

BEFORE THE OIL & GAS COMMISSION

LAWRENCE & SHALYNE FOX,

Appellants,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee,

and

EVERFLOW EASTERN PARTNERS, L.P.,

Intervenor.

Appeal No. 822

Review of Permit Issuance, Joseph
#1D Well (Everflow Eastern Partners, L.P.)

FINDINGS, CONCLUSIONS AND ORDER OF THE COMMISSION

Appearances: Lawrence & Shalyne Fox, Appellants *pro se*; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; John K. Keller, Michael J. Settineri, Counsel for Intervenor Everflow Eastern Partners, L.P.

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Lawrence & Shalyne Fox from the Division Chief's issuance of a drilling permit to Everflow Eastern Partners L.P. ["Everflow Eastern"] for an oil & gas well to be known as the Joseph Unit #1D Well.

Everflow Eastern applied for this drilling permit on August 11, 2009. The permit was granted by the Division on May 4, 2010. Mr. & Mrs. Fox live in the vicinity of this proposed well, and appealed the permit issuance on May 21, 2010. On June 2, 2010, Everflow Eastern moved for intervention into this action. On June 14, 2010, the Commission granted Everflow Eastern's request for intervention, and Everflow Eastern has participated in this appeal with full-party status. Everflow Eastern's position is adverse to the Foxes' position.

Accompanying the Foxes' notice of appeal was a request for Stay. An oral argument upon the Foxes' request was conducted by the Oil & Gas Commission on July 19, 2010. On July 21, 2010, the Commission **granted** the Foxes' request for Stay.

On August 16, 2010, this cause came on for hearing before four members of the Oil & Gas Commission. Commission member Howard Petricoff **recused** himself from this matter, and did not participate. Prior to hearing, all parties filed pre-hearing statements with the Commission. At hearing, the parties presented evidence and examined witnesses appearing for and against them.

ISSUE

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in granting Everflow Eastern's permit to drill the well to be known as the Joseph Unit #1D 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. §1509.01(G) defines a "drilling unit" as:

"Drilling unit" means the minimum acreage on which one well may be drilled

3. O.R.C. §1509.24 provides:

The chief of the division of mineral 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 . . . for the purpose of conserving oil and gas reserves.

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

(A) General spacing rules:

(1) The division of mineral 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;

(b) Not less than one thousand (1000) feet from any well drilling to, producing from, or capable of producing from the same pool;

(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. . . .

5. O.A.C. §1501:9-1-02 addresses permitting requirements for oil & gas wells, including wells drilled in urbanized areas, and provides:

(F) Water sampling. The well owner shall sample all water wells within three hundred (300) feet of the proposed well location in urbanized areas prior to drilling under the guidelines provided in the divisions BMPs [best management practices] for pre-drilling water sampling manual, dated April 30, 2005 that can be located at <http://www.dnr.state.oh.us/mineral/oil/index.html> or by contacting the division of mineral resources management. The chief may require modification of this distance if determined necessary to protect water supplies or [as] site conditions may warrant.

6. O.A.C. §1501:9-1-02 addresses permitting requirements for oil & gas wells, and allows for directional drilling of a well, stating:

(H) Well deviation: The maximum point at which a well penetrates the producing formation shall not vary unreasonably from the vertical drawn from the center of the hole at the surface, with the exception of approved directional drilling. Such approval must be in writing from the chief.

7. O.R.C. §1509.06 addresses the necessary requirements for applications to drill oil & gas wells, and sets forth the items that must be included in such an application. O.R.C. §1509.06 (F) addresses the Chief's decision on an application for a permit, and provides:

(F) The chief shall issue an order denying a permit if the chief finds that there is a substantial risk that the operation will result in violations of this chapter or rules adopted under it that will present an imminent danger to public health or safety or damage to the environment, provided that where the chief finds that terms or conditions to the permit can reasonably be expected to prevent such violations, the chief shall issue the permit subject to those terms or conditions, including, if applicable, terms and conditions regarding subjects identified in rules adopted under section 1509.03 of the Revised Code.

FINDINGS OF FACT

1. Everflow Eastern intends to drill an oil & gas well in Mahoning County, Boardman Township, Ohio. The well would be known as the Joseph Unit #1D Well. On August 11, 2009, Everflow Eastern submitted to the Division of Mineral Resources Management an application to drill the Joseph Unit #1D Well. A permit to drill this well was issued by the Division on May 4, 2010.

2. The Joseph Unit #1D Well would be located in an urbanized area. Therefore, additional conditions are attached to the drilling and operation of this well. These items have been articulated in an Urbanized Area Permit Conditions Form on file with the Division. (See Division Exhibit J.)

3. The proposed well has a target depth of 5,500 feet, and would produce from the Clinton Sandstone Formation. The well would be "directionally" drilled, meaning that the well will be drilled at an angle, rather than vertically. The production point of a well is considered to be the **bottom** of the well (also known as the well's target), rather than the wellhead located at the surface. The Joseph Unit #1D Well is proposed to be cased to a depth of 620 feet, being cased through the Berea Formation.

4. The well's proposed target would be located approximately 585 feet west of the wellhead installation, and would be situated beneath Crystal Drive, on property where the oil & gas resources are owned by Dale & Mary Fishbeck. The Fishbeck property is under lease to Everflow Eastern. All surface installations associated with the Joseph Unit #1D Well (*i.e.*, the wellhead and tank batteries) would be located on property owned by Joseph & Marilyn Joseph. Everflow Eastern possesses a **development** lease for the Joseph property, meaning that the surface equipment associated with the proposed well may be located upon the Joseph property.

5. Lawrence & Shalyne Fox own and reside on property located at 103 Roche Way, Youngstown, Ohio. The Foxes have lived on this property for ten years. The Fox property is located on the corner of Roche Way and Margaret Street. The Fox residence faces Roche Way, which runs along the north side of the property. Access to the Fox driveway is gained from Margaret Street, which runs along the east side of the Fox property.

6. Mr. & Mrs. Fox obtain their domestic water supply from a water well located on their property.

7. Mr. & Mrs. Fox have retained the mineral interests, including oil & gas rights, for their property. The Foxes own the mineral interests on 0.50 acre.

8. The Foxes hold the surface rights to 0.34 acre of property. Approximately 0.16 acre of property, for which the Foxes own the oil & gas resources, is dedicated to public roadways maintained by Boardman Township.

9. The Fox property abuts and adjoins the 3.93-acre parcel of the Joseph property, upon which the surface installations for the Joseph Unit #1D Well are proposed to be located. The Fox home/garage is the closest structure to the proposed wellhead. Relevant distances are:

110 feet	distance from the Foxes' southern property line to the proposed wellhead
140 feet	distance from the Foxes' attached garage to the proposed wellhead
550 feet	distance from the Foxes' southern property line to the proposed well target
610 feet	distance from the Foxes' attached garage to the proposed well target

10. After the Joseph Unit #1D Well is drilled and operational, access to the wellhead, by light vehicles, will be gained via Margaret Street, which runs along the eastern side of the Fox property. During the drilling operations for the Joseph Unit #1D Well, alternate ingress and egress has been secured by Everflow Eastern for any heavy drilling equipment to be used on this site.

11. The drilling unit for the Joseph Unit #1D Well includes 86 individual properties. These properties form the pool,¹ which supports the proposed Joseph Unit #1D Well. In addition to the development lease obtained from Joseph & Marilyn Joseph, Everflow Eastern obtained non-development leases² from 82 separate landowners. These 83 landowners voluntarily leased their oil & gas rights to Everflow Eastern for the development of the Joseph Unit #1D Well, with the understanding that they would share in this well as royalty owners.

¹ A "pool" is defined at O.R.C. §1509.01(E) as: "an underground reservoir containing a common accumulation of oil or gas, or both...".

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. Surface installations would be located on lands covered by a development lease. A non-development 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.

12. The properties voluntarily pooled to create the Joseph #1D drilling unit cover 38.787 acres of oil & gas resources. Based upon the proposed depth of the Joseph Unit #1D Well, the drilling unit for this well must be at least 40 acres in size and must include the mineral rights for all properties within 500 feet of the well's target (bottom of the well). To meet the unit size and set-back requirements, Everflow Eastern mandatorily pooled (pursuant to O.R.C. §1509.27), three additional properties, being:

the Mark & Barbara Bestic property	0.665 acre
the Mary Dalesandro property	0.321 acre
the Kevin & Nanette Sellards property	<u>0.367 acre</u>
	1.353 acres

The three mandatorily pooled properties will receive royalties from the operation of the Joseph Unit #1D Well. No appeals from the Division's approval of Everflow Eastern's request to mandatorily pool these 1.353 acres were filed with the Commission.

13. With the addition of the 1.353 acres requested for mandatory pooling, the total amount of mineral acreage included in the drilling unit for the proposed Joseph Unit #1D Well is 40.14 acres.

14. The target location for the proposed Joseph Unit #1D Well is located at least 500 feet from all boundaries of the drilling unit.

15. The Fox property is not included in the drilling unit for the proposed Joseph Unit #1D Well.

16. The surface installations associated with the proposed Joseph Unit #1D Well will likely be visible from the Fox property. Everflow Eastern intends to screen the surface features associated with the proposed well by installing vinyl fencing around the wellhead and the tank batteries, and by planting bushes around these well structures. Everflow Eastern also intends to install mufflers on the drilling rig to mitigate the noise associated with the drilling operation.

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.
2. The drilling unit for the proposed Joseph Unit #1D Well contains 40.14 acres of oil & gas resources, and complies with the drilling unit size requirement of O.R.C. §1509.24 and O.A.C. §1501:9-1-04.
3. The surface and target locations of the proposed Joseph Unit #1D Well comply with the spacing requirements of O.R.C. §1509.24 and O.A.C. §1501:9-1-04.
4. Everflow Eastern's application for a permit to drill the proposed Joseph Unit #1D Well is proper in form and substance, and meets the legal requirements of Chapter 1509 of the Ohio Revised Code.
5. The Division Chief's approval of Everflow Eastern's application for a permit to drill the proposed Joseph Unit #1D Well was not unreasonable or unlawful, and was issued in compliance with O.R.C. §1509.06.

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 Appellants, who own land, which overlie deposits of oil & gas.

The law requires that wells be drilled on tracts of land meeting certain set-back, acreage and spacing requirements. See O.R.C. §1509.24. The Joseph Unit #1D Well is proposed to be drilled to a depth of 5,500 feet. For a well of this proposed depth, O.R.C. §1509.24 and O.A.C. §1501:9-1-04 require a 40-acre drilling unit and require that the drilling unit include the mineral rights for all properties located within a 500-foot radius of the proposed well's target.

HISTORY OF THE SITE.

The Commission is familiar with the Fox property. On September 30, 2008, Everflow Eastern filed an application with the Division for a mandatory pooling order. This application for mandatory pooling, requested that four properties be mandatorily pooled into the proposed Joseph #1D drilling unit. That application for mandatory pooling included the Fox property. The Division approved Everflow Eastern's request for mandatory pooling on November 18, 2008. The proposed location of the Joseph Unit #1D Well at the time of the 2008 mandatory pooling action was different than the current proposed location.

In December 2008, the Foxes appealed the Division's approval of the 2008 mandatory pooling application, which included the Fox mineral rights (appeal #811). A hearing was conducted by this Commission in April of 2009. On June 24, 2009, the Commission issued a decision vacating the 2008 mandatory pooling order appealed by the Foxes. In the decision, the Commission found that Everflow Eastern's attempts to join the Foxes into the original drilling unit for the Joseph #1D Well were not undertaken in a just and equitable manner and, therefore, Everflow Eastern had violated the provisions of O.R.C. §1509.27.

As part of its evidence in the 2009 case, Everflow Eastern presented an Affidavit of Laszlo D. Dundics, Leasing Manager for Everflow Eastern, and testimony to support this Affidavit, which Affidavit stated:

Affiant further states that the proposed bottom hole of the Joseph #1D Well cannot be located to eliminate the need to include the property of the "Respondent" [which includes Lawrence & Shalyne Fox] because of the following reason, to wit:

1. The bottom hole location is utilized to eliminate the need of mandatory pooling more than four (4) "respondents". Also this projected bottom hole target was selected due to spacing concerns of existing wells in the area.
2. The proposed bottom hole location of the Joseph #1D Well is located in an urban area. The surface location is the best possible location to minimize the impact to the area.

Based upon the evidence from the 2009 hearing, the Foxes were under the impression that the Joseph Unit #1D Well could not be drilled without the inclusion of the Foxes' oil & gas acreage.

Despite its assertions in 2008 and 2009 that the Joseph Unit #1D Well could not be drilled without the Foxes' oil & gas acreage (as contained in the 2008 Affidavit and made during the 2009 hearing before this Commission), Everflow Eastern did elect to move the target and surface location of this proposed well. Everflow Eastern then removed the Fox property from the proposed drilling unit and proceeded to re-apply for a permit to drill this well. Witnesses called by the Appellants indicated that none of the existing lessors were made aware of the fact that the proposed well target and wellhead were being relocated, or that Everflow Eastern was pursuing a new application to drill the relocated Joseph Unit #1D Well.

The Foxes have questioned why they were not informed of Everflow Eastern's decision to proceed with the development of the re-located Joseph Unit #1D Well. However, once the Foxes were removed from the Joseph Unit #1D Well drilling unit, Everflow Eastern was under no legal obligation to notify the Foxes of its decision to proceed with the development of this well. At hearing, the Foxes brought into question the fact that Everflow Eastern notified only the landowners who were **mandatorily** pooled into the drilling unit for the relocated Joseph Unit #1D Well. Everflow Eastern's failure to provide notice to other landowners who had **voluntarily** joined the pool for the Joseph Unit #1D Well did not violate any provisions of law. Notably, the Division does maintain a website accessible to the public, which reports the filing of all drilling applications.

ACREAGE OF THE DRILLING UNIT.

At the hearing on the Foxes' request for Stay, an issue was raised regarding whether the drilling unit dedicated to the Joseph #1D Well is of sufficient size. The law requires the drilling unit to contain at least 40 acres of oil & gas resources. The question was raised as to whether the drilling unit proposed by Everflow Eastern actually contained 40 acres.

The evidence presented at the merit hearing revealed that the Foxes' property, for tax purposes, was reported as 0.344 acre. Previously, in case #811, the Fox property was reported by Everflow Eastern as containing 0.50 acre. This discrepancy raised a question as to whether the acreage claimed in the Joseph Unit #1D Well permit application is accurate.

At the merit hearing, registered surveyor David Bodo testified that, in establishing a drilling unit, surveyors use mineral rights ownership acreages, rather than surface rights acreages.

Generally, when one thinks of property ownership, it is common to view such ownership as "complete." In other words, we assume that the property owner has title to and control over: (1) the land surface, (2) the subsurface, and (3) the air above the property. This assumption is often correct. Such complete ownership is known as holding a *fee simple* interest in the property. However, property owners may possess something less than a *fee simple* interest. The mineral interests in a piece of property are considered separate commodities from the ownership of the land surface. The mineral interests may, therefore, be severed from the land surface, and sold or leased. Indeed, it is not uncommon in certain areas of Ohio, for a buyer to purchase property on which the coal mining rights were severed many years ago. In such a case, the buyer purchases the land's surface, but **not** the subsurface coal rights. The same can be true regarding the rights to oil & gas resources. Oil & gas resources may be severed from the property and sold, although it is more common that these rights are leased to an entity with an interest in developing an oil & gas well. Thus, where mineral, or oil & gas resources, are severed from a piece of property, there is more than one "owner" of the property. The person residing on the property owns and controls the surface of the land. But, someone else owns and controls the subsurface mineral resources.

Just as there may be more than one "owner" of property where subsurface mineral rights have been severed or leased, there may be more than one "owner" of property in areas covered by public roadways. Outside incorporated areas, a landowner owns and controls the subsurface aspects of the property beneath the road, but does not control the land surface rights. This makes sense when one considers that the usage of this portion of the property is dedicated to the public.

Indeed, if roadways were **not** subject to public easements, it would be the responsibility of each individual owner along a roadway to maintain this property. As the public benefits from the existence of a roadway, it makes sense that roads should be maintained by a public entity, and that the public entity would hold an easement for the surface of such property. (See Intervenor's Exhibit A; Callen v. Columbus Edison Electric Light Co., 66 Ohio St. 166, 64 N.E. 141 (1902).)

The Foxes argued that the term "tract" as defined in O.R.C. §1509.01(J) refers to a "taxed parcel of land," and asserted that the acreage used to support the proposed well must be based upon the taxed acreage (which would not include abutting roadways), rather than the subsurface oil & gas acreage. Significantly, the definition of "drilling unit" found in O.R.C. §1509.01(G) does not require that the drilling unit be composed of "tracts."

So what do the Foxes own? They own the surface and subsurface rights to 0.344 acre of land. The Foxes also own the subsurface rights to an additional 0.156 acre of land, situated under one half the road easement fronting the Foxes' property on Roche Way and Margaret Street, for a total of 0.50 subsurface acreage. They, like their neighbors, may lease these subsurface rights to an entity such as Everflow Eastern. In this case, the Foxes have decided **NOT** to lease to Everflow Eastern, and their subsurface rights are not included within the Joseph #1D Well drilling unit. Therefore, Everflow Eastern must establish a 40-acre drilling unit without the inclusion of the Fox property.

The size of the drilling unit supporting the Joseph Unit #1D Well must contain the oil & gas resources associated with 40 acres of land. In this case, the evidence established that the landowners in this area, although they do not control the surface rights associated with the roadways abutting their properties, do own the subsurface oil & gas rights beneath the abutting roadways. Therefore, the oil & gas acreage for this drilling unit will include the oil & gas resources situated beneath the dedicated roadways located within the drilling unit and the oil & gas resources located beneath one-half of the dedicated roadways located on the boundaries of the drilling unit. The plat showing the acreage of the Joseph Unit #1D Well depicts the oil & gas resource ownership in this area, and establishes that the drilling unit is of an appropriate size. (See Division Exhibit C.)

Notably, as the Joseph Unit #1D Well is proposed to be directionally drilled, several of the spacing requirements are measured from the well's target (the bottom of the well). Pursuant to O.A.C. §1501:9-1-02(K), and specifically noted in the well permit, after drilling is complete, Everflow Eastern must submit to the Division a bore hole deviation survey showing the "as drilled" target location. Should the final location of the well's target deviate from the proposed location, Everflow Eastern would be required to revise its permit and meet the set-back provisions based upon the new target location.

**CONCERNS RELATING TO POSSIBLE IMPACTS FROM
THE PROPOSED JOSEPH UNIT #1D WELL UPON THE
FOXES' DOMESTIC WATER WELL.**

The Foxes have articulated a concern regarding possible impacts of the proposed Joseph Unit #1D Well upon their domestic water supply. The Foxes obtain water from a well located on their property.

Pursuant to O.A.C. §1501-9-1-02, Everflow Eastern is required to sample all water supplies located within 300 feet of the proposed well location. Therefore, the Foxes' water well will be sampled. Indeed, in this area, most of the homes are connected to a public water supply, with only two homes, within 300 feet of the proposed oil & gas well, obtaining their supplies from domestic water wells. Additionally, O.R.C. §1509.17 requires that oil & gas wells be cased, so as to protect any fresh water strata. The permit for this well requires that the well include 620 feet of 8+5/8 inch cemented surface casing, which is intended to protect the local aquifer, from which the two homeowners in the area within 300 feet of the proposed well location obtain their domestic water supplies.

Moreover, Everflow Eastern would be responsible for any damage to the Fox water well, such as diminution of supply or contamination, proximately caused by the drilling or operation of the Joseph Unit #1D Well. O.R.C. §1509.22(F) provides in part:

(F) An owner [of an oil & gas well] shall replace the water supply of the holder of an interest in real property who obtains all or part of the holder's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been substantially disrupted by contamination, diminution, or interruption proximately resulting from the owner's oil or gas operation, or the owner may elect to compensate the holder of the interest in real property for the difference between the fair market value of the interest before the damage occurred to the water supply and the fair market value after the damage occurred if the cost of replacing the water supply exceeds this difference in fair market values. . . .

Therefore, if the Fox water supply is adversely affected by Everflow Eastern's operations, Everflow would be bound by statute to replace the water supply or compensate the Foxes.

**AS THE FOX RESIDENCE IS THE CLOSEST STRUCTURE
TO THE PROPOSED WELLHEAD, ARE THE FOXES
ENTITLED TO ANY ADDITIONAL CONSIDERATIONS
UNDER THE LAW?**

The Foxes have raised the fact that their home is the closest structure to the proposed wellhead, and they have suggested that this proximity should entitle them to special consideration relating to the drilling and operation of the proposed well.

O.A.C. §1501:9-1-05 requires that a minimum distance of 100 feet exist between a private dwelling and a wellhead. Additionally, O.A.C. §1501:9-1-04(C)(5) requires that, in urbanized areas, a wellhead may not be located closer than 75 feet to a property not included within the drilling unit. The location of the proposed Joseph Unit #1D wellhead complies with these set-back requirements.

As already noted, the Foxes' water supply will be sampled by Everflow Eastern. Additionally the proposed well will include 620 feet of casing, to protect the local aquifer.

Several provisions of Ohio law address the health and safety of persons in the vicinity of an oil & gas operation. O.R.C. §1509.06(F) requires the applicant for a permit to demonstrate that the permit will not adversely affect public health and safety and will not harm the environment. O.A.C. §1501:9-1-02(E) specifically addresses safety, and access road usage, for permits located in urbanized areas. Even though the Fox property is not within the Joseph #1D drilling unit, and is situated outside the set-back requirements of the law, the health and safety requirements of Chapter 1509 will inure to the benefit of the Fox family, as well as other families in the area.

Recently, in recognition of the concerns of citizens living in close proximity to oil & gas wells, the Ohio legislature revised Ohio's law to better address such citizen concerns.³ However, the permit for the Joseph Unit #1D Well was issued prior to this change in Ohio law, and the new provisions do not apply in this case. Even so, the provisions of Ohio law applicable to this permit, and the actual terms of the permit, will require that the Joseph Unit #1D Well be drilled and operated in a safe and environmentally sound manner. Indeed in approving a permit application, the Division Chief is required under O.R.C. §1509.06(F) to make a positive finding that the terms and conditions of a permit can reasonably be expected to prevent imminent danger to public health or safety or damage to the environment.

**EVERFLOW EASTERN'S OFFER TO INCLUDE THE FOX
PROPERTY IN THE DRILLING UNIT FOR THE PROPOSED
JOSEPH UNIT #1D WELL.**

At the conclusion of the merit hearing, Everflow Eastern offered to include the Fox property into the drilling unit for the Joseph #1D Well. The Commission commends Everflow Eastern for making this offer. Clearly, the Foxes oppose the drilling of this well. However, their neighbors have granted Everflow Eastern oil & gas leases to support this well, and the evidence established that the well may legally be drilled.

³ O.R.C. §1509.021, effective June 30, 2010, provides additional and expanded set-back requirements for properties located in the vicinity of an oil & gas well proposed to be sited in an urbanized area. The new law also provides for greater notice to citizens in such areas and for written consent from landowner under certain specified circumstances.

Despite their clear opposition to the drilling of this well, the Foxes may wish to consider the advantages of inclusion within the proposed drilling unit. If the well is to be drilled, the Foxes may find that there are financial benefits to participating as royalty owners in this endeavor.⁴

The Commission also commends Everflow Eastern for securing alternate access to the site during the drilling operations, so that Margaret Street will not be subjected to heavy drilling equipment.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division Chief's approval of the drilling permit for the proposed Joseph Unit #1D Well.

Date Issued: Sept. 29, 2010

Robert W. Chase
ROBERT W. CHASE, Acting Chair

Karen H. Fryer
KAREN H. FRYER

James H. Cameron
JAMES H. CAMERON

RECUSED
M. HOWARD PETRICOFF

Timothy C. McNutt
TIMOTHY C. McNUTT

⁴ The Foxes may wish to review information describing such participation in a well. An article on mineral rights found at geology.com, provides basic information about oil & gas rights in a clear and unbiased manner, and may be informative to the Fox family.

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:

Lawrence & Shalyne Fox (Via Certified Mail #: 91 7108 2133 3936 5364 8563 & Regular Mail)
Molly Corey (Via Inter-Office Certified Mail #: 6588)
John K. Keller, Michael J. Settineri (Via Certified Mail #: 91 7108 2133 3936 5364 8556)
Mary Alice Hawkins (Via Regular Mail)

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INDEX OF EVIDENCE PRESENTED AT HEARING

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In Attendance: Jim Cameron, Karen Fryer, Timothy McNutt

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WITNESS INDEX

Appellants' Witnesses:

Lawrence Fox
Mary Alice Hawkins
Kelly McCandless
Robert McCandless
David Bodo

Statement on Record; Cross Examination
Direct Examination; Cross Examination
Direct Examination; Cross Examination
Direct Examination; Cross Examination
Rebuttal; Cross Examination

Appellee's Witnesses:

Kelly Barrett

Direct Examination; Cross Examination

EXHIBIT INDEX

All exhibits were accepted into evidence.

Appellants' Exhibits:

Appellants' Exhibit 1	Signed Petition, entitled "Do Not Want the Gas Well Joseph Unit #1D"
Appellants' Exhibit 2	Portion of Ohio Revised Code §1509.01 [effective until June 30, 2010]
Appellants' Exhibit 3	Plat Map for Original Joseph Unit #1D Well Location, dated September 22, 2008 (first location)
Appellants' Exhibit 4	Portion of Plat Map for Joseph Unit #1D Well Location, unsigned, with revision date of July 10, 2009 (second location); with taxed acreages noted by Mr. Fox
Appellants' Exhibit 5	Unsigned Non Development Oil and Gas Lease from Kevin J. and Nanette M. Sellards
Appellants' Exhibit 6	Unsigned Non Development Oil and Gas Lease from Lawrence and Shalyne Fox
Appellants' Exhibit 7	Portion of a Non Development Oil and Gas Lease from Mary A. Dalesandro
Appellants' Exhibit 8	Letter from Haven R. Grove, P.S. to Lawrence Fox, dated August 13, 2010
Appellants' Exhibit 9	Ohio Revised Code §1509.021 [effective June 30, 2010]
Appellants' Exhibit 10	Article from The Youngstown Vindicator, dated August 19, 2009, entitled "Gas-well mishap"

Appellants' Exhibit 11	Affidavit of Laszlo D. Dundics of Everflow Eastern, dated September 29, 2008, relating to first mandatory pooling action
Appellants' Exhibit 12	Restoration Plan for the Joseph Unit #1D Well
Appellants' Exhibit 13	Letter from Kelly Barrett (Division) to Nanette Sellards, dated November 6, 2008
Appellants' Exhibits 14 thru 18	Photographs, Fox property and area around Fox property
 <u>Appellee's Exhibits:</u>	
Appellee's Exhibit A	Permit Application for Joseph Unit #1D Well, received August 11, 2009
Appellees' Exhibit B	Oversized Aerial with Properties Marked; Joseph Unit #1D Well (from application)
Appellee's Exhibit C	Plat Map for Joseph Unit #1D Well (from application, second location)
Appellee's Exhibit D	Letter to Darren L. Crivelli, Boardman Township Zoning Inspector from Patty Nicklaus (Division), dated August 11, 2009
Appellees' Exhibit E	Unsigned Letter to Whom it May Concern from Kelly Barrett (Division), Notification of Hearing Before the Technical Advisory Counsel on Oil and Gas for November 10, 2009 meeting
Appellees' Exhibit F	Unsigned Letter Copy to Technical Advisory Council Member from Kelly Barrett (Division), dated October 13, 2009
Appellees' Exhibit G	Agenda for Technical Advisory Council Hearing on November 10, 2009, with list of attendees and partial transcript of hearing
Appellees' Exhibit H	Letter from Laszlo D. Dundics (Everflow Eastern) to John Husted (Division), dated January 11, 2010
Appellees' Exhibit I	Mandatory Pooling Order 2009-61 (second location), issued March 16, 2010

Appellees' Exhibit J

Well Permit, API # 34-099-2-3128-00-00, Joseph Unit #1D Well, issued May 4, 2010, expires May 4, 2011, with attached terms and/or conditions

Intervenor's Exhibits:

Intervenor's Exhibit A

Article, entitled "Who Owns the Mineral Rights Under Public Highways and Streets?" by Attorney John N. Teeple, Ohio Land Title Association, December 1989