

BEFORE THE OIL & GAS COMMISSION

BIG SKY ENERGY, INC.,	:	Appeal Nos. 860 & 861
	:	
Appellant,	:	Review of Chief's Orders 2014-43 &
	:	2014-44; (Miller #1 Well; bond
-vs-	:	forfeiture; Cincinnati Insurance Co.)
	:	
DIVISION OF OIL & GAS RESOURCES	:	
MANAGEMENT,	:	<u>ORDER DISMISSING</u>
	:	<u>APPEALS</u>
Appellee.	:	

Appearances: Gino Pulito, Counsel for Appellant Big Sky Energy, Inc.; Jennifer Barrett, Elizabeth Ewing, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

BACKGROUND

These matters come before the Oil & Gas Commission upon appeal by Big Sky Energy, Inc. ["Big Sky Energy" or "Big Sky"] from Chief's Orders 2014-43 and 2014-44 [the "orders" or the "bond forfeiture orders"]. Both orders address the forfeiture of Big Sky's \$15,000 blanket bond, based upon conditions associated with a well, known as the Miller #1 Well. Chief's Order 2014-43 was directed to Big Sky Energy, as the purported owner of the Miller #1 Well. Chief's Order 2014-44 was directed to the Cincinnati Insurance Company, as the surety and guarantor of the bond supporting all wells owned by Big Sky Energy.¹

On February 25, 2014, Big Sky appealed Chief's Orders 2014-43 and 2014-44 to the Oil & Gas Commission. As these two matters address common questions of law and fact, and by agreement of the parties, these matters were **consolidated**.

¹ The Commission has provided notice of these proceedings to the Cincinnati Insurance Company. However, the surety has not participated in these appeals in any manner.

On March 11, 2014, Big Sky filed an *Application for Stay of Order Pending Determination of Appeal*, asking the Commission to stay the execution of Chief's Orders 2014-43 and 2014-44 during the pendency of the immediate appeals. On March 31, 2014, the Commission issued an order **denying** Big Sky's Application for Stay.

On April 9, 2014, Big Sky filed a *Renewed Application for Stay of Order Pending Determination of Appeal*. On April 16, 2014, the Commission issued an order **striking** Appellant's Renewed Application for Stay, as the application presented no new, or additional, facts or arguments in support of the request.

These appeals then came on for hearing upon their merits on June 12, 2014. At hearing, the parties presented evidence and examined witnesses appearing for and against them.

At hearing, the Commission received uncontroverted evidence establishing that the Miller #1 Well had been plugged and that efforts to restore the well site were in progress. In light of evidence presented during the June 12, 2014 hearing, the Commission elected to reconsider Big Sky's applications for stay, and on June 16, 2014, the Commission issued an order **granting** Big Sky's application for stay of the orders underlying these appeals.

Thereafter, on August 7, 2014, the Commission issued an *Order Calling for Status Reports*, wherein the Commission ordered the parties to file reports describing site conditions relative to restoration work at the Miller well site.

On August 20, 2014, rather than file the report as ordered by the Commission, the Division filed a *Motion to Rescind the Sua Sponte Stay of Chief's Orders 2014-43 and 2014-44 and Motion to Stay the August 7, 2014 Order Requiring the Parties to Submit Status Reports Pending Consideration of Commission Precedent*. On August 25, 2014, Big Sky Energy responded to the Division's motions. Big Sky's response included photographs of conditions at the Miller well site. The Division provided no report or verification of field conditions at the site.

On November 10, 2014, the Commission issued an *Order Denying Division's Motion to Rescind Stay, Denying Motion to Stay the Filing of Status Reports, and Calling for Status Reports*. This Order required the parties to report upon field conditions at the Miller well site by November 17, 2014.

On November 17, 2014, Big Sky and the Division filed Status Reports, which reports reflected that the Miller #1 well site was inspected by Division staff on September 24, 2014 and found to be fully restored.

FINDINGS OF FACT

1. On January 29, 2014, Chief's Order 2014-43 was issued to Big Sky Energy. Chief's Order 2014-43 found that Big Sky Energy had failed to comply with Chief's Order 2011-30, which had ordered Big Sky to plug the Miller Well by September 7, 2011. Chief's Order 2014-43 ordered the following:

IT IS HEREBY ORDERED:

(1) The entire amount of Big Sky Energy's fifteen thousand dollar (\$15,000) bond, bond number B-0347222, is forfeited.

(a) Pursuant to R.C. 1509.071(A), in lieu of forfeiture of the total amount of bond number B-0347222, the Cincinnati Insurance Company or Big Sky Energy may cause the Miller #1 Well to be properly plugged and abandoned and the area properly restored; or

(b) The Cincinnati Insurance Company or Big Sky Energy may pay the Treasurer of the State of Ohio the cost of plugging and abandoning the Miller #1 Well.

(2) Effective immediately, Big Sky Energy shall not operate any wells or produce from any wells in the State of Ohio.

(3) Big Sky Energy shall not operate any wells or produce from any wells in the State of Ohio until Big Sky Energy posts a new surety bond in the amount of fifty thousand dollars (\$50,000) and files the \$50,000 bond with the Division pursuant to R.C. 1509.07 and the rules adopted thereunder.

(See Division's Exhibit 6, p. 2.) The Chief's order articulated no deadlines for the actions listed under item 1(a) of its "Orders."

2. Bond number B-0347222 was issued by surety, the Cincinnati Insurance Company, with Big Sky Energy as the principal. This bond was issued in the amount of \$15,000 and served as a blanket bond for all wells registered to Big Sky Energy, Inc.

3. On January 29, 2014, Chief's Order 2014-44 was issued to the Cincinnati Insurance Company. Chief's Order 2014-44 also found that Big Sky Energy had failed to comply with Chief's Order 2011-30, which had ordered Big Sky to plug the Miller Well by September 7, 2011. Chief's Order 2014-44 ordered the following:

IT IS HEREBY ORDERED:

The entire amount of Big Sky Energy's fifteen thousand dollar (\$15,000) bond, bond number B-0347222, is forfeited. In lieu of forfeiture of the total amount of bond number B-0347222, the Cincinnati Insurance Company or Big Sky Energy may:

- (1) Cause the Miller #1 Well to be properly plugged and abandoned and the area properly restored; or
- (2) Pay the Treasurer of the State of Ohio the cost of plugging and abandoning the Miller #1 Well.

(See Division's Exhibit 7, p. 2.) Chief's Order 2014-44 went on to address some items specific to the rights and obligations of a surety, including (1) allowing Cincinnati Insurance 30 days to make its election of whether it would pay or perform under its surety agreement, and (2) setting forth the circumstances under which the Division would take action to terminate Cincinnati Insurance's right to perform remedial work under the surety agreement. *(See Division's Exhibit 7, pp. 2-3.)*

4. Immediately upon receiving Chief's Order 2014-43, Robert W. Barr, Sr. contacted the Division. On January 31, 2014, Robert W. Barr, Sr. informed Division Inspector Patrick Shreve that Big Sky would plug the Miller Well. (*See Division Exhibit 8.*) At some time after January 31, 2014, Roger Barr also contacted Inspector Shreve and informed the inspector that the Miller Well would be plugged.

5. On January 31, 2014, Robert W. Barr, Sr., on behalf of Big Sky Energy, prepared an application for a plugging permit, which was submitted to the Division on February 7, 2014. (*See Division's Exhibit 12, p. 4.*)

6. On February 25, 2014, Big Sky Energy appealed Chief's Orders 2014-43 and 2014-44 to the Oil & Gas Commission.

7. On March 14, 2014, the Division issued a plugging permit to Big Sky Energy for the Miller Well. The permit was issued for a two-year term, to expire on March 13, 2016. (*See Division's Exhibit 13.*)

8. By April 2014, plugging operations at the Miller Well had begun. However, because of weather, standing water and soft ground conditions, the plugging needed to be accomplished in "stages."

9. By May 6, 2014, the plugging of the Miller Well was complete, but there was still site restoration work to be accomplished. The deadline for restoration of the site was November 6, 2014 (six months following the completion of plugging).

10. On September 24, 2014, the Division conducted an inspection of the Miller #1 well site and determined that the well site had been fully restored.

DISCUSSION

In the State of Ohio, before being issued a permit to drill a well, or before operating or producing an oil & gas well, a well owner must post a performance bond. (*See O.R.C. §1509.07(B)(1).*) The purpose of the bond is to ensure that well owners comply with the laws and rules regulating the production of oil & gas. If an owner fails to comply with such laws and rules, or fails to comply with agreements or orders addressing its operations, the posted bond may be forfeited to the State, and the owner may be required to post a replacement bond. (*See O.R.C. §1509.071(A); O.R.C. §1509.04(E).*)

However, the forfeiture statute, O.R.C. §1509.071, provides certain alternatives to total forfeiture. Specifically, O.R.C. §1509.071(A) states:

In lieu of total forfeiture, the surety or owner, at the surety's or owner's option, may cause the well to be properly plugged and abandoned and the area properly restored or pay to the treasurer of state the cost of plugging and abandonment.

(Emphasis added.)

When threatened with forfeiture, an owner and its surety, still have certain options under O.R.C. §1509.071. An owner may: (1) allow the total forfeiture of its posted bond, (2) avoid total forfeiture by properly plugging and abandoning the well at issue, or (3) avoid total forfeiture by paying to the State the actual cost of plugging and abandoning the well.

Therefore, at the point of forfeiture, O.R.C. §1509.071(A) specifically allows an owner one last opportunity to come into compliance with the law and avoid total forfeiture. Significantly, both Chief's Orders 2014-43 and 2014-44 repeat the "in lieu of total forfeiture" language of the statute.

Robert W. Barr, Sr., on behalf of Big Sky Energy, elected the option of plugging and abandoning the Miller #1 Well, rather than allowing the total forfeiture of Big Sky Energy's blanket bond. Immediately, upon receipt of Chief's Order 2014-43, Robert W. Barr, Sr. contacted the Division to inform the Division that Big Sky Energy would plug the Miller Well. Big Sky applied for a plugging permit, which the Division granted. This permit was issued for a two-year period (*i.e.*, until March of 2016). The Miller Well was plugged by May 6, 2014, and restoration work at the site was then underway. In accordance with O.R.C. §1509.072(B), restoration work was required to be completed within six months of plugging (by November 6, 2014).

At the time of the merit hearing, Big Sky Energy was actively in the process of complying with item 1(a) of the "Orders" section of Chief's Order 2014-43. Moreover, Big Sky's compliance efforts were being undertaken under a plugging permit approved and issued by the Division Chief, and were proceeding in accordance with all applicable deadlines.²

On September 24, 2014, the Division determined that the Miller #1 well site had been fully restored.

Chief's Orders 2014-43 and 2014-44 provided to Big Sky Energy, or its surety, the option either to forfeit Big Sky's blanket bond or to plug and restore the Miller #1 Well site. Big Sky chose the option of plugging and restoring the well. Big Sky complied with Chief's Order 2014-43 and did so within all applicable time frames.

Big Sky's effective compliance with the mandates of Chief's Order 2014-43 renders appeals #860 and #861 moot, and supports the Commission's dismissal of these appeals.

It is the assumption and understanding of the Commission that, as Big Sky has successfully and timely complied with the subject orders, Big Sky's \$15,000 blanket bond is not forfeited and Big Sky is under no requirement to supply a replacement bond.

² Chief's Order 2014-43 sets forth no deadline, whatsoever, for the compliance activities articulated under item (1)(a) of its "Orders." The permit to plug issued by the Chief extends for a two-year period (until March 13, 2016). By May 6, 2014, Big Sky had plugged the Miller Well. Pursuant to O.R.C. §1509.072(B), site restoration was to be completed within six months of plugging (*i.e.*, by November 6, 2014).

CONCLUSIONS OF LAW

1. O.R.C. §1509.071(A) allows for the forfeiture of bond, and the posting of replacement bond, where an owner has failed to comply with certain provisions of law, or certain orders and agreements. However, O.R.C. §1509.071(A) allows an owner the option of properly plugging and abandoning a non-compliant well in lieu of total forfeiture. In these matters, Big Sky Energy has exercised its option to plug and abandon the Miller #1 Well in order to avoid forfeiture of its \$15,000 blanket bond.

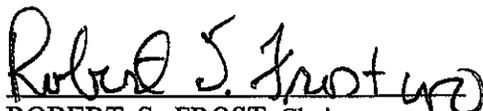
2. As Big Sky Energy has exercised its option under O.R.C. §1509.071(A) to perform the plugging and restoration of the Miller #1 Well and the associated well site, Big Sky Energy has avoided forfeiture and shall not, at this time, be required to repost bond in the amount of \$50,000.

3. As Big Sky Energy has successfully, and timely, complied with Chief's Order 2014-43, appeals #860 and #861 are rendered **moot**.

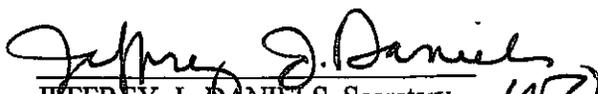
ORDER

Based upon the foregoing, and in light of Big Sky's compliance with Chief's Order 2014-43, the Commission hereby **DISMISSES** appeals #860 and #861 as moot.

Date Issued: December 4, 2014


ROBERT S. FROST, Chairman

J. BRANDON DAVIS, Vice Chairman


JEFFREY J. DANIELS, Secretary

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.

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