

BEFORE THE OIL & GAS COMMISSION

MERIDIAN ENERGY COMPANY,
BIG SKY ENERGY, INC.¹,

Appellants,

-vs-

DIVISION OF OIL & GAS RESOURCES
MANAGEMENT²,

Appellee.

Appeal No. 832

Review of Chief's Order 2011-01
(Schloss-Hans Well #1)

FINDINGS, CONCLUSIONS & ORDER OF THE COMMISSION

Appearances: Gino Pulito, Counsel for Appellants Meridian Energy Company & Big Sky Energy, Inc.; Molly Corey, Megan DeLisi, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

Date Issued: November 3, 2011

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Meridian Energy and Big Sky Energy ["Meridian"] (see footnote 1) from Chief's Order 2011-01.

On January 5, 2011, Chief's Order 2011-01 [the "Plugging Order"] was issued to Meridian. This Order required Meridian to: (1) plug and abandon, or (2) produce within a specified period, a well known as the Schloss-Hans Well #1. On February 22, 2011, Meridian appealed the Plugging Order to the Oil & Gas Commission. This matter came on for hearing before the Oil & Gas Commission on October 14, 2011.

¹ The enforcement action under appeal was issued to Meridian Energy and Big Sky Energy. These companies are commonly owned, and Mr. Robert Barr, Sr. serves as the President of both companies. Per testimony at hearing, the well at issue is owned by Meridian Energy. Big Sky Energy does not currently have an interest in this well.

² Prior to September 29, 2011, Revised Code Chapter 1509 was administered by the Chief of the Division of Mineral Resources Management. On September 29, 2011, pursuant to Sub. H.B. 153, the Division of Mineral Resources Management was split into two divisions. The Chief of the Division of Oil & Gas Resources Management is now responsible for administering Chapter 1509, and the Division of Oil & Gas Resources Management is hereby substituted as the Appellee in this action.

ISSUE

The primary issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in issuing Chief's Order 2011-01, which ordered (in part) the plugging of the Schloss-Hans Well #1.**

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. §1509.12 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.

3. O.R.C. §1509.11 provides in part:

The owner of any well producing or capable of producing oil or gas shall file with the chief of the division of mineral 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 in such form as the chief may prescribe...

4. O.R.C. §1509.062(A)(1) provides:

The owner of a well that has not been completed, a well that has not produced within one year after completion, or 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 mineral resources management.

5. 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, except that a person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under this chapter

FINDINGS OF FACT

1. Meridian is the registered owner of certain oil & gas wells in the State of Ohio, including the Schloss-Has Well #1. Witnesses for Meridian testified that Meridian specializes in the rehabilitation of existing wells that have become unproductive. Meridian has rehabilitated several wells in Ohio.

2. The Schloss-Hans Well #1 is located in Claridon Township, Geauga County Ohio. This well was drilled in March 1985, to a depth of 4,006 feet, and was produced from the Clinton Group Formation. [Division Ex. A.] The Schloss-Hans Well was originally drilled on property owned by Mr. Ray Schloss. The drilling unit for the original well included properties owned by Mr. Schloss and Mrs. Hans. Historically, Mr. Schloss bought gas from this well to heat an asphalt plant located upon his property, and this well provided a domestic gas supply to the Hans home.

3. Meridian acquired the existing Schloss-Hans Well in 2001.

4. Prior to 2000, the Schloss-Hans Well produced in commercial quantities.³ Production reports on file with the Division indicate that this well was producing oil and/or gas from 1985 until 2000. Production levels dropped significantly after 1994.

³ Meridian testified that Mr. Schloss obtained gas from this well for his asphalt plant until about 2004, and that the landowner Mrs. Hans received domestic gas from this well until about 1998.

5. The Schloss-Hans Well last reported commercial production in 1996, during which year 35 barrels of oil were produced.⁴ The last production reported for this well was 45 mcf of gas in 2000 (not considered a commercial quantity). No production has been reported to the Division on this well since 2000.

6. On or about November 6, 2008, the Division received a complaint from Mr. Ray Schloss, indicating that the Schloss-Hans Well was idle.

7. On November 7, 2008, the Division inspected the Schloss-Hans Well, in response to Mr. Schloss' complaint [Division Exhibit B]. At this time, the Division determined that: (1) there had been no reported production since 2000, (2) the valves on the well were shut off, (3) the rods on the well were rusted, (4) the surface installations were overgrown with vegetation, (5) the motor was in disrepair, (6) lines were disconnected, (7) no chart existed in the meter box, and (8) the tank was approximately ¼ full of fluid. In response to the Division's inspection, Meridian began to take actions to address the identified issues.

8. On November 7, 2008, Division Inspector Tom Hill issued a Compliance Notice [commonly called a Notice of Violation or "NOV"] to Meridian, reflecting the field conditions observed on November 7, 2008. The NOV stated in part:

Well either needs plugged or put back into production by
02/07/2009 [90 days from inspection].

9. In November 2008, Meridian determined that the Schloss-Hans Well had approximately 800 pounds of "rock pressure," indicating that the well could produce in commercial quantities⁵.

⁴ Commercial production is found where there is an annual production of at least 15 barrels of oil or 100,000 cubic feet of gas from a well (or a combination thereof). See §O.R.C. §1509.062(A)(2).

⁵ More recently, the pressure on the well has dropped to approximately 660 pounds, which would still indicate a well capable of commercial production.

10. Prior to the issuance of the Plugging Order at issue, the Division Inspector reported the following information relative to the Schloss-Hans Well:

| Inspection Date | Field Conditions ⁶ |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| November 7, 2008 | Notice of Violation 1226070832 issued, finding that the Schloss-Hans Well was insufficiently equipped to prevent the escape of oil & gas and that the well was incapable of producing oil &/or gas in commercial quantities. Well valves were shut off. Surface equipment was rusted, disconnected or missing. [Division Ex. D]. The Notice of Violation ordered Meridian to plug or produce the well within 90 days (by February 7, 2009). Photographs taken [Division Ex. C]. |
| December 8, 2008 | Well not producing. A rig was on site, pulling rods and tubing. Initially, the Division believed that this work was directed towards the plugging of the well (eventually, the Division was informed that Meridian intended to produce this well, rather than plug it). |
| April 20, 2009 | Photograph taken of wellhead [Division Ex. F]. |
| July 22, 2009 | Well not producing. Tank battery had been installed. Wellhead had been damaged by the landowner or the landowner's agent (hit with front-end loader). |
| October 21, 2009 | Well not producing. Swedge had been threaded onto wellhead casing. |
| December 2, 2009 | Well not producing. Tank battery had been roughed in. Separator and tank were on site. Landowner had created an asphalt berm around wellhead. |
| April 21, 2010 | Well not producing. No change in field conditions from December 2, 2009. |
| June 21, 2010 | Well not producing. Division was informed that litigation had been commenced in the local courts regarding this well. |
| September 20, 2010 | Well not producing. Tank battery was not hooked up to the well. |
| November 30, 2010 | Well not producing. No change in field conditions from September 20, 2010. Division spoke with a representative of Meridian (on December 6, 2010), who indicated that Meridian was working with Dominion East Ohio Gas, with the purpose of connecting to the Dominion East Ohio Gas transmission line. Photographs taken [Division Ex. G]. |

11. During the time period between 2006 and 2007, Mr. Schloss sold his property to an entity, perhaps Kokosing Materials, Inc. ["Kokosing"].⁷ On June 5, 2009, Kokosing (the proclaimed successor-in-interest to the Schloss property) filed an action in the Geauga County Court of Common Pleas, addressing the ownership of this property and the validity of the Schloss oil & gas lease. The Common Pleas action sought a temporary restraining order against Meridian, with the permanent relief being an end to Meridian's efforts towards producing the well. That litigation is still pending, but has been stayed pending the outcome of this proceeding.

⁶ The field information is taken from Division Inspection Reports [Division Ex. E] and from the testimony of Division Inspector Tom Hill.

⁷ The present ownership of the Schloss property is the subject of litigation in the Geauga County Court of Common Pleas. While it had been represented to the Division that Ray Schloss sold his property (the property on which the well is located) to Kokosing Materials, this fact is disputed in the local court action.

12. At sometime prior to June 21, 2010, Mrs. Hans sold her property to Ms. Jean Brunner, who now resides on this property.

13. Meridian has invested between \$15,000 and \$20,000 in the rehabilitation of the Schloss-Hans Well. Efforts by Meridian to produce this well include: (1) attempts to "tie into" the Broad Street line⁸ (in approximately 2008), (2) arrangements to tap into a Dominion East Ohio Gas transmission line (on January 14, 2011 [Appellants' Exhibit 3]), (2) payment of \$2,000 to Dominion East Ohio Gas for a tap into its transmission line (on March 24, 2011 [Appellants' Exhibit 4]), (3) payment of approximately \$3,500 to Geneva Pipeline to install the tap into the Dominion East Ohio Gas transmission line, (4) installation of approximately 1,500 feet of pipe to connect the well to the transmission line, (5) ordering of two regulators, at a cost of \$2,300 per unit, (in or around October 2011), and (6) installation of a new line to provide domestic gas to landowner Jean Brunner (residing on the former Hans property).

14. Meridian has faced several impediments to the production of this well, including: (1) litigation filed by alleged new landowner Kokosing (on June 5, 2009), (2) having the sheriff called to the well site by Kokosing for alleged trespass (on August 19, 2011), (3) damage to the wellhead (hit by a front-end loader operated by a landowner or a landowner's agent, between December 2008 and July 2009), and (4) physical interference with attempts to connect to the transmission line (truck parked over area where connection would be made, late September or early October 2011).

15. In order for the Schloss-Hans well to produce, Meridian needs to: (1) install two regulators, (2) trench and install lines in a small area for connection to the transmission lines, and (3) connect surface equipment to the tank and the transmission lines. These activities would require approximately 2 months to accomplish.

16. Meridian testified that, if properly rehabilitated, the Schloss-Hans Well could be productive for another 15 - 20 years.

⁸ Broad Street operates a producer-gathering line. Ultimately, Meridian was not allowed to tie into this line, and approached Dominion East Ohio Gas, for the purpose of connecting to the Dominion East Ohio Gas transmission line.

17. On January 5, 2011, the Division issued Chief's Order 2011-01. Plugging Order 2011-01 found the Schloss-Hans Well to be "incapable of producing oil and/or gas in commercial quantities." The Plugging Order required Meridian to either: (1) place the well into production within 10 days, or (2) properly plug and abandon the well within 30 days.

18. Since the issuance of Chief's Order 2011-01, the Division has conducted several inspections of this well site, noting the following field conditions:

| Inspection Date | Field Conditions ⁹ |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| January 18, 2011 | Well not producing. No apparent change in site conditions. |
| March 8, 2011 | Well not producing. Valves were closed. Two-inch pipe had been connected to the top of the valve. Wellhead was not connected to tank battery. |
| March 10, 2011 | Well not producing. No change in field conditions since March 8, 2011 inspection. Photographs taken [Division Ex. K]. |
| March 16, 2011 | Well not producing. Inspection noted that spacing between well and separator was inadequate, and would need to be corrected, if well is to be produced. ¹⁰ |
| June 23, 2011 | Well not producing. Wellhead was connected to the flow line, and the flow line was connected to the separator. The separator was connected to a sales line, but valves were closed. |
| June 24, 2011 | Well not producing. Meridian was prepared to "flow" the well into the production tank, but was not allowed to do so by the Division, as the use of the flexible line in place between the well and the production tank was not to industry standards. Spacing issues continued to exist between well and separator (measured at 48 feet, needs to be at least 50 feet), and between separator and production tank (measured at 5 feet, 5 inches, needs to be at least 10 feet). |
| August 19, 2011 | Well not producing. Tap had been installed to Dominion East Ohio Gas' transmission line. |
| August 22, 2011 | Well not producing. Meridian was running its sales line to Dominion East Ohio Gas' transmission line |
| September 15, 2011 | Well not producing. Sales line installed, but not connected to production tank, separator or transmission line tap. |
| October 4, 2011 | Well not producing. Sales line installed to within 150 feet of the Dominion East Ohio Gas' tap. Landowner had parked truck in the area where the sales line needed to be trenched and connected to the transmission line. Sales line was still disconnected from separator and production tank. |
| October 13, 2011 | Well not producing. Spacing between separator and production tank had been corrected. Sales line was not connected to the separator; but separator and production tank had been connected. Sales line was installed to within 50 feet of the tap into the transmission line. Photographs taken [Division Ex. L]. |

⁹ Field information taken from Division Inspection Reports [Division Ex. J] and the testimony of Division Inspector Tom Hill.

¹⁰ Spacing between wellhead and separator measured at 45 feet (measured at 48 feet on June 24, 2011). O.R.C. §1509.021(N) requires 50 feet of separation between these items.

19. On February 22, 2011, Meridian appealed Plugging Order 2011-01 to the Oil & Gas Commission. The appeal of this Plugging Order is the subject of the immediate decision.

DISCUSSION

Ohio oil & gas law requires the owner of an oil & gas well to file a statement of production with the Division on an annual basis. *See O.R.C. §1509.11*. Pursuant to O.R.C. §1509.062, if an existing well has not reported production for two consecutive reporting periods, that well may be plugged, placed into temporary inactive status, or the operator may be directed to perform other approved activities relative to the well.

Generally, wells that are found to be "incapable of producing oil or gas in commercial quantities," qualify for plugging. (*See Michael L. Kiser, dba Bootstrap Oil vs. Division, case no. 775 [Oil & Gas Commission, November 21, 2008]; Cheftain Energy Corporation vs. Division, case nos. 734, 735 & 741 [Oil & Gas Commission, February 6, 2006]; Alsid Oil & Gas vs. Division, case no. 650 [Oil & Gas Commission, January 11, 1999]*). The plugging of non-productive wells is intended to protect both the environment and other oil & gas producing strata.

The Division inspects oil & gas well sites to determine whether oil & gas operations are being conducted in accordance with Revised Code Chapter 1509, and to determine whether oil & gas wells are being commercially produced. In this case, the inspection of the Schloss-Hans Well was not the result of routine inspection, but rather followed a complaint lodged by Mr. Ray Schloss, indicating the presence of an idle well on property that he owned or previously owned.

To determine if a well is productive, the Division relies upon the submitted annual production reports and the field condition of the well. The evidence adduced at hearing revealed that the Schloss-Hans Well has historically produced in commercial quantities. Yet, there has been no reported production from this well since 2000. The evidence at hearing also revealed that Meridian has taken significant steps towards returning this well to a productive state.

Plugging Order 2011-01, issued on January 5, 2011, determined that the Schloss-Hans Well was "incapable of commercial production." This finding was based, in part, upon the fact that production reports filed for the past several years had not shown commercial production, and, in part, upon the field condition of the well.

To determine whether the Division Chief has reasonable grounds to find that a well is "incapable of producing oil or gas in commercial quantities," this Commission has developed a five-point test. *State of Ohio v. Baldwin Producing Corporation, No. 76AP-892 (Court of Appeals, Franklin County [March 10, 1997]).*

The *Baldwin* test requires consideration of five indicia of commercial production, which are:

1. Has the owner of the well requested permission from the Chief for the well to stand idle and presented firm, reasonable plans, which he is capable of carrying out, to produce oil or gas in commercial quantities?
2. How recently the well has, in fact, produced oil or gas in commercial quantities and how much oil or gas has been sold?
3. Is the well equipped sufficiently with both surface and in-hole equipment to allow for commercial production?
4. How recently have actual good faith on-site attempts been made to produce the well in commercial quantities?
5. Has the state caused investigation to be made on the well site?

(See also: Lake Underground Storage v. Mason, appeal #487 (June 27, 1996); Alsid Oil & Gas v. Division, appeal #650 (January 11, 1999).)

The first criteria set forth under the *Baldwin* analysis asks: (1) whether the well owner has requested permission from the Division Chief to allow the well to stand idle, and (2) whether the well owner has presented firm, reasonable plans to produce the well in commercial quantities. In this case, Meridian has not requested to place the Schloss-Hans Well in temporary inactive status. O.R.C. §1509.062, enacted in June 2010, sets forth a new procedure for placing wells in inactive status. The new status of allowing a well to be "permitted to stand idle" was available for the Schloss-Hans Well, but this status is not currently in wide use. Witnesses for Meridian also expressed confusion regarding the interface between the NOV and the action pending in the Common Pleas Court.

The existence of the litigation in Geauga County, relating to ownership of the former Schloss property and the validity of the Schloss oil & gas lease, suggests that temporary inactive status may be appropriate for the Schloss-Hans Well, and may be an option available to Meridian.

Baldwin also asks whether the owner has presented firm and reasonable plans to produce the well in commercial quantities, which plans the owner is capable of accomplishing. The testimony of Meridian's witnesses revealed that such plans do exist regarding the future production of the Schloss-Hans Well, and that these plans have been communicated to the Division. Testimony from witnesses for Meridian established that Meridian's business model is to acquire and rehabilitate once productive wells that are out of production. Meridian's experience in this area suggests that Meridian is in a position to accomplish its proposed plans for the Schloss-Hans Well.

The second criteria under *Baldwin* asks how recently a well has produced in commercial quantities. O.R.C. §1509.062(A)(2) defines "commercial production" as the annual production of at least 100,000 cubic feet of natural gas and/or fifteen barrels of crude oil. In this regard, the production reports filed with the Division reveal that the last commercial production from the Schloss-Hans Well occurred in 1996, and that no production was reported after 2000. However, these facts are not determinative of whether the Schloss-Hans Well is "capable" of commercial production. Given the fact that Meridian rehabilitates historically productive wells, it is not surprising that the Meridian has elected to rehabilitate the Schloss-Hans Well. Indeed, readings of "rock pressure" within this well showed pressures between 660 – 800 pounds. Such rock pressures indicate the well's capacity to be commercially produced.

Under *Baldwin*, the Commission may also examine whether the well is sufficiently equipped for production. In this regard, exhibits and testimony presented at hearing established that, while the Schloss-Hans Well has not been totally "hooked up" to a production system, most of the necessary equipment has been purchased and installed. In fact, the evidence revealed that the Schloss-Hans Well could be brought into production if: (1) two regulators are installed, (2) lines (that there already in place) are connected to the transmission line tap, and (3) surface equipment present at the well is fully "hooked-up."

Baldwin also asks how recently good faith attempts have been made to produce the well in commercial quantities. In this regard, witnesses for Meridian testified to several actions, which Meridian has undertaken (as early as 2008 and as recently as October 2011) to rehabilitate the Schloss-Hans Well. Meridian estimates that it has invested between \$15,000 and \$20,000 in the rehabilitation of this well, although Division Exhibits A through L show that this work has not been completed, especially at the wellhead.

Finally, *Baldwin* asks whether the State has investigated the well site. Division inspection reports, covering inspections conducted over the past three years establish that this site has undergone extensive investigation.

The evidence at hearing established that the Schloss-Hans Well is not currently in commercial production. However, the evidence also firmly showed that this well is actively being prepared for production, and that there is good reason to believe that the well, when fully rehabilitated, will be capable of commercial production. Indeed, witnesses for Meridian estimate that this well, when rehabilitated, may produce for 15 - 20 years into the future.

There is clearly a dispute between Meridian and the current landowners as to whether this well should be plugged or placed into production. The alleged current landowner has taken several actions to thwart Meridian's production of this well. This controversy is currently being litigated in Common Pleas Court. However, the existence of divergent opinions regarding the production of this well does not alter Meridian's right to produce this well under the existing permit, and under what, at this time, is a recorded and validly-executed lease.

In Ohio, the "conservation" of a natural resource, and particularly that aspect of conservation which includes the development of the natural resources of the State, is an important consideration. O.R.C. §1509.20 requires that reasonable precautions be taken to prevent the waste of oil & natural gas. Prematurely plugging the Schloss-Hans Well could result in permanent loss of hydrocarbons.

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 both lawful and reasonable.
2. The evidence presented has not established that the Schloss-Hans Well #1 is incapable of production of oil and/or gas in commercial quantities. *State of Ohio v. Baldwin Producing Corporation, No. 76AP-892 (Court of Appeals, Franklin County [March 10, 1997])*.
3. The Chief's issuance of Order 2011-01, which may require the plugging of the Schloss-Hans Well #1, is unreasonable under the facts of this case.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby VACATES the Division's issuance of Chief's Order 2011-01. Meridian shall be permitted to continue its efforts towards production of the Schloss-Hans Well #1 or may seek to place this well in temporary inactive status under the provisions of O.R.C. §1509.062.

Date Issued: 11/3/2011


M. HOWARD PETRICOFF, Chairman


ROBERT W. CHASE


KAREN H. FRYER

ABSTAINED
JERRY D. JORDAN

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:

Gino Pulito, Via Fax [440-322-6474] & Certified Mail # 91 7108 2133 3936 6718 6822
Molly Corey, Megan DeLisi, Via Fax [614-268-8871] & Inter-Office Certified Mail # 6647

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DIVISION OF OIL & GAS RESOURCES
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Appeal No. 832

Review of Chief's Order 2011-01
(Schloss-Hans Unit #1)

**INDEX OF EVIDENCE
PRESENTED AT HEARING**

Before: Howard Petricoff, Chairman

In Attendance: Robert Chase, Karen Fryer

Appearances: Gino Pulito, Counsel for Appellants Meridian Energy Company & Big Sky Energy, Inc.; Molly Corey, Megan DeLisi, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

WITNESS INDEX

Appellants' Witnesses:

Robert Barr, Jr.
Robert Barr, Sr.

Direct Examination; Cross Examination
Direct Examination; Cross Examination

Appellee's Witnesses:

Tom Hill

Direct Examination; Cross Examination

| | |
|----------------------|-------------------------------------------------------------------------------------------|
| Appellee's Exhibit E | Division Inspection Reports, Schloss-Hans Well #1, December 11, 2008 to November 30, 2010 |
| Appellee's Exhibit F | Photographs, Schloss-Hans Well #1, taken April 20, 2009 |
| Appellee's Exhibit G | Photographs, Schloss-Hans Well #1, taken November 30, 2010 |
| Appellee's Exhibit H | Production Report List for Schloss-Hans Well #1, from 1984 2009 |
| Appellee's Exhibit I | Chief's Order 2011-01, issued January 5, 2011 |
| Appellee's Exhibit J | Division Inspection Reports, Schloss-Hans Well #1, January 18, 2011 to October 13, 2011 |
| Appellee's Exhibit K | Photographs, Schloss-Hans Well #1, taken March 10, 2011 |
| Appellee's Exhibit L | Photographs, Schloss-Hans Well #1, taken October 13, 2011 |