

BEFORE THE
OIL & GAS COMMISSION

MUNICIPALITY OF SEBRING, OHIO,	:	
	:	
Appellant,	:	Appeal No. 839
	:	
-vs-	:	
	:	
DIVISION OF OIL & GAS RESOURCES MANAGEMENT,	:	Review of Chief's Order 2011-37; (Ohio Valley Energy Systems, Grindley #1 Well)
	:	
Appellee,	:	
	:	
and	:	
	:	
OHIO VALLEY ENERGY SYSTEMS,	:	<u>FINDINGS, CONCLUSIONS</u>
	:	<u>AND ORDER OF THE</u>
	:	<u>COMMISSION</u>
	:	
Intervenor.	:	

Appearances: Andrew L. Zumbar, Counsel for Appellant Municipality of Sebring, Ohio; Molly Corey, Megan DeLisi, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; John K. Keller, Michael J. Settineri, Robert J. Krummen, Counsel for Intervenor Ohio Valley Energy Systems.

Date Issued: August 6, 2012

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by the Municipality of Sebring, Ohio ["Sebring" or "the municipality"] from Chief's Order 2011-37. Through Order 2011-37, the Chief of the Division of Oil & Gas Resources Management [the "Division"] **approved** an application for mandatory pooling, associated with the drilling of a well to be known as the Grindley #1 Well. Sebring owns property, which is affected by this mandatory pooling order. In total, 2.73 acres of unleased municipality-owned land (all in streets and alleys) are proposed to be mandatorily pooled into the Grindley #1 drilling unit. Ohio Valley Energy Systems ["Ohio Valley"] is the applicant for mandatory pooling, and intends to permit, drill and operate the Grindley #1 Well.

Sebring filed its appeal of Chief's Order 2011-37 with the Commission on September 27, 2011. Ohio Valley moved for intervention into this action. The Commission **granted** Ohio Valley's request for intervention, and Ohio Valley has participated in this appeal with full-party status. Ohio Valley's position is adverse to Sebring's position.

On May 15, 2012, this cause came on for hearing before three members of the Oil & Gas Commission. Commission member Howard Petricoff **recused** himself from this matter, and did not participate. At hearing, the parties presented evidence and examined witnesses appearing for and against them. Following the hearing, the parties filed written closing arguments, with the last filing received on July 2, 2012.

ISSUE

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in approving Ohio Valley's application for mandatory pooling for the well to be known as the Grindley #1 Well.**

THE LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.24 provides *inter alia*:

The chief of the division of oil and gas resources management ... may adopt, amend, or rescind rules relative to minimum acreage requirements for drilling units and minimum distances from which a new well may be drilled ... from boundaries of tracts, drilling units, and other wells for the purpose of conserving oil and gas reserves. **The rules relative to minimum acreage requirements for drilling units shall require a drilling unit to be compact and composed of contiguous lands.**

(Emphasis added.)

3. O.A.C. §1501:9-1-04 addresses the spacing of wells and provides:

(A) General spacing rules:

(1) The division of oil and gas resources management shall not issue a permit for the drilling of a new well . . . unless the proposed well location and spacing substantially conform to the requirements of this rule.

* * *

(4) A permit shall not be issued unless the proposed well satisfies the acreage requirements for the greatest depth anticipated.

* * *

(C) Location of wells:

* * *

(4) No permit shall be issued to drill . . . a well for the production of the oil or gas from pools from four thousand (4000) feet or deeper unless the proposed well is located:

(a) Upon a tract or drilling unit containing not less than forty (40) acres;

* * *

(c) Not less than five hundred (500) feet from any boundary of the subject tract or drilling unit.

(5) For new applications to drill wells in urbanized areas, the proposed wellhead location shall be no closer than seventy five (75) feet to any property not within the subject tract or drilling unit. . . .

4. O.R.C. §1509.27 provides *inter alia*:

If a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner of the tract who also is the owner of the mineral interest has been **unable to form a drilling unit under agreement as provided in section 1509.26 of the Revised Code, on a just and equitable basis**, the owner of such tract may make application to the division of oil and gas resources management for a mandatory pooling order.

The application shall include information as shall be reasonably required by the chief of the division of oil and gas resources management and shall be accompanied by an application for a permit as required by section 1509.05 of the Revised Code. The chief shall notify all owners of land within the area proposed to be included within the drilling unit of the filing of the application and of their right to a hearing. After the hearing or after the expiration of thirty days from the date notice of application was mailed to such owners, the chief, if satisfied that the application is proper in form and that mandatory pooling is necessary to protect correlative rights and to provide effective development, use, and conservation of oil and gas, shall issue a drilling permit and a mandatory pooling order complying with the requirements for drilling a well as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable . . .

(Emphasis added.)

FINDINGS OF FACT

1. Ohio Valley has applied for a permit to drill an oil & gas well in Smith Township, Mahoning County, Ohio. The well would be known as the Grindley #1 Well. The Grindley #1 Well is proposed to be drilled in an urbanized area, within the Municipality of Sebring.

2. The Grindley #1 Well is proposed to be drilled vertically to an approximate depth of 5,500 feet, and would produce from the Ohio Shale through the Clinton Sandstone Formation.

3. Based upon the proposed depth of the Grindley #1 Well, Ohio Valley attempted to assemble a drilling unit that was 40 acres in size, and that included all properties within 500 feet of the well.¹

¹ A "drilling unit" is defined at O.R.C. §1509.01(G) as "the minimum acreage on which one well may be drilled," Pursuant to O.A.C. §1501:9-1-04, a well proposed to produce from pools at, or deeper than, 4,000 feet must be sited on a drilling unit containing at least 40 acres. Such drilling units must also include all of the oil & gas rights associated with all properties located within a 500-foot radius of the proposed well.

4. The Grindley #1 drilling unit consists of twenty-five voluntary lessors, and four unleased mandatorily-pooled properties. The properties voluntarily pooled to create the Grindley #1 drilling unit encompass the oil & gas rights beneath 37.01 acres of ground. The unleased properties consist of 3.69 acres. The total acreage of the drilling unit (including voluntarily-leased properties and mandatorily-pooled properties) encompasses 40.7 acres.

5. The majority of the oil & gas leases supporting this drilling unit are non-drilling leases, which were entered into between individual landowners and Ohio Valley during 2008. The surface installations associated with this well are proposed to be located upon a 2.48-acre parcel of property owned by Dean and Deborah Grindley. Ohio Valley holds a development lease on the Grindley property.²

6. Sebring is the fee owner of the public roads and alleys located within this municipality. Some of these roads and alleys are located within 500 feet of the proposed Grindley #1 Well.

7. On January 28, 2008, Ohio Valley approached the Municipality of Sebring, asking the municipality to lease 8.5 acres of property (all utilized as public roadways). Ohio Valley offered to pay Sebring a \$100/acre signing bonus, and to pay Sebring royalties, in the amount of 1/8 of the proceeds from the production of the Grindley #1 Well, based upon Sebring's proportional share of the total drilling unit acreage. This same offer was made to Sebring on three additional occasions (July 7, 2009, April 19, 2010 and December 8, 2010). This offer was rejected by the municipality in June 2010, and no counter offers were made.

² A development lease for oil & gas grants to the lessee the mineral interests in the property and includes the right of ingress and egress for the surface development associated with a well. A non-development, or non-drilling, lease for oil & gas grants to the lessee only the underlying mineral interests and does not provide for any surface affectment of the property subject to the lease.

8. The Grindley #1 Well is proposed to be located within approximately 200 feet of a baseball field owned by the Sebring Local School District.³ The tank battery associated with this well is proposed to be located within approximately 400 feet of the ball field. The Sebring Local Board of Education, and other members of the community, have expressed safety concerns relative to the operation of this proposed well.⁴

9. On July 1, 2011, Ohio Valley filed with the Division an application to mandatorily pool 3.69 acres of oil & gas interests into the Grindley #1 drilling unit. This acreage included:

1. 2.73 acres of land owned by the Municipality of Sebring and utilized as streets and alleys, some of which are located within 500 feet of the proposed well,
2. 0.31 acre of land owned by Natalie Yaggi-Springer,⁵ a portion of which is located within 500 feet of the proposed well,
3. 0.31 acre of land owned by Karen Poorbaugh, a portion of which is located within 500 feet of the proposed well, and
4. 0.34 acre of land, representing a portion of a parcel owned by Gomer Enterprises; the pooling application only applied to include those acres of this parcel that were located within 500 feet of the proposed well.

With the inclusion of these proposed mandatorily-pooled properties, the Grindley #1 drilling unit encompasses the oil & gas interests on 40.70 acres of land.

³ The Sebring Local School District signed a voluntary non-development lease with Ohio Valley in June of 2008. The school property under lease to Ohio Valley consists of four separate parcels, totaling 18.43 acres. Testimony at hearing indicated that, at the time of signing a lease for this property, the proposed well location was different from its currently proposed location, and was located at a greater distance from the school ball field.

⁴ The Commission heard testimonies from Harry Hill, School Board Treasurer; Mayor Michael Pinkerton, Mayor; Douglas Burchard, Village Manager; James Cannell, Fire Chief; and Natalie Yaggi-Springer, local resident and mandatory pooling recipient; all of whom expressed safety concerns relative to this well.

⁵ Natalie Yaggi-Springer did not appeal Chief's Order 2011-37 (the mandatory pooling order). However, Ms. Yaggi-Springer appeared at the hearing before the Oil & Gas Commission, and gave testimony. Ms. Yaggi-Springer's testimony primarily addressed safety concerns relative to the proposed Grindley #1 Well.

10. On July 7, 2011, the Division sent to the mandatory pooling recipients, including the Municipality of Sebring, a Notification of Hearing before the Technical Advisory Council on Oil and Gas [the "TAC"].⁶ On August 9, 2011, the TAC conducted an oral hearing, addressing the Grindley #1 drilling unit. Six members of the TAC were in attendance. At the hearing, the TAC received information regarding the Grindley #1 Well. Following the presentations, the TAC, by a vote of 4 to 2, made a recommendation to the Division Chief to deny the Grindley #1 mandatory pooling application.

11. On August 25, 2011, the Division Chief issued Chief's Order 2011-37, which approved Ohio Valley's application for the mandatory pooling of 3.69 acres of land into the drilling unit for the Grindley #1 Well. Chief's Order 2011-37 states in part:

Findings

* * *

5. After having given due consideration to all testimony presented at the hearing and all facts filed by the applicant, a determination has been made that the application is proper in form and that mandatory pooling is necessary to protect correlative rights and to provide for the effective development, use and conservation of oil and gas.

Orders

1. It is hereby ordered that mandatory pooling is established for the drilling unit requirements of the well to be known as the Grindley #1.

* * *

5. A drilling permit will be issued to Ohio Valley Energy Systems Corporation for the Grindley #1.

(See Division's Exhibit G.) The Chief's Order did not specifically address the Division's decision to reject the recommendation of the TAC.

⁶ The TAC is created pursuant to O.R.C. §1509.38. In accordance with O.R.C. §1509.27, the Division is required to conduct hearings upon applications for mandatory pooling. Traditionally, this task has been delegated by the Division Chief to the TAC. Following its hearing, the TAC makes a recommendation to the Division Chief regarding applications for mandatory pooling. There is no statutory requirement that the Chief follow the recommendation of the TAC.

CONCLUSIONS OF LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief, if the Commission finds that the order appealed is lawful and reasonable. If the Commission finds that the order appealed is unreasonable or unlawful, the Commission shall make a written order vacating the order of Chief, and making the order that it find the Chief should have made.

2. O.R.C. §1509.24(A) requires that drilling units be configured so as to create units that are both "compact and composed of contiguous land." The Grindley #1 Well drilling unit is not "compact."

3. O.R.C. §1509.27 requires the Division Chief to order the mandatory pooling of properties where: (1) a tract of land is of insufficient size or shape to meet the spacing requirements of the law, (2) the Chief finds that the owner of the proposed well has been unable to form a drilling unit under agreement on a just and equitable basis, and (3) mandatory pooling is necessary to protect correlative rights and to provide effective development, use or conservation of oil & gas resources. Mandatory Pooling Order 2011-37 does not protect the correlative rights of the Municipality of Sebring, or the correlative rights of certain other landowners, with properties located in the vicinity of the proposed well.

4. Mandatory Pooling Order 2011-37, requiring the pooling of 3.69 acres of property, including 2.73 acres of property owned by the Municipality of Sebring, is not lawful and reasonable, as the proposed drilling unit is not "compact," as required by O.R.C. §1509.24(A), and as the mandatory pooling order does not protect correlative rights, as required by O.R.C. §1509.27.

5. The Chief's issuance of Order 2011-37 was not lawful and reasonable.

DISCUSSION

Ohio's oil & gas law is designed to protect both the public's interest in the conservation and efficient development of oil & gas resources, and the private property interests of those, like the Municipality of Sebring, who own land, which overlies deposits of oil & gas.

The law requires that an applicant for a drilling permit assemble a drilling unit meeting certain set-back, acreage and spacing requirements. See O.R.C. §1509.24; O.A.C. §1501:9-1-04. In addition to meeting the set-back, acreage and spacing requirements, all drilling units must be "compact," and "composed of lands that are contiguous." See O.R.C. §1509.24.

If an adequately-sized drilling unit cannot be established through the voluntary participation of landowner-lessors, the permit applicant may seek to mandatorily pool some non-leased lands into the drilling unit. See O.R.C. §1509.27.

Mandatory pooling is designed to allow for mineral development on a drilling unit, which is of insufficient size and/or shape to meet the requirements of the state's spacing laws. Mandatory pooling is considered a tool of last resort, and is used only when sufficient size and shape cannot be voluntarily achieved. See *Chodkiewicz v. Division & Ohio Valley Energy, Mark Scoville and Jerry Esker*, #788 (Oil & Gas Commission, October 31, 2008).

Mandatory pooling prevents a minority landowner, whose acreage is small but necessary to form a legal drilling unit, from disrupting the majority landowners' ability to develop their properties. It is designed not only to protect the voluntary lessors' correlative rights,⁷ but also to protect the correlative rights of the landowner whose property is mandatorily pooled. Under O.R.C. §1509.27, the landowner whose property is mandatorily pooled will receive royalties, proportionate to the acreage subject to pooling, and may elect to hold a working interest in the proposed well.⁸

⁷ "Correlative rights" is defined at O.R.C. §1509.01(1) as the "reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense."

⁸ A "working interest" would allow a landowner to participate in the profits of a successful well, subject to the payment of a share of all costs and expenses associated with the drilling and production of the well.

The Grindley #1 Well is proposed to be drilled to a depth of 5,500 feet. For a well of this depth, O.A.C. §1501:9-1-04(C) requires a 40-acre drilling unit, which must also include the oil & gas rights associated with all properties located within a 500-foot radius of the proposed well.

Ohio Valley attempted to obtain voluntary leases from the properties necessary to meet the set-back, acreage and spacing requirements for the Grindley #1 Well. Twenty-five landowners voluntarily leased their oil & gas rights to Ohio Valley. However, four landowners, whose properties are situated within the 500-foot radius of the proposed Grindley Well, chose not to lease the oil & gas rights beneath their properties. The inclusion of all properties within the 500-foot radius of a proposed well into the well's drilling unit is required. See O.A.C. §1501:9-1-04(C)(c). Ohio Valley requested to mandatorily pool all acres within 500 feet of the Grindley Well into this drilling unit.

In order to create a drilling unit composed of contiguous properties, Ohio Valley also proposed to mandatorily pool some additional unleased properties (owned by the Municipality of Sebring, and located outside the 500-foot radius of the well) into the drilling unit. These small properties are used to "connect" larger, leased parcels to the unit.

The Municipality of Sebring is the fee owner of the streets and alleys located within the limits of this municipality. Sebring chose not to lease the oil & gas rights associated with its property to Ohio Valley. Therefore, Ohio Valley applied to mandatorily pool 2.73 acres of municipality property into the Grindley #1 Well drilling unit. Inclusion of the 2.73 acres of Sebring streets and alleys was considered necessary by Ohio Valley for three reasons:

1. to achieve the required unit size of 40 acres,
2. to include all acreage within 500 feet of the proposed well, and
3. to "connect" leased properties, so that the properties included in the drilling unit would be contiguous.

O.R.C. §1509.27 addresses the procedures to be employed where mandatory pooling is requested, and allows for the inclusion of unleased properties into a drilling unit, only if:

... a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon ... and the owner of the tract who also is the owner of the mineral interest has been unable to form a drilling unit under agreement as provided in section 1509.26 of the Revised Code, on a just and equitable basis, ...

and, if the Division Chief is:

... satisfied that the application is proper in form and that mandatory pooling is necessary to protect correlative rights and to provide effective development, use, and conservation of oil and gas

...

(Emphasis added.)

In the immediate case, the Division Chief allowed the mandatory pooling of 3.69 acres of unleased land, including 2.73 acres owned by the Municipality of Sebring, into the Grindley #1 Well drilling unit. The Commission has **concluded** that the Chief's decision to allow mandatory pooling was unlawful and unreasonable.

The Grindley #1 Drilling Unit is Not "Compact" and "Contiguous."

The terms "compact" and "contiguous" are not defined by statute or regulation. All parties appear to agree that "contiguous" properties are properties that are adjoining, or connected without a break; and this appears to be the interpretation that the Division has applied to this term. In this matter, with the inclusion of the mandatorily-pooled properties, all properties within the Grindley #1 drilling unit are "connected." Thus, as proposed, the Grindley unit is "contiguous."

Without a statutory definition of "compact," or any written policy or standard addressing this concept, the Division (in its written closing arguments) directed the Commission to the dictionary definition of this term: "occupying a small volume by reason of efficient use of space."⁹

⁹ This definition provided by the Division is taken from www.merriam-webster.com.

Other dictionary definitions of "compact" more strongly emphasize the "closeness" suggested by this term. For example, Webster's Online Dictionary includes within the definition of compact: (1) "closely and firmly united or packed together," (2) "a close union of parts," and (3) "having a solid form."

Thus, a "compact" drilling unit does not necessarily indicate that the unit be as "small" as possible, but rather suggests that the unit be as "connected" as possible. Ideally, a drilling unit would be a large block of property with the well located in the middle. Where an owner is attempting to construct a drilling unit by combining many separately-owned properties, such an ideal unit is not always possible. However, a drilling unit that contains several parcels, which are only connected to each other by small "bridges" of mandatorily-pooled property, cannot be considered "compact."

The Grindley unit as currently proposed is not "compact." Sebring points out that some properties, as close as 501 feet from the well, are not included in the unit; while other properties, located more than 1,600 feet from the well, are included. Ohio Valley maintains that the elongated configuration of this unit was required in order to include leased lands at the extreme eastern and western boundaries of the unit. The most remote properties on the eastern and western boundaries of the unit are "connected" to the unit through the use of small sections of the mandatorily-pooled Sebring streets. (Included with this decision, as Attachment A, is Division's Exhibit B, a plat of the Grindley unit, with the properties proposed for mandatory pooling highlighted.) However, the use of small pieces of mandatorily-pooled properties for the purpose of connecting remote parcels to this drilling unit does not create a "compact" unit.

Ohio Valley originally offered to lease 8.5 acres of streets and alleys from the Municipality of Sebring. Under that original offer, entire stretches of roads would have been leased, as opposed to small "connecting" pieces of roads. The inclusion of more road area between leased properties would serve to make this drilling unit more "compact," as separate parcels would be more "connected" to the unit.¹⁰

¹⁰ For example, in its mandatory pooling application, Ohio Valley applied to pool two sections of road, each approximately 50 feet in length (just enough to serve as a "bridge" between certain leased properties). Including greater portions of the Sebring streets along and between leased properties would create a more "compact" unit.

Protection of Correlative Rights.

Pursuant to O.R.C. §1509.27, mandatory pooling will only be ordered if the Division Chief finds that mandatory pooling is necessary to protect correlative rights. The "protection of correlative rights" is defined at O.A.C. §1501:9-1-01(A)(25) as:

"Protection of correlative rights" means administration and enforcement of these rules and regulations by the chief in such a manner as to afford reasonable opportunity to **every person entitled thereto** to recover and receive the oil and gas in and under his tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or to incur other unnecessary expense.

(Emphasis added; see also O.R.C. §1509.01 (I).)

The protection of correlative rights is extended to all persons in the vicinity of a proposed well. Therefore, in reviewing mandatory pooling applications, the Division Chief must consider not only the correlative rights of those individuals who voluntarily leased their properties, but must also consider the correlative rights of the mandatory pooling recipients. See *Johnson v. Kell*, 89 Ohio App. 3d 623 (1993); *Bass Energy, Inc. v. Division and Duck Creek Energy, Inc.*, #815 (Oil & Gas Commission, January 29, 2010). Additionally, O.A.C. §1501:9-1-01(A)(25) would require the Chief to consider the correlative rights of other landowners in the area.

The importance of considering the correlative rights of landowners who are subject to mandatory pooling has been considered by this Commission previously:

A consideration of correlative rights is vital in examining mandatory pooling as mandatory pooling, by definition, forces a party who is the owner or lessee of property to use that property with another lessee and/or for a purpose or price not acceptable to him.

See *Jerry Moore, Inc. v. State of Ohio*, #1 (Oil & Gas Board of Review, July 1, 1966).

In this matter, Sebring asserts that the current configuration of the Grindley #1 drilling unit creates small "stranded" properties, some of which are surrounded on three sides by the drilling unit. The location of these "stranded" pieces of property makes it unlikely, or impossible, that these properties will be available for inclusion in units for other wells that might be drilled in this vicinity. Configuration of a drilling unit in a manner that creates "stranded" properties, fails to protect the correlative rights of Sebring and others.

The Commission also heard testimony indicating that some property owners in close proximity to the proposed Grindley #1 Well were not approached by Ohio Valley regarding the leasing of their oil & gas rights.¹¹ Failure to approach landowners in close proximity to this proposed well, and whose properties are truly contiguous to the proposed unit, for the purpose of seeking leases, is not protective of these individuals' correlative rights.¹² Moreover, as mandatory pooling is a tool of last resort, Ohio Valley should attempt to exhaust all voluntary leasing opportunities before seeking mandatory pooling. See Chodkiewicz v. Division & Ohio Valley Energy, Mark Scoville and Jerry Esker, supra.

Having determined that the proposed Grindley #1 drilling unit is not "compact," and that mandatory pooling in this case is not protective of correlative rights, the Commission could conclude its evaluation of the issues presented by this appeal. However, as Ohio Valley may elect to re-configure this drilling unit and submit a future application for mandatory pooling, the Commission will briefly address some additional issues, as guidance to the parties.

¹¹ Ben Funderburg of Ohio Valley testified that some property owners in close proximity to the proposed well were not approached. For other property owners in close proximity, Mr. Funderburg was not sure if they had been approached, but had no written record of any offers to lease being made to these landowners.

¹² Gomer Enterprises was a mandatory pooling recipient. Ohio Valley proposed to include in the drilling unit only that portion of the Gomer property that is located within 500 feet of the proposed Grindley Well. Gomer Enterprises did not appeal the mandatory pooling order. However, the inclusion of only a portion of the Gomer tract is inconsistent with the court of appeals' holding in Johnson v. Kell, supra, and appears to violate Gomer Enterprises' correlative rights.

Issues Regarding the Hill Lease:

Sebring raised an issue regarding the possible improper notarization of the Hill lease. A flaw in this lease is significant as the Hill property is used as a "bridge" to connect the easternmost Wayt parcels to the drilling unit. This Commission has consistently held that it is not authorized to adjudicate property rights issues. See *Clarence Tussel, Jr., et al. v. Division & Kastle Resources Enterprises*, #818, Order Granting Motion in Limine (July 16, 2010); *Bass Energy v. Division & Duck Creek Energy*, *supra*. Issues relating to the validity of the Hill lease would have to be determined by a court of competent jurisdiction.

Testimony at hearing from Division geologist Steve Opritza indicated that Mr. Opritza was unaware of any issues relating to the Hill lease at the time of his review of Ohio Valley's applications for a drilling permit and for mandatory pooling. Drilling applications must be accompanied by an Affidavit of Ownership, through which the applicant attests to its ownership of the mineral interests supporting a permit to drill an oil & gas well. See O.A.C. §1501:9-1-02(A)(4). The Division is required to evaluate this Affidavit as part of the permitting process. Issues relating to the validity of the Hill lease cannot be decided by this Commission. However, the Division (now aware of this issue) may consider this information in its review of any future Affidavit of Ownership regarding the Grindley Well.¹³

The Use of Mandatorily-Pooled Properties to "Connect" Remote Parcels to the Drilling Unit:

In this matter, some of the Sebring streets were requested to be pooled into the Grindley drilling unit because the streets were located within 500 feet of the proposed well. Such acreage is required, by the spacing laws, to be included in the drilling unit. See O.A.C. §1501:9-1-04(C)(c). It is more typical for the Commission to review mandatory pooling orders where the properties pooled are located within areas that are required by the spacing laws to be included in a drilling unit (*i.e.*, areas within 500 feet of a well proposed at this depth).

¹³ The Division has maintained in previous appeals, that if questions are raised relating to information contained within an Affidavit of Ownership, the Division will take steps to assure that the applicant possesses adequate property rights to support the requested drilling permit. See *Bass Energy v. Division & Duck Creek Energy*, *supra*.

It is more uncommon for mandatory pooling to be utilized to "connect" remote parcels to the drilling unit. Sections of Sebring roads and alleys were used in this case to connect the Hill property, the easternmost Wayt properties and some of the Sebring school properties.

The Commission finds no prohibition in the law, which would preclude utilizing mandatorily-pooled properties in this fashion. However, at the TAC hearing, two of the members recommending against pooling were particularly concerned about the use of mandatorily-pooled properties as "connectors." (See Division Exhibit F, transcript of TAC hearing.) The use of mandatorily-pooled properties in this fashion may not be forbidden by law, but did seem to be problematic for the TAC members who routinely review mandatory pooling applications.

In this matter, the Commission can see the logic of using the Sebring streets to connect properties owned by a single landowner, who has voluntarily elected to participate in the proposed well. However, this practice is not appropriate where the mandatorily-pooled "connectors" isolate properties, thereby failing to protect the correlative rights of certain landowners.

Failure to Follow the TAC's Recommendation:

O.R.C. §1509.27 requires the Division to conduct a hearing upon any application for mandatory pooling. It has been the Division's long-standing practice to delegate this function to the Technical Advisory Council on Oil & Gas [the "TAC"]. Following its hearing, the TAC makes a recommendation to the Division Chief regarding mandatory pooling. In this case, the TAC recommended, by a vote of 4 – 2, against mandatory pooling.

There is no requirement in the law that the Chief follow the recommendation of the TAC. And, in this case the Chief did not follow the TAC's recommendation. However, in testimony, Division geologist Steve Opritza was unable to articulate his rationale for rejecting the TAC's recommendation.

Mr. Opritza has significant experience in the area of mandatory pooling. However, where the recommendation of the TAC is not followed, and a mandatory pooling order is appealed, the Division should be able to provide information, which specifically explains and supports how the Division reached a determination that is inconsistent with the TAC's findings.¹⁴

The Depth of the Mandatory Pooling Order:

Oil & gas is produced from various formations, found at different depths within the strata underlying the ground's surface. The Grindley Well is proposed to produce from the Ohio Shale through the Clinton Formation. However, other oil or gas producing formations may exist in this area, which formations would be encountered at greater depths from the surface. It is possible for a landowner to lease "shallow" rights to one well, and to commit "deeper" rights to another well.

The Commission did not receive into evidence all of the leases that comprise the Grindley unit. However, the leases that were produced did not contain any depth restrictions. Thus, these leases appear to grant Ohio Valley the right to produce from any formation encountered beneath the lessors' properties. Notably, the 8.5 acre lease initially offered to the Municipality of Sebring contained no depth limitations.

At hearing, relative to discussions of correlative rights, the issue of which formations were affected by the mandatory pooling order was raised by Sebring. Ben Funderburg of Ohio Valley testified that Sebring could "keep its deep rights" for the areas subject to mandatory pooling. However, there is no written indication of what rights are "committed" under the mandatory pooling order. The Commission believes that this could be an area of significant conflict. The Commission suggests that the Division consider including language within its mandatory pooling orders that specifically addresses which formations are affected by mandatory pooling.

¹⁴ In testimony before the Commission, Mr. Opritza admitted that the Grindley Well mandatory pooling application presented a "close" case. In the transcript from the TAC hearing, Mr. Opritza stated that the use of small pieces of mandatorily-pooled property to "connect" remote parcels to a drilling unit was "unusual."

Inability to Voluntarily Form a Drilling Unit on a "Just and "Equitable" Basis:

To establish the right to a mandatory pooling order, an operator must be able to demonstrate that attempts to form a voluntary drilling unit, on a just and equitable basis, were unsuccessful.

The standard for "just and equitable" efforts has been addressed by this Commission in past cases. In *Jerry Moore, Inc. v. State of Ohio, supra*, the Commission held:

... unless the parties themselves so agree, the Chief of the Division ... shall determine, preferably after advice from the Technical Advisory Council, whether the owner-applicant has been unable to form such drilling unit under voluntary pooling agreement provided in Section 1509.26, Ohio Revised Code, and whether such owner- applicant has used **all reasonable efforts** to enter into a voluntary pooling agreement. Using "all reasonable efforts" **contemplates both a reasonable offer and sufficient efforts** to advise the other owner or owners of the same.

(Emphasis added.)

The Commission need not make the factual determination in this case, as to whether Ohio Valley's offer to Sebring was "just and equitable." However, the Commission would note that, in testimony, Division geologist Steve Opritza indicated that to determine if an offer is "just and equitable" the Division will compare the offer rejected by the mandatory pooling recipient to other offers in the area of the well at issue. The Commission did hear testimony that other offers on this specific drilling unit were significantly more generous than the offer made to the Municipality of Sebring.¹⁵

¹⁵ For example, the Sebring schools received a signing bonus that was approximately four times higher than that offered to the municipality, and the school board's lease contained a conversion clause, allowing a free-gas allotment to be converted into an annual cash payment. See Sebring Exhibit 8.

Safety Considerations:

All parties to this appeal stressed the importance of drilling and operating an oil & gas well in the safest manner possible, and in compliance with all safety standards set forth in the law. The Grindley Well is proposed to be drilled in an urbanized area, and would be located in relatively close proximity to the Sebring schools' baseball field. Each witness called by the Municipality of Sebring, and interested person Natalie Yaggi-Springer, testified as to safety concerns relative to this well.

During the hearing, the Commission received testimony from the Division and from Ohio Valley, that certain specific safety features would be implemented at the Grindley site. The drilling application, and the terms and conditions that accompany that application, were part of the record of this appeal. (See Division Exhibit A.) The Commission has reviewed the application, and has found that many of the safety features discussed at hearing are not articulated in the terms and conditions that accompanied this application.¹⁶ Significant testimony was provided by Sebring Fire Chief Cannell regarding concerns relative to access to the well site by emergency vehicles. O.A.C. §1501:9-1-02(E) sets forth several requirements, specifically addressing access to a well site by emergency equipment.¹⁷ Based upon the language of that regulation, it would appear that these requirements are applicable to the Grindley Well site. However, the Grindley application did not address the requirements of this rule.

Indeed, the Commission would recommend that the Division take a "harder look" at all safety issues, particularly in light of the current interest in the development of wells in the Utica Shale, which wells are produced at higher pressure. Additionally, permit applications should clearly articulate all safety requirements, which will be applied to a particular well.

¹⁶ The Commission heard testimony regarding the use of lightning arrestors. Such items are required by the regulations (O.A.C. §1501:9-9-05(E)(4)), but are not specifically mentioned within the permit application. Ohio Valley also testified that it would be willing to "strap down" the battery tank associated with the Grindley Well. But this commitment does not appear in the permit application.

¹⁷ For example, O.A.C. §1501:9-1-02(E)(4) requires that access roads in urbanized areas, that are in excess of 150 feet in length, must include turnaround areas for the ingress and egress of fire and emergency response.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **VACATES** the Division's issuance of Chief's Order 2011-37, and **CONCLUDES** that the mandatory pooling application for the Grindley #1 Well, as submitted on July 1, 2011, should be **disapproved**.

Date Issued: 8/06/12


ROBERT W. CHASE, Acting Chair


KAREN H. FRYER


JERRY D. JORDAN

RECUSED
M. HOWARD PETRICOFF

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:

Andrew L. Zumbar (Via Fax [330-821-5521], e-mail [lgzlawalliance@sbcglobal.net] & Certified Mail #: 91 7108 2133 3936 6716 8088)

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ATTACHMENT A

Division Exhibit B

Plat Showing Location of the Grindley Unit No. 1 Well
(mandatorily-pooled properties highlighted on original exhibit)

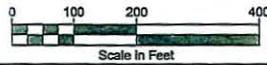
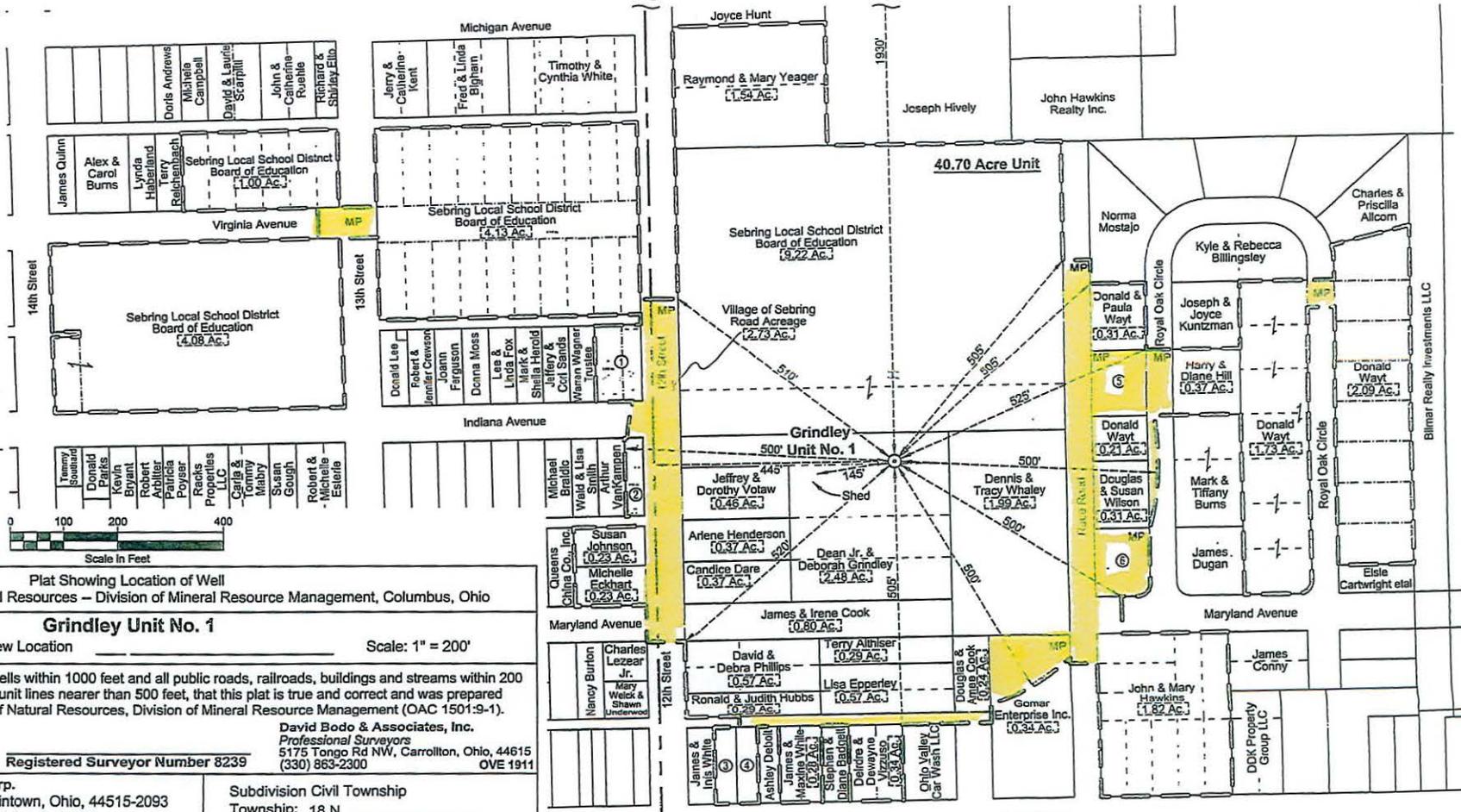


1. Racks Properties LLC 0.29 Ac.
2. Shawn & Mary Virtue 0.12 Ac.
3. James & Inis White 0.14 Ac.
4. John & Brenda Pedicord 0.14 Ac.
5. Karen Poorbaugh 0.31 Ac.
6. Natalie Yaggi 0.31 Ac.

Mandatory Pool (MP)		
Property Owner	Acreage	Distance to Target
Village of Sebring Roads	2.73 Ac.	325'
Karen Poorbaugh	0.31 Ac.	385'
Natalie Yaggi	0.31 Ac.	400'
Enterprise Inc.	0.34 Ac.	375'

4 MP - 3.69 Acres = 9.23% of 40 Acres
29 Leased Tracts totaling 37.01 Acres

Names and acreages compiled from the Mahoning County Auditor's and/or Recorder's records.



Plat Showing Location of Well
State of Ohio, Department of Natural Resources - Division of Mineral Resource Management, Columbus, Ohio

Grindley Unit No. 1

XX Oil or Gas XX New Location Scale: 1" = 200'

I hereby state that all drilling or producing wells within 1000 feet and all public roads, railroads, buildings and streams within 200 feet have been shown, there are no drilling unit lines nearer than 500 feet, that this plat is true and correct and was prepared according to the current Ohio Department of Natural Resources, Division of Mineral Resource Management (OAC 1501:9-1).

David Bodo & Associates, Inc.
Professional Surveyors
5175 Tongue Rd NW, Carrollton, Ohio, 44615
(330) 863-2300 OVE 1911

Registered Surveyor Number 6321 or Registered Surveyor Number 8239

Operator: Ohio Valley Energy Systems Corp.
Address: 200 Victoria Road, Building 4, Austintown, Ohio, 44515-2093

Landowner: Surface Dean Jr. & Deborah Grindley
Minerals See Map

Well Number: 1 Drilling Unit Acre: 40.70

County: Mahoning Township: Smith

Organized Area: Village of Sebring

Quadrant: Alliance

(NAD 83) Ohio State (NAD 27)

Plane Coordinates

X 2,379,905 X 2,411,365

Y 462,000 Y 461,970

Subdivision Civil Township
Township: 18 N
Range: 5 W
Section: 26 Lot: --
Tract: --
Subdivision: Congress Lands North
of the Old Seven Ranges
FEMA Panel No.: 39099C0267D
Zone: "X" Effective Date: Nov. 18, 2009
Elevation: 1109 Date: 06/28/2011
Coordinates are based on actual GPS field observations

EXHIBIT
R
DIVISION

BEFORE THE
OIL & GAS COMMISSION

MUNICIPALITY OF SEBRING, OHIO, :

Appellant, :

-vs- :

DIVISION OF OIL & GAS RESOURCES :
MANAGEMENT, :

Appellee, :

and :

OHIO VALLEY ENERGY SYSTEMS, :

Intervenor. :

Appeal No. 839

Review of Chief's Order 2011-37;
(Ohio Valley Energy Systems, Grindley #1 Well)

INDEX OF EVIDENCE
PRESENTED AT HEARING

Before: Robert Chase

In Attendance: Karen Fryer, Jerry Jordan

Appearances: Andrew L. Zumbar, Counsel for Appellant Municipality of Sebring, Ohio; Molly Corey, Megan DeLisi, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; John K. Keller, Michael J. Settineri, Robert J. Krummen, Counsel for Intervenor Ohio Valley Energy Systems.

WITNESS INDEX

Appellant's Witnesses:

Harry A. (Pete) Hill
Douglas A. Burchard
James Robert Cannell
Michael Pinkerton

Direct Examination; Cross Examination
Direct Examination; Cross Examination
Direct Examination; Cross Examination
Direct Examination; Cross Examination

Interested Person:

Natalie Yaggi Springer

Statement on Record; Cross Examination

Appellee's Witnesses:

Steve Opritza

Direct Examination; Cross Examination

Intervenor's Witnesses:

Ben L. Funderburg

Direct Examination; Cross Examination

EXHIBIT INDEX

Appellant Municipality of Sebring's Exhibits:

Appellant Sebring's Exhibit 1	Notice of May 15, 2012 hearing before the Oil & Gas Commission, with Certified Mail Receipts (6 pages)
Appellant Sebring's Exhibit 3	Letter from Ohio Valley Energy to Douglas A. Burchard, dated April 19, 2010, with Proposed Non-Development Lease (5 pages)
Appellant Sebring's Exhibit 4	Plat Showing Well Location, Grindley Unit #1, with Mandatory Pooling Areas marked, dated June 28, 2011 (1 page)
Appellant Sebring's Exhibit 5	Plot Plan with Contours (aerial photograph) Showing Location of Surface Well and Contour Lines, Grindley Unit #1, dated June 28, 2011 (1 page)
Appellant Sebring's Exhibit 6	Transcript of Sebring Village Council Workshop Session, held May 24, 2010 (8 pages)
Appellant Sebring's Exhibit 7	Minutes, Sebring Village Council Workshop and Meeting, May 24, 2010 (4 pages, two-sided)
Appellant Sebring's Exhibit 8	Non-Development Oil & Gas Lease, between Board of Education, Sebring Local School District and Ohio Valley Energy Systems Corp., dated June 24, 2008 (2 pages)
Appellant Sebring's Exhibit 9	Non-Development Oil & Gas Lease, between Harry A. Hill & Diane A. Hill and Ohio Valley Energy Systems Corp., dated July 9, 2008 (1 page)

PROFFERED

Appellant Sebring's Exhibit 10 - 20

Photographs, taken October 30, 2010, discussed during Yaggi-Springer testimony, (11 photographs), **NOT ADMITTED INTO EVIDENCE**

PROFFERED

Appellant Sebring's Exhibit 21

Article by Gayle Agnew, Oil tanks explode on Smith Twp. Farm, published November 1, 2010 (1 page), **NOT ADMITTED INTO EVIDENCE**

Appellee Division's Exhibits:

Appellee Division's Exhibit A

Ohio Valley Energy System's Application of Mandatory Pooling, Grindley Unit #1, filed July 1, 2011 (76 pages)

Appellee Division's Exhibit B

Plat Showing Location of Well, from Mandatory Pooling Application, Grindley Unit #1, with Mandatory Pooling areas marked in color, dated June 28, 2011 (1 page)

Appellee Division's Exhibit C

Plot Plan (color, aerial photograph), Showing Location of Surface Well and Structures, from Mandatory Pooling Application, Grindley Unit #1, dated June 28, 2011 (1 page)

Appellee Division's Exhibit D

Notification of Hearing Before the Technical Advisory Council on Oil and Gas, dated July 7, 2011, with attachments and Certified Mail Receipts (15 pages)

Appellee Division's Exhibit E

Map of Wells in Vicinity of Grindley Unit #1 (sent to Technical Advisory Council) (1 page)

Appellee Division's Exhibit F

Transcript of Proceedings before the Technical Advisory Council, August 9, 2011 (pages 1 - 3 + pages 40 - 104; 68 pages)

Appellee Division's Exhibit G

Chief's Order 2011-37 (Mandatory Pooling Order), Grindley Unit #1, issued August 25, 2011 (7 pages)

Intervenor Ohio Valley Energy Systems' Exhibits:

- | | |
|----------------------------|--|
| Intervenor OVE's Exhibit 1 | Plot Plan with Contours (color), Showing Location of Surface Well and Contour Lines, Grindley Unit #1, dated June 28, 2011 (1 page) |
| Intervenor OVE's Exhibit 2 | Plat Showing Location of Well, Village of Sebring Unit #1, dated December 20, 2005 (1 page) |
| Intervenor OVE's Exhibit 3 | Non-Surface Development Oil & Gas Lease, between Village of Sebring and Great Lakes Energy Partners, LLC, dated January 4, 2005 (1 page) |
| Intervenor OVE's Exhibit 4 | Non-Surface Development Oil & Gas Lease, between Village of Sebring and Great Lakes Energy Partners, LLC, dated January 4, 2005 (1 page) |
| Intervenor OVE's Exhibit 5 | Non-Surface Development Oil & Gas Lease, between Village of Sebring and Great Lakes Energy Partners, LLC, dated February 24, 2005 (1 page) |
| Intervenor OVE's Exhibit 6 | Non-Drilling Oil & Gas Lease, between Village of Sebring and Dorfman Production Company, dated May 28, 2008 (2 pages) |
| Intervenor OVE's Exhibit 7 | Minutes, Annexation Meeting, June 7, 2010 (1 page) |
| Intervenor OVE's Exhibit 8 | Plat, Showing Location of Well, Royal Sebring Unit #1, dated December 16, 2005 (1 page) |
| Intervenor OVE's Exhibit 9 | Plat, Showing Location of Well, United Die Unit #1, dated December 20, 2005 (1 page) |