STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

Department Staff's Proposal for Gas Well Spacing Orders and Compulsory Integration Orders in the STAGECOACH FIELD Located in Tioga and Broome Counties Pursuant to the Environmental Conservation Law Article 23, Mineral Resources.

COMMISSIONER'S RULING ON PETITION FOR MODIFICATION OR VACATUR OF THE COMMISSIONER'S SEPTEMBER 24, 1993 ORDER

March 12, 2004

COMMISSIONER'S RULING ON PETITION FOR MODIFICATION OR VACATUR OF THE COMMISSIONER'S SEPTEMBER 24, 1993 ORDER

Petitioners filed a petition, dated September 16, 2003, seeking modification or vacatur of a September 24, 1993 decision and order of Commissioner Thomas C. Jorling of the New York State Department of Environmental Conservation, which established natural gas well spacing and compulsory integration procedures for the Stagecoach Field located in portions of Broome and Tioga counties. For the reasons that follow, the petition is denied.

Background

Establishment of the Stagecoach Field

After determining that commercial quantities of natural gas might be present in the subsurface of the area later designated as the Stagecoach Field, Quaker State Corporation, among others, applied to the Department of Environmental Conservation ("Department") for permits to place wells and commence drilling operations in the Stagecoach Field. The Stagecoach Field has two separate pools of natural gas, the Widell-Jones Pool and the Barnhart-Owen Pool.

The Department initiated proceedings to establish spacing units for the Stagecoach Field in the early 1990's. Environmental Conservation Law ("ECL") article 23, titles 1, 3, 5, 7 and 9 require the Department to regulate the development, production and operation of natural gas and oil wells within the State. The Department is charged with the responsibility of, among other things, protecting the correlative rights of each property owner in a pool against damage to a common source of supply, and providing for a right to a fair and equitable share of the production from the pool.

The hearing procedures of 6 NYCRR part 624, where applicable, were used to establish the spacing units. See also Environmental Conservation Law 23-0901(2); 6 NYCRR part 550. A notice of legislative hearing dated March 25, 1992 was published on April 1, 1992, in the Binghamton Press & Sun-Bulletin and in the Department's Environmental Notice Bulletin. The notice was also mailed to those known or deemed to have an interest in the proceedings. A legislative hearing, open to the public, was held on April 29, 1992 and continued on May 25, 1993 in the Tioga County Office Building.

A stipulation dated December 30, 1992 (the "1992 Stipulation"), was entered into by Department staff and Quaker

State Corporation that resolved all issues between them regarding the Stagecoach Field, including the boundaries of well spacing units. Notice of the 1992 Stipulation and its availability for public review was published in the January 5, 1993 edition of the Binghamton Press & Sun-Bulletin and the January 13, 1993 issue of the Environmental Notice Bulletin. The 1992 Stipulation was incorporated into and made part of the September 24, 1993 decision and order (the "1993 order").

At present, most of the natural gas wells comprising the Stagecoach Field under the 1993 order have been depleted or plugged and abandoned. In addition, a significant amount in royalties has been paid to landowners in productive spacing units.

Petitioners' Present Application for Modification/Vacatur

Petitioners, a group of 45 named individuals who own or owned property in Tioga County and allegedly have an interest in the Stagecoach Field, initially sought to challenge the 1993 order by commencing an action in Supreme Court, Tioga County, in 2002 (the "2002 action"). The action was for money damages and for an accounting based upon alleged conversion, trespass, fraud, breach of fiduciary duty and negligence by Quaker State Corporation, various limited partnerships of which Quaker State Corporation is a general partner, QSE&P, Inc., a subsidiary of Quaker State Corporation (collectively, "Quaker State"), Central New York Oil & Gas, Inc., eCorp, LLC, and Belden & Blake Corp. (the "respondents"), arising from the establishment of the Stagecoach Field. Petitioners alleged that respondents knowingly provided erroneous, false and misleading information to the Department and that, if respondents had provided all of the relevant information in their possession, the spacing units would have been different and more protective of petitioners' rights.

Supreme Court dismissed the complaint pursuant to CPLR 3211 (see Steen v Quaker State Corp., Sup Ct, Tioga County, March 27, 2003, Mulvey, J., Index No. 30286). The court ruled that petitioners failed to timely commence a CPLR article 78 proceeding challenging the 1993 order in that any such proceeding should have been commenced by January 1994. Accordingly, the court ruled that petitioners were precluded from collaterally attacking the 1993 order through the 2002 action. The court also noted that the Department is the government agency responsible for establishing field-wide spacing units and that petitioners should avail themselves of "the appropriate modification procedures" (id. at 5).

On September 16, 2003, petitioners filed a notice of petition with the Department seeking to modify or vacate the 1993 order. In addition to the notice of petition, petitioners served a petition and affidavit of James A. Sacco, both dated September 16, 2003.

By letter dated October 17, 2003 of senior attorney Arlene J. Lotters, Department staff opposed the petition to modify/vacate. Respondents served a response to the petition to modify/vacate dated October 17, 2003 by Thorp, Reed & Armstrong, LLP, opposing the petition. On October 30, 2003, petitioners served a reply to the Department staff's and respondents' submissions. Sur-replies were served by respondents and Department staff on November 18, 2003, and November 20, 2003, respectively.

Petitioners' Position

Petitioners argue that the spacing units established by the 1993 order do not accurately reflect all land that lies above the pools at issue. Accordingly, petitioners contend that the 1993 order should be modified, pursuant to ECL 23-0501(6) and the terms of the 1993 order itself. In their notice of petition, petitioners claim that new evidence "is now available, which was previously unavailable to the Department, which is of such character as to create the probability that had such evidence been received by the Department prior to such Order, the Order would have been more favorable to the undersigned [petitioners]."

Petitioners acknowledge that the information set forth in the petition is not new information, but explain that this is the first instance when the information was presented to the Department and that petitioners were not aware of this information until a few years ago. Petitioners' attorneys ask that the Department make a decision regarding the Stagecoach Field with "all appropriate facts so as to protect the interests of all affected landowners."

Petitioners submit an affidavit of petitioner Roger Steen with their reply papers. Mr. Steen states that two former employees of Quaker State (who were subsequently employed by Belden & Blake Corp.) admitted to him in 2001 that respondents withheld information from the Department that certain landowners, whose natural gas would be extracted, were within the boundaries of the pools. Because these landowners were not shown to be within the spacing units, they were not paid any royalties.

Petitioners seek (1) a rehearing on the field-wide

spacing rules; (2) the granting of party status to them for that hearing; (3) a reclassification of the boundaries so that a fair and just determination of petitioners' damages may be assessed; and (4) a modification or vacatur of the 1993 order.

Department Staff's Position

Department staff opposes the petition on several grounds. Department staff argues that the petition lacks merit in that no new evidence is offered that would warrant a modification of the 1993 order. Also, Department staff notes that the petition is untimely and should be barred by the statute of limitations, and that the Department does not have the authority to modify or vacate the order in the absence of proof of a substantial change or other compelling circumstance.

Department staff acknowledges that ECL 23-0501(6) and (7) allows for changes to spacing units to include lands subsequently determined to be underlaid by a pool (see also 6 NYCRR 550.4[f]; Paragraph VIII of the 1992 Stipulation). However, Department staff asserts that the information furnished by petitioners is not sufficient to establish that their lands are underlain by the subject pools.

In summary, Department staff's position is that petitioners have failed to meet any of the statutory or regulatory requirements for modification or vacatur of the 1993 order, and have failed to meet any of the requirements for party status or to raise an adjudicable issue.

Respondents' Position

Respondents argue that the petition should be dismissed because (1) it is untimely; (2) under the laches doctrine respondents would be unduly prejudiced; and (3) the petition fails to contain the requisite significant indication of changed conditions for the Department to reopen the matter. Respondents also deny, by affidavits, the allegations made by petitioner Roger Steen that two former Quaker State employees admitted that they knew the pools were under petitioners' properties, and that respondents intentionally misled the Department to exclude petitioners' lands from the well spacing units.

Discussion

Pursuant to ECL 23-0501, an order establishing spacing units for a pool "shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the department

from time to time to include additional lands subsequently determined to be underlaid by such pool" (ECL 23-0501[6]). In addition, an order establishing spacing units may be modified by the Department to change their size (see ECL 23-0501[7]).

Under the Department's oil and gas well spacing regulation, "unless there is a significant indication of changed conditions, the department will not hold a hearing on any matter which has already been the subject of a prior hearing" (6 NYCRR 550.4[f]).[1]

In their submissions on this petition, petitioners fail to establish a "significant indication of changed conditions" sufficient to warrant reopening the 1993 order. Petitioners make two arguments in support of their claim of changed conditions: (1) new evidence; and (2) fraud.

With respect to their new evidence argument, petitioners concede that the "new evidence" they seek to rely upon would have been available at the time hearings were held on the Stagecoach Field, but maintain that it is evidence that was not previously before the Department. Of the five exhibits attached to petitioners' October 30, 2003 reply, however, four of these exhibits were included in the administrative record that supported the 1993 order. Petitioners' exhibit 1 is a stipulation dated September 30, 1992 that was attached to the 1993 order. Petitioners' exhibits 2, 3 and 4 represent spacing unit maps that, although prepared by Quaker State, were independently reviewed and verified by Department staff and were also part of the administrative record with respect to the 1993 order. Therefore, the claimed evidence is not new and, in fact, was previously considered by the Department.

Petitioners' exhibit 5 consists of an undated and

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[1] On a procedural note, petitioners rely, among other grounds, upon 6 NYCRR 624.13(e) as a basis for their petition. Section 624.13(e) provides that "[a]t any time prior to issuing the final decision, the commissioner or the ALJ may direct that the hearing record be reopened to consider significant new evidence." Because the 1993 order was issued more than ten years ago, an application pursuant to section 624.13(e) is untimely (see Matter of Mohawk Valley Organics, LLC., Commissioner's Ruling on Motion to Suspend Order and Reopen the Hearing Record, Sept. 8, 2003, at 4-5). Petitioners' application is more in the nature of a petition to reconsider a Commissioner's order after hearing (see id.).

unsigned map. Given the lack of a date, it cannot be determined whether the map is "new evidence." In any event, although it purports to provide certain information on porosity, it does not demonstrate that the parcels depicted are underlain by gas or were drained by a well or group of wells and, therefore, is not probative.

Accordingly, petitioners' claimed new evidence does not constitute "changed conditions" since the establishment of the Stagecoach Field. Moreover, petitioners do not provide any evidence, beyond mere speculation, that their properties should have been included in the Stagecoach Field. They offer no expert reports, technical, geological or engineering data, and no other scientific evidence or material new information that would support their claims.

Petitioners' claim of fraud is similarly unsupported. Their claim is that respondent Quaker State and its successor to the field, respondent Belden & Blake Corp., committed fraud when they withheld information from the Department that the Stagecoach Field boundaries were inaccurately established. Petitioners reference statements made by two former Quaker State employees that such information was withheld. In affidavits, however, the two former Quaker State employees categorically deny making the statements that petitioners attribute to them. Petitioners offer no direct evidence that respondents knew that the 1993 order did not accurately reflect the underlying gas producing formation and that they concealed that fact from the Department.

The 1993 order was issued after extensive Department review and analysis of the technical data relevant to the Stagecoach Field. Although that data was originally obtained from the well operator, it was independently verified by Department petroleum engineers and geologists. The field-wide spacing rules contained in the Stagecoach Field stipulations were the result of Department staff's extensive analysis of the data regarding the production characteristics of the field, and based upon professional and field experience, as well as the technical judgments of Department staff experts in the areas of petroleum geology and reservoir engineering.

In addition, the 1992 Stipulation that was signed between the Department and Quaker State Corporation, and various other stipulations relating to the Stagecoach Field, were publicly noticed and made available for public review. Petitioners' claims that, notwithstanding this extensive and independent technical and public review process, the 1993 order was effected by fraud are speculative and unsupported by any

factual or technical evidence.

No other basis for reconsidering the 1993 order is apparent from petitioners' submissions (see Matter of Mohawk Valley Organics, LLC., Commissioner's Ruling on Motion to Suspend Order and Reopen the Hearing Record, Sept. 8, 2003; Matter of Village of Elbridge, Commissioner's Ruling on Motion for Reconsideration, Sept. 26, 1995). Accordingly, the petition is denied.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

/s/

By: _____
ERIN M. CROTTY, COMMISSIONER

Dated: March 12, 2004
Albany, New York