filed seek to address issues of property law. The Division lacks the legal authority to make decisions concerning property law. Indiana Code specifies that "a permit does not convey to the owner or operator a property right or an exclusive privilege." I.C. 14-37-4-3.

17. Pursuant to I.C. 14-37-4-8 and 312 IAC 16-3-3 the permit "shall issue" where all enumerated statutory and regulatory requirements have been complied with and the applicant has not otherwise had a history of non-compliance under prior permits.

Legal Conclusion and Order

18. Accordingly, the Division determines that the objections and comments filed in this matter are outside the purview of the Division's permitting process to act upon or consider. The permit applications contain the items enumerated by statute and rules of the Division such that the 8 proposed permits should be issued to Pulse Energy Systems, LLC as requested.


Right to Administrative Review

19. The above Findings of Fact, Legal Conclusions, and Decision on Informal Hearing under 312 IAC 29-3-4 are subject to administrative review pursuant to I.C. 4-21.5 and 312 IAC 3-1. In order to qualify for administrative review, a person must file a request for review in writing stating facts that demonstrate the petitioner is:

- (A) a person to whom the order is specifically directed;
- (B) aggrieved or adversely affected by the order; or
- (C) entitled to review under any law.

In order to be timely, any petition for administrative review must be filed with the Division of Hearings, Natural Resources Commission, Indiana Government Center North, 10 N. Senate Avenue, N103, Indianapolis, IN 46204 within fifteen (15) days after notice is served or within eighteen (18) days if service is by U.S. mail.

Dated: 7/30/2020



Russell Retherford, Director
Division of Oil and Gas

A copy of the above decision was sent by electronic mail on July 30, 2020, to the following:

Jeffrey Jarrett: jljarrett@live.com

Will Illingworth: wcillingworth@basinlawgroup.com

John Seifert: jseifert@dnr.in.gov

Justin Paicely: jpaicely@dnr.in.gov

Jeffrey A. Lewellyn: JALewellyn@wilkinsonlaw.com