

BEFORE THE OIL & GAS COMMISSION

THOMAS C. WHITNEY, : Appeal No. 899
: :
Appellant, : Review of Chief's Order 2015-55
: (Lulu Schonauer #1 Well)
-vs- :
: :
DIVISION OF OIL & GAS RESOURCES : FINDINGS, CONCLUSIONS
MANAGEMENT, : & ORDER OF THE
: COMMISSION
Appellee. :

Appearances: Robert W. Eckinger, Stephen A. Eckinger, Counsel for Appellant Thomas C. Whitney; Jennifer Barrett, Brett Kravitz, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; Gregory D. Russell, Timothy J. Cole, Counsel for *Amicus Curiae* Ohio Oil & Gas Association.

Date Issued: April 14, 2016

BACKGROUND

This matter comes before the Oil & Gas Commission upon appeal by Thomas C. Whitney from Chief's Order 2015-55. Chief's Order 2015-55 requires the plugging of an oil & gas well, known as the Lulu Schonauer #1 Well. Mr. Whitney is the current registered owner of the Lulu Schonauer #1 Well.

On March 24, 2015, Mr. Whitney appealed plug order 2015-55 to the Oil & Gas Commission. On April 13, 2015, the Division of Oil & Gas Resources Management [the "Division"] filed a *Motion to Dismiss* this appeal, asserting that the Commission lacked jurisdiction. On November 6, 2015, the Commission **denied** the Division's motion.

This matter proceeded to hearing on December 3, 2015 and February 11, 2016. At hearing, Mr. Whitney and the Division presented evidence and examined witnesses appearing for and against them. The parties filed post-hearing briefs, with the last filing received on March 8, 2016.

The Ohio Oil & Gas Association ["OOGA"] is a state-based trade organization with members drawn from all aspects of the oil & gas industry. On February 25, 2016, OOGA filed an *Amicus Curiae Brief*, addressing issues of particular interest to OOGA's membership. On March 9, 2016 (in response to the Division's argument that OOGA's brief was not filed in compliance with O.A.C. §1509-1-14(D)), OOGA filed a *Motion for Leave to File its Amicus Curiae Brief or, in the Alternative, Motion for Leave to File its Amicus Curiae Brief Instantly*. The Commission hereby **GRANTS** OOGA permission to participate in this matter as an *amicus curiae*, and the *amicus curiae* brief filed by OOGA on February 25, 2016 is **accepted** into the Record.

On April 7, 2016, the Appellee Division filed a *Motion to Admit Newly Discovered Evidence* pursuant to O.A.C. §1509-1-19(D). The Division asked the Commission to accept into evidence a February 9, 2015 invoice for the disposal of 130 barrels of brine from the Lulu Schonauer #1 Well. The Division suggests that this information influences the question of whether the Schonauer Well has viability into the future. On April 11, 2016, Mr. Whitney filed a *Response to Motion to Admit Newly Discovered Evidence*, arguing for the denial of the Division's motion. The Commission **FINDS** that the invoice proposed as evidence by the Division is not material to the Commission's ultimate decision in this appeal. Therefore, the Commission will not accept, or consider, the Division's newly-proposed evidence.

ISSUE

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in issuing Chief's Order 2015-55 to Thomas C. Whitney, which order required the plugging of the Lulu Schonauer #1 Well.**

FINDINGS OF FACT

1. In October 1983, the Lulu Schonauer #1 Well [the "Schonauer Well"] was drilled in Monroe Township, Coshocton County, Ohio. The registered owner of the Schonauer Well was Prime Time Energy Investments ["Prime Time" or "Prime Time Energy"]. Prime Time Energy is owned by Sharon & Dennis Zolman. Sharon Zolman is the President of Prime Time Energy.

2. The Schonauer Well was drilled to an approximate depth of 3,538 feet. No well completion report was submitted to the Division for the Schonauer Well.

3. O.R.C. §1509.11 requires owners of oil & gas wells to file annual reports with the Division reflecting well production. As of February 11, 2016, no annual production reports had been filed for the Schonauer Well.

4. In the past, the Schonauer Well may have been utilized by the landowner for domestic gas. However, there is no firm evidence establishing that the Schonauer Well has recently been utilized as a source of domestic gas.

5. Mr. Thomas Whitney is primarily a farmer. In 1969, Mr. Whitney purchased his first oil & gas well. Mr. Whitney has been involved in the oil & gas industry since that time. Mr. Whitney has owned between 20 - 40 wells, often in conjunction with Mr. Donald Ridgeway.

6. Currently, Mr. Whitney is the registered owner of 18 oil & gas wells in the State of Ohio.

7. Since its drilling in 1983, the Schonauer Well has been periodically inspected by the Division. Often, several years would pass between Division inspections. In the 31 years from October 1983 to May 2014, the Schonauer Well was inspected at least seven times by the Division.

8. In 1987, Mr. Whitney acquired a $\frac{1}{8}$ working interest in the Schonauer Well.¹ Even though Mr. Whitney acquired a $\frac{1}{8}$ working interest in this well, Prime Time Energy remained the registered owner of the Schonauer Well.

9. On September 7, 2004, the Division conducted an inspection of the Schonauer Well, and found the well to be idle and non-productive. On September 16, 2004, the Division issued a Notice of Violation to Prime Time Energy, requiring Prime Time to plug or produce the well by October 20, 2004. The Division did not conduct a follow-up inspection to assess Prime Time's compliance with the September 16, 2004 Notice of Violation. The Schonauer Well was not plugged or produced by October 20, 2004. The Division did not take any enforcement action directly related to Prime Time's failure to meet the October 20, 2004 compliance deadline. Prime Time did not report any production from the Schonauer Well in 2004.

10. Approximately three years later, on August 2, 2007, the Division again inspected the Schonauer Well, and again determined the well to be idle and non-productive.

¹ A working interest owner invests in a well and is liable for costs associated with the drilling and operation of the well. A working interest owner also participates in profits generated by a well.

A well may have several working interest owners.

While a working interest owner fully participates in the costs and profits of a well, the working interest owner is not considered the "registered well owner" under O.R.C. §1509.01(K). O.R.C. §1509.01(K) defines a well owner as:

... the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others,

As regards enforcement actions, the Division communicates only with the registered well owner. For example, copies of enforcement notices and orders are sent by the Division to the registered well owner. The Division does not send such notices and orders to working interest owners.

11. On September 26, 2007, Prime Time obtained a permit to plug the Schonauer Well. Prime Time did not plug the Schonauer Well before the permit's expiration on September 25, 2008. The Division did not take any enforcement action based upon this failure to plug.

12. On June 11, 2008, September 25, 2008, August 8, 2011 and July 24, 2013, the Division inspected the Schonauer Well, each time finding the well idle, unplugged and non-productive.

13. On April 10, 2014, the Division inspected the Schonauer Well, again finding the well idle, unplugged and non-productive. On May 15, 2014, the Division issued Chief's Order 2014-128 to Prime Time Energy. This order asserted that the Schonauer Well had not reported production since its drilling in 1983. Chief's Order 2014-128 required Prime Time Energy to plug the Schonauer Well within 30 days. This order was issued to Prime Time Energy, as the registered owner of the well.² Prime Time did not appeal Chief's Order 2014-128 to this Commission.

14. In May 2014 (after receiving plug order 2014-128), Sharon Zolman (President of Prime Time Energy) contacted Mr. Whitney, and inquired whether Mr. Whitney would be willing to "take over" as the registered owner of the Schonauer Well. At this time, it was Mr. Whitney's understanding that the Zolmans wanted to "get out of the oil & gas business." The Zolmans transferred the Schonauer Well to Mr. Whitney at no cost to Mr. Whitney.³ Mr. Whitney testified that the Zolmans did not inform him of pending plug order 2014-128.

² At this time, Mr. Whitney held a $\frac{1}{8}$ working interest in the Lulu Schonauer #1 Well. But, as Mr. Whitney was not the registered well owner, the Division did not provide Mr. Whitney with a copy of Chief's Order 2014-128.

³ The Commission received testimony about a \$5,000 payment from Mr. Whitney to Prime Time Energy made in October 2011. The Division speculated that this exchange of money could have been related to Mr. Whitney's acquisition of some interest in the Lulu Schonauer #1 Well. However, the evidence was not clear as to the purpose of this \$5,000 payment, and the timing of this payment does not coincide with other evidence relative to the transfer of the Lulu Schonauer #1 Well. Moreover, Mr. Whitney had dealings with Prime Time regarding other wells. Thus, the October 2011 payment is not clearly associated with the Schonauer Well.

15. On May 30, 2014 and June 3, 2014, respectively, Sharon Zolman and Thomas Whitney, signed a **Form 7 Change of Ownership Form**, memorializing the transfer of registered ownership of the Schonauer Well from Prime Time Energy to Thomas C. Whitney. The **Form 7** was filed with the Division on June 12, 2014.

16. Prime Time did not plug the Schonauer Well by June 15, 2014, as required by Chief's Order 2014-128. Rather, Prime Time transferred ownership of the Schonauer Well to Mr. Whitney only three days before the plugging deadline.

17. Before acquiring ownership of the Schonauer Well, Mr. Whitney did not seek information regarding outstanding enforcement orders on the Schonauer Well from either Prime Time or from the Division. Mr. Whitney did not review inspection logs, maintenance records, notices of violation or enforcement orders for the Schonauer Well prior to becoming the well's registered owner. Division witnesses testified that if Mr. Whitney had requested information on this well's compliance status from the Division, said information would have been readily provided.

18. From 1983 through June 12, 2014, Prime Time Energy was the registered owner of the Schonauer Well. During this 31-year period, no production reports were filed for this well.

19. Although no money was exchanged, on May 30, 2014, Mr. Whitney effectively "purchased" the Schonauer Well from Prime Time.

20. On June 12, 2014, the Division was notified of the transfer of the Schonauer Well's ownership from Prime Time Energy to Mr. Whitney, via the filing of a Form 7. The Division did not take any action to prohibit the transfer of the Schonauer Well to a new owner, even though the Division would have been aware that the well was subject to an active plug order at the time of transfer.

21. Effective June 12, 2014, Mr. Whitney became the registered owner of the Schonauer Well. At the time of transfer, Mr. Whitney was aware that the Schonauer Well had not been actively producing. Mr. Whitney was also aware that he might be required to plug this well.

22. In 2014, Mr. Whitney believed that the Schonauer Well could be rehabilitated and made productive. Ultimately, Mr. Whitney intended to sell, or transfer, this well to the landowner for domestic use.

23. In March 2015, as the registered owner of the Schonauer Well, Mr. Whitney would have been required to submit a production report to the Division for the months between June and December 2014. Mr. Whitney did not submit such a report.

24. On February 20, 2015, Chief's Order 2015-55 (the order under appeal) was issued to Mr. Whitney. Chief's Order 2015-55 required Mr. Whitney to plug the Schonauer Well within 30 days. The Chief's order provided no compliance options other than plugging.

25. Chief's Order 2015-55 recited certain facts regarding the "history" of the Schonauer Well, including: (1) the fact that in 2004 a plug or produce order was issued to Prime Time for this well, and (2) the fact that, a decade later in 2014, another plug order was issued to Prime Time for this well. Prime Time failed to comply with either of these plug orders.

26. Mr. Whitney testified that his receipt of Chief's Order 2015-55 in February 2015 constituted his first notice of the two previously-issued plug orders.

27. On March 24, 2015, Mr. Whitney filed a notice of appeal with the Oil & Gas Commission, contesting the issuance of plug order 2015-55. Mr. Whitney was not, initially, represented by counsel. Mr. Whitney retained counsel in November 2015, and was represented by counsel at the Commission's December 3, 2015 and February 11, 2016 hearings.

28. Mr. Whitney did not ask the Commission to stay Chief's Order 2015-55.

29. Mr. Whitney has not filed a request with the Division to place the Schonauer Well in Temporary Inactive Status.

30. According to Division testimony, the Schonauer Well does not qualify for temporary inactive status.

31. Upon receipt of Chief's Order 2015-55 in February 2015, Mr. Whitney initially intended to plug the Schonauer Well.

32. During the Fall of 2015, while still under order to plug the Schonauer Well, Mr. Whitney decided to undertake actions to rehabilitate this well. Mr. Whitney did not file a rehabilitation plan with the Division, nor did Mr. Whitney obtain the Division's approval to rehabilitate this well.

33. In September 2015, Mr. Whitney produced the Schonauer Well. The well produced at very low pressure. It is unclear how much actual oil or gas was produced from the Schonauer Well in September 2015.

34. Other violations of Ohio law are alleged to exist with regards to the Schonauer Well. Mr. Whitney appears willing to address and correct any outstanding issues of non-compliance. Mr. Whitney also appears willing to pressure-test the well's casing, in order to confirm the mechanical integrity of this well's casing.

35. In December 2015, the Division (through the Ohio Attorney General) filed suit against Mr. Whitney in the Coshocton County Court of Common Pleas, seeking a Temporary Restraining Order to prohibit his production of the Schonauer Well. The Division also sought civil penalties against Mr. Whitney. On December 16, 2015, the Coshocton County Court of Common Pleas granted the TRO.

DISCUSSION

The Division is the permitting and regulatory authority for all oil & gas operations in Ohio. Division staff is charged with inspecting oil & gas wells, in order to determine compliance with Revised Code Chapter 1509.

Ohio's oil & gas law requires registered well owners to file annual statements, indicating well production. *See O.R.C. §1509.11*. Pursuant to O.R.C. §1509.062(A)(1), if a vertical well has not reported production for two consecutive reporting periods, the Division Chief may order the well to be plugged.

The Schonauer Well was drilled in 1983. As of February 2016, no well production had ever been reported. In fact, the first attempt to produce the Schonauer Well appears to have occurred in September 2015. This attempt occurred after the Division had ordered this well to be plugged, and 31 years after the well was drilled.

The Division has possessed regulatory authority over the Schonauer Well for the past 32 years. During most of this 32-year period, the Schonauer Well was owned by Prime Time Energy. The Division's inspection schedule for this well has been sporadic. Often, several years passed between inspections. In 2004, and again in 2014, the Division ordered Prime Time to plug this well. Both orders were based upon the well's idle condition and Prime Time's failure to report production. Prime Time never plugged this well.

The plug order issued to Prime Time Energy in 2014 required the well to be plugged by June 15, 2014. Rather than plug the Schonauer Well, Prime Time transferred the well to Mr. Whitney. This transfer occurred only three day before Prime Time's plugging deadline.⁴

On June 12, 2014, Mr. Whitney became the registered owner of the Schonauer Well. Mr. Whitney testified that, upon transfer, he knew that this well had been unproductive for some time. However, he did not know that the well was actively subject to a plug order. According to Mr. Whitney's undisputed testimony, Prime Time never informed Mr. Whitney of the outstanding plug order. It appears that Prime Time actively concealed the plug order from Mr. Whitney.

⁴ There is a significant cost associated with the plugging of a well. The Division Chief testified that, if the Schonauer Well were to be plugged under the State's Orphan Well Program, such work could cost the State as much as \$50,000. A private contractor would likely accomplish this plugging at a significantly lower cost.

Chief Simmers testified that the Division regulates over 64,000 wells in the State of Ohio. These wells can be freely transferred between owners through private transactions. Such private transactions occur outside of the Division's "regulatory view."

O.R.C. §1509.31 requires that the Chief be **notified** of private transfers of wells. Such notification allows the Chief to "keep track" of responsible parties. However, the Chief plays no actual "role" in these transactions. The Chief does not "approve" or "disapprove" these private transfers of property. The Division simply "records" the transfers. Once a transfer is recorded (assuming that the new owner is bonded and insured), the Division's regulatory function shifts from the "old" registered owner to the "new" registered owner.

On June 12, 2015, the Division was notified that the Schonauer Well had been transferred from Prime Time Energy to Mr. Whitney.

Mr. Whitney is not new to the oil & gas business. He has been working in this industry for over 45 years. Thus, we must assume that Mr. Whitney has some experience and knowledge regarding the buying and selling of wells.

Prime Time Energy sold Mr. Whitney a well that was destined for immediate plugging. According to Mr. Whitney, Sharon Zolman (President of Prime Time Energy) never informed him of plug order 2014-128. And, the Division took no action to prohibit the transfer of this well.⁵

However, it is also true that Mr. Whitney purchased the Schonauer Well without conducting any research as to the well's regulatory compliance status.

⁵ The Division successfully argued that there is no statutorily-imposed obligation requiring the Division to notify a new well owner of outstanding plug orders. While this is true, the Division Chief testified that, in the future, the Division intends to notify new well owners of existing plug orders when a well is transferred. It is possible that Mr. Whitney may have a private cause of action against Mrs. Zolman or Prime Time Energy Investments based upon the facts surrounding the transfer of this well. But, Prime Time Energy and the Zolmans are not parties to the immediate appeal.

The immediate appeal is between Mr. Whitney and the Division. Mr. Whitney contends that: (1) had the Division Chief enforced the prior plug orders against Prime Time (issued in 2004 and 2014), or (2) had the Division Chief disapproved Prime Time's 2014 transfer of the Schonauer Well to Mr. Whitney, Mr. Whitney would not now be the owner of a well requiring immediate plugging.

Mr. Whitney argues that the Chief's current insistence on the immediate plugging of the Schonauer Well is unreasonable and inflexible.

The Schonauer Well has been idle for 32 years. It is true that the Division's current insistence on the plugging of the Schonauer Well stands in stark contrast to the Division's regulatory approach to this well during the preceding 31 years. It appears that since Mr. Whitney acquired this well in 2014, the Division has been much more aggressive in seeking the plugging of this well. The inconsistencies in the Division's enforcement efforts and practices are troubling.

The Chief explained that statutory changes in 2010 enhanced his enforcement authorities with regards to idle wells. *See O.R.C. §1509.062*. Chief Simmers also testified that, since he took charge of the Division in 2013, he has been committed to taking a serious and proactive approach to the plugging of idle wells.

The Ohio Oil & Gas Association's ["OOGA's"] *amicus* brief expresses the industry's concern that the plugging of wells might be viewed as an automatic requirement under O.R.C. §1509.062. The industry stresses that the plugging of a well should **not** be the **only**, or even the **preferred**, regulatory option where a well has failed to produce.

The industry's argument makes sense, as the fact that a well has not produced for two years is not always due to issues of well integrity or formation depletion. Sometimes, a well is not produced because of the financial condition of a well owner or because of other business or market-driven decisions.

OOGA advocates for some flexibility in the Chief's enforcement of the plugging language contained in O.R.C. §1509.062. The Commission agrees. The Commission **FINDS** that the plugging language of O.R.C. §1509.062 should be applied on a case-by-case basis and that the Chief should always consider site-specific factors before ordering a well to be plugged. The recent transfer of a well's registered ownership would be a factor deserving of the Division's consideration prior to the issuance of a plug order under O.R.C. §1509.062.

Where a well has failed to produce for two consecutive years, plugging is an option. But, the Division should provide, and encourage, pathways to other options, particularly where a well has demonstrated a potential to produce.

Chief Simmers testified to the many recent statutory changes instituted under Chapter 1509. Such changes require both the Division and the industry to adjust their practices and to embrace new procedures.

In consideration of these many recent statutory changes, the Commission suggests that orders of the Chief be drafted in a manner that very clearly set forth all available options. In this case, Mr. Whitney (who has been active in this industry for more than 45 years) appeared uninformed of the options available to him under Chapter 1509. Where the law is rapidly changing, the Division owes a particular duty to the regulated community to make sure that the community is well-informed regarding applicable procedures and processes.

In testimony, the Chief committed to notifying new well owners of pending regulatory actions. Thus, a new well owner would be informed of outstanding plug orders. While the Commission acknowledges that there is no legal requirement that the Division so notify a new well owner, such a practice would support the industry, support new well owners and support the Division's regulatory efforts.

In this case, it is clear that the Division has fully considered all relevant facts regarding the operation of the Schonauer Well, and that the Chief has made an informed decision to require the plugging of this particular well. The Chief's decision does not hinge solely on the well's lack of production for two consecutive years.

In light of the facts of this particular case, the Commission **FINDS** that it was not unlawful or unreasonable for the Division to order the plugging of the Schonauer Well, even though this well had been recently transferred to new owner.

CONCLUSIONS OF LAW

1. O.R.C. §1509.36 provides that any person adversely affected by a Chief's order may appeal to the Oil & Gas Commission. O.R.C. §1509.36 addresses the standard of review applied in Commission appeals, and provides *inter alia*:

If upon completion of the hearing the commission finds that the order appealed from was lawful and reasonable, it shall make a written order affirming the order appealed from; if the commission finds that the order was unreasonable or unlawful, it shall make a written order vacating the order appealed from and making the order that it finds the chief should have made.

Hearings before the Commission are *de novo* in nature; meaning that the Commission takes a "fresh look" at the evidence presented at hearing. The Commission is not restricted to a record developed before the Division Chief. Rather, the Commission may consider any evidence that either supports or refutes the Chief's decision under appeal.⁶

The Appellant has argued that the Division presented evidence that was "outside the actual text" of Chief's Order 2015-55. For example, Division witnesses testified regarding the mechanical integrity of the Schonauer Well's casing, even though such integrity was not specifically mentioned in Chief's Order 2015-55.

⁶ The Commission is an administrative review board, and operates on the agency level. The Commission's review is not restricted to a record developed before the Chief, and the Commission may freely evaluate factual issues. In fact, O.R.C. §1509.36 allows the Commission to substitute its judgment for that of the Chief (*i.e.* to modify a Chief's order under review) where appropriate. Thus, the scope of the Commission's review is not limited in the same manner as an appellate court's would be. Decisions of the Oil & Gas Commission are directly appealable into the Ohio courts (*see* O.R.C. §1509.37). Judicial review of a Commission decision is limited to the record developed before the Commission.

O.R.C. §1509.062 requires the plugging of idle wells. The Division Chief testified that the requirement to plug idle wells, in part, acknowledges that a well's integrity may be compromised if such well is allowed to set idle and uncared for.

The fact that Chief's Order 2015-55 did not specifically mention every concern associated with an idle well does not preclude the Commission from receiving or considering evidence on such concerns at a *de novo* hearing.

Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is both lawful and reasonable. In this appeal, Mr. Thomas Whitney shoulders the burden of proving, by a preponderance of the evidence, that Chief Order 2015-55 was unlawful or unreasonable.

The Commission may evaluate evidence that was not before the Division Chief at the time of his issuance of Chief's Order 2015-55. And, the Commission may receive evidence and arguments relative to matters not specifically articulated in Chief Order 2015-55, so long as such evidence or arguments either support, or refute, the Chief's issuance of Chief's Order 2015-55.

2. O.R.C. §1509.01 defines the "owner" of an oil & gas well as:

(K) "Owner," * * * means the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, * * *.

3. O.R.C. §1509.31 provides in part:

(A) Whenever the entire interest of an oil and gas lease is assigned or otherwise transferred, the assignor or transferor shall notify the holders of the royalty interests, and, if a well or wells exist on the lease, the division of oil and gas resources management, of the name and address of the assignee or transferee by certified mail, return receipt requested, not later than thirty days after the date of the assignment or transfer. When notice of any such assignment or transfer is required to be provided to the division, it shall be provided on a form prescribed and provided by the division and verified by both the assignor or transferor and by the assignee or transferee and shall be accompanied by a nonrefundable fee of one hundred dollars for each well. * * *

4. O.R.C. §1509.062(A)(1) provides:

The owner of * * * an existing well * * * that has no reported production for two consecutive reporting periods as reported in accordance with section 1509.11 of the Revised Code * * * shall plug the well in accordance with section 1509.12 of the Revised Code, obtain temporary inactive well status for the well in accordance with this section, or perform another activity regarding the well that is approved by the chief of the division of oil & gas resources management.

5. O.R.C. §1509.11 provides in part:

The owner of any well * * * that is producing or capable of producing oil or gas shall file with the chief of the division of oil and gas resources management, on or before the thirty-first day of March, a statement of production of oil, gas, and brine for the last preceding calendar year * * *.

6. O.R.C. §1509.12 provides in part:

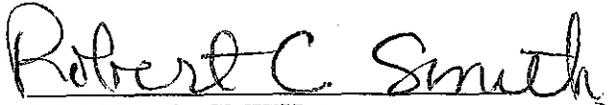
(B) When the chief finds that a well should be plugged, the chief shall notify the owner to that effect by order in writing and shall specify in the order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order. Each day on which such a well remains unplugged thereafter constitutes a separate offense.

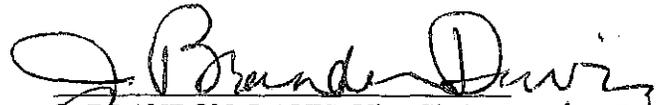
7. In this matter, it was not unreasonable or unlawful for the Division Chief to require the plugging of a well that had been idle for several years, even though the well was recently transferred to a new registered owner.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2015-55, and the Lulu Schonauer #1 Well shall be plugged.

Date Issued: 4/14/2016


ROBERT C. SMITH, Chairman *WT*


BRANDON DAVIS, Vice Chairman *WT*


JEFFREY J. DANIELS, Secretary *WT*

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

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**BEFORE THE
OIL & GAS COMMISSION**

THOMAS C. WHITNEY,	:	Appeal No. 899
	:	
Appellant,	:	
	:	Review of Chief's Order 2015-55
-vs-	:	(Lulu Schonauer #1 Well)
	:	
DIVISION OF OIL & GAS RESOURCES	:	
MANAGEMENT,	:	<u>INDEX OF EVIDENCE</u>
	:	<u>PRESENTED AT HEARING</u>
Appellee.	:	

Before: J. Brandon Davis

In Attendance: Jeffrey J. Daniels, Robert C. Smith

Appearances: Robert W. Eckinger, Stephen A. Eckinger, counsel for Appellant Thomas C. Whitney; Jennifer Barrett, Brett Kravitz, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; Gregory D. Russell, Timothy J. Cole, Counsel for *Amicus Curiae*, The Ohio Oil and Gas Association.

WITNESS INDEX

Appellant's Witnesses:

Donald E. Ridgeway	Direct Examination; Cross Examination
Thomas C. Whitney	Direct Examination; Cross Examination

Appellee's Witnesses:

Richard J. Simmers	Direct Examination; Cross Examination
Christopher Grimm	Direct Examination; Cross Examination
Robert Roush	Direct Examination; Cross Examination

EXHIBIT INDEX

Appellant's Exhibits:

- Appellant's Exhibit 1 Oil & Gas Lease from Leroy Schonauer, Executor of Lula M. Schonauer, *et al.* to Donald E. Ridgeway; dated 02/18/1983 (2 pages)
- Appellant's Exhibit 2 Summary of lease, assignments, affidavit of production and affidavit of forfeiture for the Schonauer #1 Well; various dates (1 page)
- Appellant's Exhibit 3 Assignment of 1/8th Working Interest in Schonauer #1 Well from Ridgeway to Whitney; dated 11/13/1987 (1 page)
- Appellant's Exhibit 4 Assignment of 1/16th Working Interest in Schonauer #1 Well from Ridgeway to Wilson; dated 11/13/1987 (1 page)
- Appellant's Exhibit 5 Assignment of Oil & Gas Lease on Schonauer #1 Well, assigning 1/16th working interests, from Ridgeway to CTR Resources Corporation and Ruffner G. Hamrick; dated 04/03/1984 (3 pages)
- Appellant's Exhibit 6 Chief's Order 2014-128, issued on 05/15/2014 to Prime Time Energy Investments for Schonauer #1 Well (3 pages)
- Appellant's Exhibit 7 Request for Change of Owner (Form 7), from Prime Time Energy Investment, Inc. to Thomas Whitney; signed 05/30/2014 and 06/03/2014 (2 pages)
- Appellant's Exhibit 8 Chief's Order 2015-55, issued on 02/20/2015 to Thomas C. Whitney for Schonauer #1 Well (3 pages)
- Appellant's Exhibit 9 Complaint with Request for Temporary and Permanent Injunction Relief; filed in the Court of Common Pleas for Coshocton County, Ohio; dated 12/15/2015 (22 pages)

- Appellant's Exhibit 10 Judgment Entry, case 15-CI-0496; Common Pleas Court for Coshocton County, Ohio; dated 12/16/2015 (2 pages)
- Appellant's Exhibit 11 Enforcement Actions issued by the Division between 09/07/2004 and 12/22/2015; re: the Lulu Schonauer #1 Well (19 pages)
- Appellant's Exhibit 12 E-mail from C. Grimm to D. Bear dated 04/30/2014 with attached draft of Chief's Order 2014-?? (4 pages)

Appellee Division's Exhibits:

- Appellee's Exhibit 1 Notice of Violation No. 1130395605; issued 09/116/2004 (1 page)
- Appellee's Exhibit 2 Facility Report; Schonauer #1 Well; inspection dated 07/24/2013 (1 page)
- Appellee's Exhibit 3 Facility Report; Schonauer #1 Well; inspection dated 04/10/2014 (1 page)
- Appellee's Exhibit 4 Three Photographs, Schonauer #1 Well; undated (testimony indicated that photographs were from April 2014) (2 pages)
- Appellee's Exhibit 5 Chief's Order 2014-128, issued on 05/15/2014 to Prime Time Energy Investments for Schonauer #1 Well (3 pages)
- Appellee's Exhibit 6 Request for Change of Owner (Form 7), from Prime Time Energy Investment, Inc. to Thomas Whitney; dated 05/30/2014 and 06/03/2014 (1 page)
- Appellee's Exhibit 7 Facility Report; Schonauer #1 Well; inspection date 09/12/2014 (1 page)
- Appellee's Exhibit 8 Seven Photographs, Schonauer #1 Well; taken 09/12/2014 (4 pages)
- Appellee's Exhibit 9 Chief's Order 2015-55, issued on 02/20/2015 to Thomas C. Whitney for Schonauer #1 Well (3 pages)

Appellee's Exhibit 10	Facility Report; Schonauer #1 Well; inspection dated 07/29/2015 (1 page)
Appellee's Exhibit 11	Nine Photographs, Schonauer #1 Wellsite; taken 07/29/2015 (5 pages)
Appellee's Exhibit 12	Facility Report; Schonauer #1 Well; inspection dated 11/20/2015 (1 page)
Appellee's Exhibit 13	Sixteen Photographs, Schonauer #1 Wellsite; taken 11/20/2015 (8 pages)
Appellee's Exhibit 14	Facility Report; Schonauer #1 Well; inspection dated 12/11/2015 (1 page)
Appellee's Exhibit 15	Two Photographs, Schonauer #1 Wellsite; taken 12/11/2015 (2 pages)
Appellee's Exhibit 17	Invoice for Cementing Work and Record of Casing, Cementing and Mudding; invoice date 12/30/1983; record date 01/05/1984 (2 pages)
Appellee's Exhibit 18	Invoice for Cementing Work and Record of Casing, Cementing and Mudding; invoice date 06/20/1984; record date 08/09/1984 (2 pages)
Appellee's Exhibit 19	Resume of Robert Roush (1 page)
Appellee's Exhibit 20	Map of Wells in Vicinity of the Lulu Schonauer #1 Well (1 page)
Appellee's Exhibit 21	Five Photographs, Schonauer #1 Wellsite; taken 12/11/2015 (5 pages)
Appellee's Exhibit 22	WITHDRAWN / OPEN
Appellee's Exhibit 23	State Oil and Gas Agency Groundwater Investigations; August 2011; pages 53 & 54 (3 pages)
Appellee's Exhibit 24	WITHDRAWN / OPEN