

# BEFORE THE OIL & GAS COMMISSION

CITY OF MUNROE FALLS, OHIO,	:	
	:	
Appellant,	:	Appeal No. 812
	:	
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES MANAGEMENT,	:	Review of Chief's Decision
	:	Granting Permit (D&L Energy, Inc.)
Appellee,	:	
	:	
and	:	
	:	
D & L ENERGY, INC.,	:	<b><u>FINDINGS, CONCLUSIONS</u></b>
	:	<b><u>AND ORDER OF THE</u></b>
	:	<b><u>COMMISSION</u></b>
Intervenor.	:	

Appearances: Jack Morrison, Jr., Thomas R. Houlihan, Counsel for Appellant City of Munroe Falls, Ohio; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; John Keller, Counsel for Intervenor D & L Energy, Inc.

Date Issued: August 20, 2009

## **BACKGROUND**

This matter came before the Oil & Gas Commission upon appeal by the City of Munroe Falls ["Munroe Falls"] from the Chief's re-issuance of an oil & gas drilling permit to D&L Energy, Inc. ["D&L Energy"]. The proposed well has been designated as the Sonoco #1 Well. The property upon which the well is proposed to be sited, is located within Munroe Falls. Through this appeal, Munroe Falls raises concerns about the possible impacts that the Sonoco #1 Well could have upon the hydrology of the area, particularly with regards to Munroe Falls' public drinking water supply.

Permit 34-153-2-3024-00-00 was initially issued to D&L Energy on October 18, 2007. Munroe Falls appealed the October 2007 issuance of the permit to this Commission. Ultimately, that appeal (appeal #793) was **dismissed** by the Commission on jurisdictional grounds. Thereafter, Munroe Falls appealed the Commission's dismissal to the Court of Common Pleas for Franklin County, Ohio. The appeal to the Court was likewise **dismissed**. Permit 34-153-2-3024-00-00 was issued for a one-year period, which expired during the appeal process.

On November 17, 2008, upon second application, permit 34-153-2-3024-00-00 was re-issued to D&L Energy. On December 16, 2008, Munroe Falls filed the immediate appeal of the re-issuance of the permit with this Commission. The November 17, 2008 re-issuance of the permit is the subject of the instant decision.

On December 31, 2008, D&L Energy moved for intervention into this action. On that date, the Commission **granted** D&L Energy's request for intervention, and D&L Energy has participated in this appeal with full-party status. D&L Energy's position is adverse to Munroe Falls' position.

On April 24 and April 30, 2009, 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. Written closing arguments were filed by all parties on May 28, 2009.

## **ISSUE**

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in issuing to D&L Energy, a permit to drill and operate the proposed well to be known as the Sonoco #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. In accordance with O.R.C. §1509.05, all oil & gas wells, operated within the State of Ohio, must be permitted by the Chief of the Division of Mineral Resources Management.

3. Under current Ohio law, the Chief of the Division of Mineral Resources Management is the sole permitting authority for oil & gas wells. O.R.C. §1509.06(F) addresses the Chief's authority to issue or deny permits, and provides:

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 condition 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.

Emphasis added.

4. O.A.C. §1501:9-1-07 addresses the prevention of contamination and pollution in the operation of oil & gas wells, and provides:

(A) All persons engaged in any phase of operation of any well or wells shall conduct such operation or operations in a manner which will not contaminate or pollute the surface of the land, or water on the surface or in the subsurface.

(B) In urbanized areas, to minimize off-site sedimentation, erosion and to control the surface flow of water, the well owner and/or authorized representative must follow the best management practices (BMPs) for oil and gas well site construction 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, as provided by the chief. BMPs and other design standards other than provided by the chief may be used if a well owner or their authorized representative demonstrates that the alternative BMP or practices minimize erosion to the same degree as the BMPs provided by the chief.

## **FINDINGS OF FACT**

1. Sonoco Products, Inc. owns approximately 31.1 acres of land, located within Munroe Falls, Summit County, Ohio [the "Sonoco Property"]. Sonoco has granted an oil & gas lease to D&L Energy for the Sonoco Property.

2. D&L Energy is a duly licensed and bonded oil & gas well operator, registered with the State of Ohio, Division of Mineral Resources Management.

3. Munroe Falls is a suburb of the City of Akron, located in Summit County, Munroe Falls Township, Ohio. Munroe Falls covers approximately 2.74 square miles of land. The Cuyahoga River runs through the middle of the city. The approximate population is 5,314.

### **The Municipal Water Supply**

4. Munroe Falls currently buys its public water from the neighboring City of Cuyahoga Falls, Ohio ["Cuyahoga Falls"]. This water supply is obtained from 18 high-capacity water wells, operated by Cuyahoga Falls, and located downstream from Monroe Falls and in close proximity to the Cuyahoga River. The Cuyahoga Falls wellfield provides drinking water to approximately 60,000 residents living in the area of Cuyahoga Falls, Munroe Falls and Silver Lake. The Cuyahoga Falls wells draw water from a shallow, sand and gravel aquifer, located at an approximate depth of between 4 and 32 feet below the ground surface. The aquifer directly communicates with the waters of the Cuyahoga River, through a number of man-made channels and lagoons, designed to recharge the aquifer. The Cuyahoga River watershed collects surface runoff from an area that covers approximately 813 square miles, or about 520,000 acres, located in six counties.

5. A large diameter water line, owned by the City of Akron, runs through Munroe Falls and Cuyahoga Falls, with a tap located in the area of Munroe Falls and Cuyahoga Falls. Thus, the physical connection and equipment to obtain an emergency back-up water supply from the City of Akron exists. However, Munroe Falls currently has no formalized agreement with the City of Akron to obtain an emergency water supply through this line. It is unclear whether Cuyahoga Falls has an agreement with the City of Akron for emergency use of this water supply.

## The Sonoco #1 Well

6. The Sonoco #1 Well is proposed to be drilled into the Clinton Formation, to a depth of approximately 4,000 feet. The ground level elevation of the wellhead is proposed to be at 1,010 feet mean sea level ["msl"]. The surface elevation of the Cuyahoga River in this area is approximately 995 feet msl. Thus, the Sonoco #1 Well would be situated at an elevation approximately 15 feet higher than the river.

7. The proposed Sonoco #1 Well would be located in a wooded area on the Sonoco Property. The proposed well location is 1,200 – 1,500 feet upstream from the nearest Cuyahoga Falls' water well and approximately 350 feet from the Cuyahoga River.

8. The tank batteries associated with the proposed well would be located in a grassed area at the southwestern edge of the Sonoco parking lot, approximately 500 feet from the Cuyahoga River, and at a higher elevation than the river.

9. During the drilling process, steel pits will be utilized to contain any waste materials generated by the drilling operation.

10. Any hydraulic fracturing ["fracing"] to occur during the drilling of the proposed Sonoco #1 Well would occur near the bottom of the well, approximately 4,000 feet beneath the ground surface, and significantly below the shallow aquifer from which the Cuyahoga Falls municipal wells draw water.

11. The Sonoco #1 Well is designed to function as a contained and sealed unit. The casing program mandated by the Division for the Sonoco #1 Well would require three layers of protection between the aquifer and the well's production casing. These three layers of protection would consist of a cemented 11 $\frac{3}{4}$  inch steel conductor casing, a cemented 8 $\frac{5}{8}$  inch steel surface casing and a cemented production casing (the production casing would not be cemented to the surface). Therefore, the aquifer would be separated from the oil & gas well by three layers of steel casing, two of which are cemented to the surface. (See Appellee Exhibit 10, Wellbore Schematic, attached as Appendix A.)

12. The tank batteries associated with the well are also designed as contained systems, surrounded by a dike designed to hold greater than 100% of the largest tank.

13. The Sonoco #1 wellhead and tank batteries will be fenced, and the fences will be secured with locks.

14. Following the drilling of the Sonoco #1 Well, surface restoration of the drilling site will be required within 9 months.

15. D&L Energy has developed a Spill Prevention Control and Countermeasure Plan for the proposed Sonoco #1 Well. D&L Energy also has in effect an Emergency Response Plan, which articulates measures to be taken in response to any spill at an oil & gas well facility.

## **Hydrologic Information**

16. Although the Cuyahoga River is subject to flooding, it is unlikely that flood waters would reach the Sonoco #1 wellhead or its tank batteries. The testimonies of Munroe Falls' Service Director Larry Valentine, Munroe Falls' Mayor Frank Larson, Division Inspector Robert Worstall and Division Geologist Steve Opritza, support this finding.

17. The Ohio Environmental Protection Agency ["OEPA"] has conducted a Drinking Water Source Assessment of the Cuyahoga Falls public water supply (the water system from which Munroe Falls receives its public water). OEPA has identified the "drinking water source protection area" for the Cuyahoga Falls water wells. The protection area is composed of two "zones." One zone, the "one-year time of travel zone," is the area that provides ground water to the Cuyahoga Falls water wells within one year of pumping. The second zone, the "five-year time of travel zone," is the area that provides ground water to the Cuyahoga Falls water wells within five years of pumping. The proposed location of the Sonoco #1 Well is on the outer edge of the "five-year time of travel zone" for the Cuyahoga Falls water wells.

18. Located within the "five-year time of travel zone" for the Cuyahoga Falls water wells, and at locations similar to the proposed location of the Sonoco #1 Well, are one oil & gas production well and one brine extraction well. No evidence was presented to show that the Cuyahoga Falls water supply has been negatively impacted by these existing oil & gas wells.

19. Also located within the "five-year time of travel zone" for the Cuyahoga Falls water wells are several other potential contamination sources, such as three dumps and/or landfills, and a series of railroad tracks. No evidence was presented to show that these features have negatively impacted the Cuyahoga Falls water wells. Munroe Falls has taken no actions to address these potential sources of contamination to its water supply.

### **The Initial Sonoco #1 Well Permit**

20. On August 20, 2007, D&L Energy applied for a permit to drill a well on the Sonoco Property. On October 18, 2007, this permit was granted for a one-year period.

21. Between August 20, 2007 and October 18, 2007, the Division reviewed D&L Energy's drilling application. During this review, although not required to do so by law, Division Geologist Steve Opritza, contacted OEPA to address concerns relative to the proposed Sonoco #1 Well's proximity to the Cuyahoga Falls water wellfield, and to obtain specific information regarding the depth of the aquifer in the area of proposed Sonoco #1 Well. Scott Kell, who was then the Acting Chief of the Division, was familiarized with the location of the Sonoco #1 Well as regards the Cuyahoga Falls water wells, and was made aware of the sensitivity of this proposed oil & gas well location.

22. On September 10, 2007, as part of the Division's review of the first application for the proposed Sonoco #1 Well, a site inspection was conducted by the Division, with representatives of the Division (Robert Worstall), Munroe Falls (Mayor Frank Larson, Ken Freeman), D&L Energy (Nick Paparodis) and the Summit County Soil & Water District (Dave Ritter), in attendance.

23. On October 12, 2007, D&L Energy submitted to the Division, a revised plat for the proposed Sonoco #1 Well, which corrected the location of the proposed wellhead and indicated that the surface elevation of the wellhead would be at 1,010 feet msl.

24. On October 18, 2007, then Acting Chief Scott Kell, upon recommendation of his staff, issued permit 34-153-2-3024-00-00 to D&L Energy, approving the drilling of the proposed Sonoco #1 Well. This permit was issued with the following conditions: (1) Urbanized Area Permit Conditions, and (2) Municipal Wellhead Protection Area Conditions.

25. On January 22, 2008, Scott Kell, the Acting Chief of the Division of Mineral Resources Management, communicated by e-mail with Michael G. Baker, the Chief of the OEPA Division of Drinking and Ground Waters, regarding the proposed Sonoco #1 Well, and its potential impact upon the Cuyahoga Falls public water supply. The Division was not required by law to seek this input from OEPA. In the e-mail, Chief Baker indicated that the OEPA did not oppose the drilling of the Sonoco #1 Well. OEPA further acknowledged that the permit conditions imposed by the Division of Mineral Resources Management were considered by the OEPA to be "reasonable protective measures, " which would protect the municipal water supply.

26. On February 21, 2008, the Sonoco #1 Well permit was revised, adding Floodplain/Municipal Wellhead Protection Conditions, which clarified that steel pits would be utilized during the drilling at this location. The revised permit also added the Shallow Surface Casing Conditions<sup>1</sup> to the permit, which were imposed as additional protection for the aquifer.

27. On February 13, 2008, Munroe Falls filed an appeal of the October 18, 2007 issuance of permit 34-153-2-3024-00-00 with the Oil & Gas Commission (prior appeal number 793). On July 11, 2008, the Division filed a Motion to Dismiss Munroe Falls' appeal of the initial issuance of permit 34-153-2-3024-00-00. On August 7, 2008, the Oil & Gas Commission granted the Division's motion and issued an Order dismissing appeal number 793. Thereafter, Munroe Falls appealed the Commission's dismissal to the Court of Common Pleas for Franklin County, Ohio. On November 6, 2008, the Franklin County Court of Common Pleas dismissed Munroe Falls' appeal. Due to the delay caused by the appellate review of the issuance of D&L Energy's one-year permit to drill the Sonoco #1 Well, this initial permit expired before D&L Energy could drill the proposed well.

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<sup>1</sup> Following the issuance of the first permit for the Sonoco #1 Well, the Division instituted a program whereby Shallow Surface Casing Conditions were to be applied to oil & gas wells drilled in certain counties or townships, based upon particular geologic features. Although, Munroe Falls is not located within one of the townships subject to the Shallow Surface Casing Conditions, the Division applied these conditions to the permit for the Sonoco #1 Well in order to provide extra protection to the Cuyahoga Falls water supply.

## **The Re-Issued Sonoco #1 Well Permit**

28. On October 28, 2008, D&L Energy re-applied for a permit to drill a well on the Sonoco Property. On November 17, 2008, permit 34-153-2-3024-00-00 was re-issued for a one-year period.

29. Between October 28, 2008 and November 17, 2008, the Division conducted a second complete review of D&L Energy's permit application. No longer Acting Chief, Scott Kell, now served as the Division Deputy Chief, with authority over the oil & gas program in the State of Ohio. In this role, Mr. Kell was responsible for all oil & gas well permitting, and was included in the review process for this application. Division Chief John Husted was informed of the application and was updated throughout the review process.

30. On November 13, 2008, as part of the Division's review of the second application for the proposed Sonoco #1 Well, a site inspection was conducted by the Division, with representatives of the Division (Robert Worstall, Jay Cheslock, Steve Opritza), Munroe Falls (Attorney Thomas Houlihan), D&L Energy (Nick Paparodis) and the Summit County Soil & Water District (Cindy Fink), in attendance.

31. On November 17, 2008, Division Chief John Husted, upon recommendation of his staff, re-issued permit 34-153-2-3024-00-00 to D&L Energy, approving the drilling of the proposed Sonoco #1 Well. This permit was re-issued with the following conditions: (1) Urbanized Area Permit Conditions, (2) Floodplain / Municipal Wellhead Protection Area Conditions, (3) Shallow Surface Casing Conditions, (4) Municipal Wellhead Protection Area Conditions, and (5) the 20/40 Acre Permit Conditions, addressing the necessary size of the drilling unit for the Sonoco #1 Well.

32. On December 16, 2008, Munroe Falls appealed the re-issuance of permit 34-153-2-3024-00-00 to the Oil & Gas Commission (the immediate appeal).

## The Reviewing Staff

33. All witnesses testified that they believed that the Division of Mineral Resources Management, has both the expertise, and the legal authority, to review applications for the drilling and operation of oil & gas wells.

34. The Division staff, who participated in the review of the applications for the Sonoco #1 Well, included: (1) Deputy Chief Scott Kell, who has worked in oil & gas regulation since 1979, with a particular emphasis on groundwater protection, who has served on the board of directors of the National Groundwater Protection Council<sup>2</sup> since 2000, and who has served as the President of the National Groundwater Protection Council since 2007; (2) Division Geologist Steve Opritza, who has worked in the oil & gas industry since 1980, and who has worked in the area of oil & gas regulation since 1989; (3) Division Inspector Robert Worstall, who has worked in the area of oil & gas regulation since 2002, who had worked for 15 years as a geologist in the oil & gas industry, and who has 9 years of experience as a project manager for an environmental consulting firm.

35. In reviewing the Sonoco #1 Well, although not required to do so by law, the Division, sought the input of Michael Baker, who is the Chief of the OEPA Division of Drinking and Ground Water, and who is a former President of the National Groundwater Protection Council, and the current President of the National Association of State Drinking Water Administrators.

36. The Commission heard testimony from Kathy Metropolis, an environmental specialist with the OEPA. Ms. Metropolis had been involved with the 2002 Drinking Water Source Assessment for the Cuyahoga Falls public water supply. In March of 2007, Ms. Metropolis gave a power point presentation to Munroe Falls, addressing methods of protecting a drinking water supply. The presentation provided generalized information, and Ms. Metropolis testified that she does not possess any expertise in the area of oil & gas well drilling or production, or as regards the specific impacts of oil & gas well drilling or production upon a water supply. Ms. Metropolis ultimately reports to OEPA Division Chief Michael Baker.

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<sup>2</sup> The National Groundwater Protection Council is the association of state groundwater protection administrators and underground injection control administrators, whose members are committed to the advocacy of conservation and protection of groundwater resources.

## 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. O.R.C. §1509.06(F) requires the Division Chief to review applications to drill oil & gas wells, in order to determine if a proposed well presents a substantial risk that its operation will result in violations of Ohio law, which violations could pose imminent dangers to public health or safety or imminent danger to the environment. If such a substantial risk of imminent danger exists, the Chief will grant a permit only if the Chief can impose terms or conditions reasonably expected to prevent such dangers.

3. In this matter, Munroe Falls has not established that the granting of a permit for the proposed Sonoco #1 Well would create a substantial risk that the operation will result in violations of Chapter 1509, or the rules adopted thereunder.

4. In this matter, Munroe Falls has not established that the drilling and operation of the proposed Sonoco #1 Well will result in a substantial risk of imminent danger to public health or safety or of imminent danger to the environment.

5. In this matter, Munroe Falls has not established that the terms and conditions placed upon the permit for the proposed Sonoco #1 Well can not be reasonably expected to prevent violations of Chapter 1509, or the rules adopted thereunder.

6. In this matter, Munroe Falls has failed to prove that the Division Chief's re-issuance of permit 34-153-2-3024-00-00 was either unlawful or unreasonable.

## DISCUSSION

Ohio's oil & gas law requires that oil & gas wells be permitted by the Division of Mineral Resources Management. See O.R.C. §1509.05. By statute, the Division Chief possesses the sole permitting authority for such operations. See O.R.C. §1509.06. All witnesses in this appeal acknowledged that the Division of Mineral Resources Management possesses the expertise to review and evaluate applications for the drilling and operation of oil & gas wells. The evidence also revealed that two nationally recognized experts in groundwater resources, Deputy Chief Kell and OEPA Division Chief Michael Baker, participated in the review of the proposed Sonoco #1 Well permit.

Munroe Falls has appealed the Chief's re-issuance of an oil & gas well to be installed on the Sonoco Property. Munroe Falls' appeal expresses concerns that the drilling or operation of the well might negatively impact the water wellfields from which Munroe Falls' receives its public water supply. Munroe Falls' concerns address: (1) possible contamination of the aquifer during the fracing and drilling process, and (2) possible contamination of the public water supply during a flooding event involving the Cuyahoga River. Although Munroe Falls' concerns appear quite genuine, witnesses for Munroe Falls all admitted that the risk of damage or contamination to its water supply from the operation of the Sonoco #1 Well, would be "slight" or "small." Munroe Falls' concern is that, if this "slight" risk of damage to the municipal water supply were to occur, the impacts could be "catastrophic." "Slight" or "small" concerns clearly do not rise to the level of "imminent" and "substantial," that is contemplated by O.R.C. §1509.06(F).

As regards potential contamination during the drilling process, the evidence established that any "fracing" activities would take place several thousand feet below the aquifer in question, and that any waste materials generated by the drilling process would be contained in steel pits. As regards contamination during a flood event, the evidence revealed that the relative elevations between the Cuyahoga River and the proposed Sonoco #1 wellhead and tank batteries, and the distance between these features and the river, would render any potential contamination of this water resource remote. Additionally, the specific requirements of the well casing program are designed to protect this aquifer.

O.R.C. §1509.06 authorizes the Division Chief to evaluate applications for oil & gas permits, in order to determine if a proposed operation presents a **substantial risk of imminent danger** to the public health or safety, or to the environment. If imminent danger is established, the Chief must then consider whether permit conditions could be imposed, which conditions could reasonably be expected to prevent such dangers.

The evidence in this appeal revealed that the Division carefully reviewed the Sonoco #1 Well application, not once, but twice, and that the Division was fully aware of the nearby water wellfield and aware of Munroe Falls' concerns. Munroe Falls did not present persuasive evidence that any **substantial risk of imminent** harm to health, safety, or to the environment, would be created by the proposed siting of the Sonoco #1 Well on the Sonoco Property.

Moreover, the Commission **FINDS**, and believes, that the terms and conditions imposed by the Division upon this well will adequately protect Munroe Falls' public water supply and will prevent the contamination or degrading of this water resource. In particular, the site-specific conditions attached to this permit and required by the Division, will protect the aquifer during the drilling and operation of this well. Both Scott Kell, Deputy Chief of the Division of Mineral Resources Management and Michael Baker, Chief of the OEPA's Division of Drinking and Ground Water Division --- both nationally recognized experts in the area of water resource protection --- agreed that, with appropriate conditions, the proposed location of the Sonoco #1 Well should not adversely impact the Cuyahoga Falls water wells. Indeed, OEPA's Chief Baker specifically indicated that the permit conditions imposed by the Division of Mineral Resources Management were considered by the OEPA to be "reasonable protective measures," which would protect the municipal water supply.

Significantly, the casing program required by the Division for the proposed Sonoco #1 Well provides that at least five layers of protection (either steel pipe or cement) will separate the Sonoco #1 Well's production casing from the water-producing aquifer. The re-issued permit also included several conditions, addressing the fact that the Sonoco #1 Well is located within an urban setting and within a hydrologically sensitive area. Notably, aware of the local concern regarding the proposed Sonoco #1 Well, the Division imposed more conditions on this permit, than would normally be required for a well in this setting.

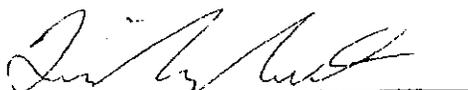
Clearly, the concerns of Munroe Falls for its unique, and potentially irreplaceable, water supply are genuine and well-founded. However, the testimonies of the Division witnesses confirmed that the Division recognized the value of this important groundwater resource, and shared Munroe Falls' concern for the protection of its water supply. The staff who reviewed the applications for the Sonoco #1 Well, conducted two complete and comprehensive evaluations of this permit, with regulators, experienced both in oil & gas regulation, and in water resource protection, being actively engaged in the review and the permitting process. The evidence established that the permit issued for the Sonoco #1 Well was specifically conditioned to protect the important water resource, which exists in the area of the proposed well site. Significantly, Munroe Falls has suggested no other specific conditions for the Sonoco #1 Well, which would be more protective of this resource.

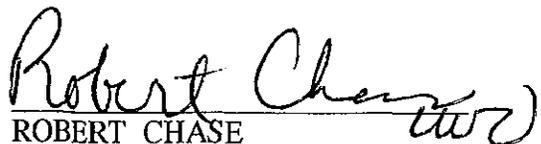
Based upon the site-specific information presented at hearing, the Commission **FINDS** that the Chief's re-issuance of permit 34-153-2-3024-00-00 to D&L Energy for the drilling of the Sonoco #1 Well was not unlawful or unreasonable.

## ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's re-issuance of permit 34-153-2-3024-00-00 to D&L Energy, Inc. for the drilling of the Sonoco #1 Well.

Date Issued: 8/20/2009

  
TIMOTHY C. McNUTT, Acting Chair

  
ROBERT CHASE

  
JAMES H. CAMERON

RECUSED  
M. HOWARD PETRICOFF, Secretary

**INSTRUCTIONS FOR APPEAL**

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

**DISTRIBUTION:**

Jack Morrison, Jr., Thomas R. Houlihan, (Via Fax [330-762-9918] & Certified Mail #: 91 7108 2133 3934 5972 4867)  
Molly Corey, (Via Fax [614-268-8871] & Via Inter-Office Certified Mail #: 6526)  
John Keller, (Via Fax [614-719-4794] & Certified Mail #: 91 7108 2133 3934 5972 4874)  
Benton D. Williamson, Via Regular Mail  
Ragland Coxe, Via Regular Mail

# **APPENDIX A**

**Appellee Exhibit 10**

**Wellbore Schematic**

# Wellbore Schematic

## Sonoco Products No. 1 Well

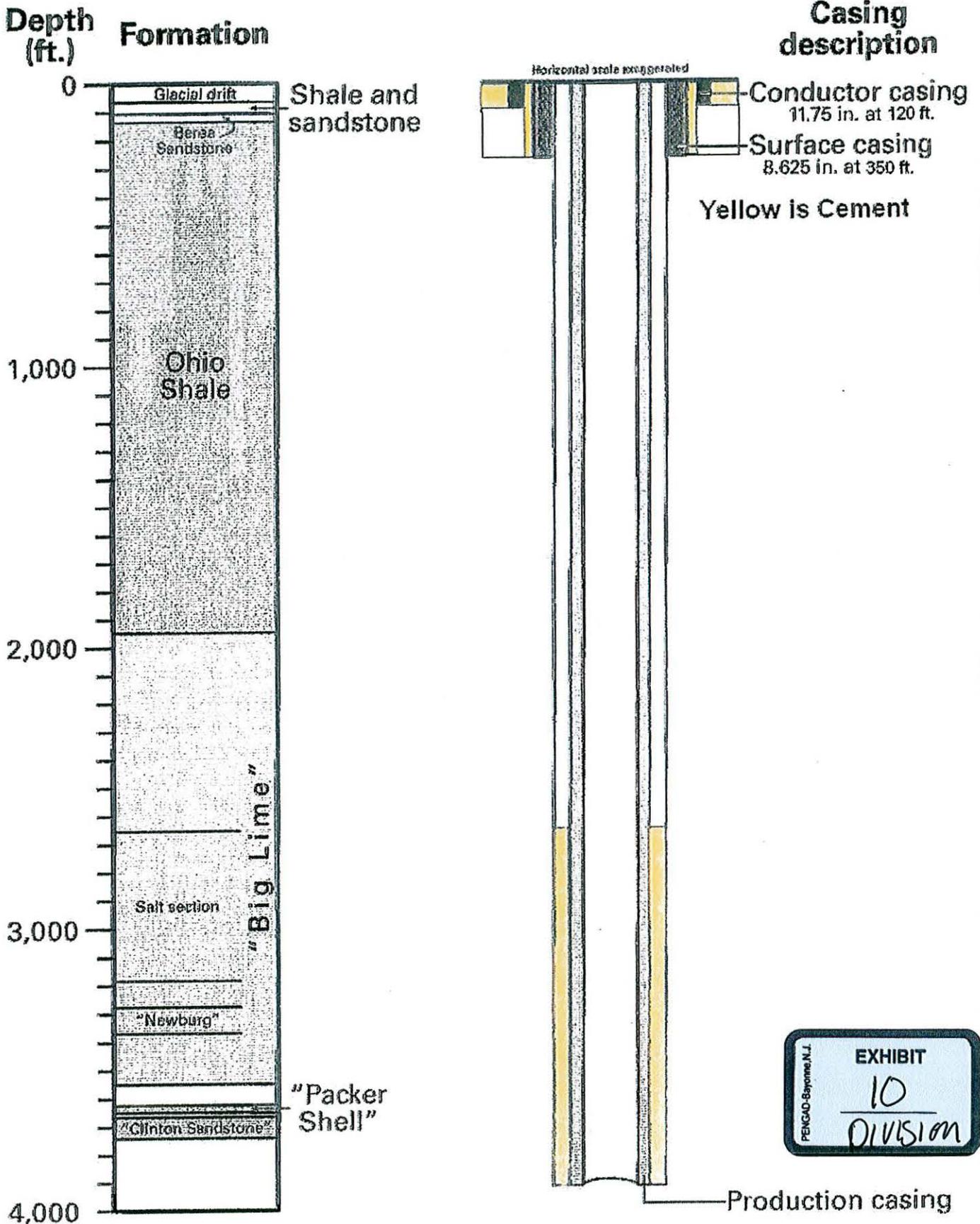


EXHIBIT  
 10  
 DIVISION

PENGAD-Bayonne, N.J.

**BEFORE THE  
OIL & GAS COMMISSION**

CITY OF MUNROE FALLS, OHIO,	:	
	:	
Appellant,	:	Appeal No. 812
	:	
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES MANAGEMENT,	:	Review of Chief's Decision
	:	Granting Permit (D&L Energy, Inc.)
Appellee,	:	
	:	
and	:	
	:	
D & L ENERGY, INC.,	:	<b><u>INDEX OF EVIDENCE</u></b>
	:	<b><u>PRESENTED AT HEARING</u></b>
Intervenor.	:	

**Before:** Timothy C. McNutt

**In Attendance:** James Cameron, Robert Chase

**Appearances:** Jack Morrison, Jr., Thomas R. Houlihan, Counsel for Appellant City of Munroe Falls, Ohio; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; John Keller, Counsel for Intervenor D & L Energy, Inc.

**WITNESS INDEX**

**Appellant's Witnesses:**

John Husted	Direct Examination; Cross Examination
Kathy Metropulos	Direct Examination; Cross Examination
Larry Valentine	Direct Examination; Cross Examination
Frank Larson	Direct Examination; Cross Examination
Scott Kell	Cross-Examination
Steve Opritza	Cross-Examination

Appellee's Witnesses:

Scott Kell  
Steve Opritza  
Robert Worstall

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

Intervenor's Witnesses:

Mark Sitch

Direct Examination; Cross Examination

**EXHIBIT INDEX**

Appellant's Exhibits:

Appellant's Exhibit A

Application for Re-Issuance of API Well Permit,  
34-153-2-3024-00-00 (second permit); applied for on  
October 28, 2008

Appellant's Exhibit B

Drinking Water Source Assessment for the City  
of Cuyahoga Falls (PWS ID # 77010120); dated July  
2002

Appellant's Exhibit C

E-Mail, Metropulos to Opritza, re: Topographic  
Map of Cuyahoga Falls Well Field; October 1,  
2007

Appellant's Exhibit D

Letter, Houlihan to Husted; re: Objections to  
Sonoco Well No. 1 Permit Application; dated  
November 12, 2008, with attachments:  
(1) Drinking Water Source Assessment  
for the City of Cuyahoga Falls (PWS  
ID # 77010120); dated July 2002  
(2) Metropulos Power Point,  
Protecting Your Drinking Water  
(3) E-Mail Correspondence between  
Metropulos and Opritza, September  
28, 2007 and October 1, 2007  
(4) E-Mail Correspondence between  
Baker and Kell, and McCormac & Kell

January 22, 2008 and January 9, 2008  
(5) News-Herald Article, Officials shocked by house explosion, December 19, 2007  
(6) Columbus Dispatch Article, 2 men die in blast at oil rig, October 20, 2008  
(7) Petition to Suspend All Oil and Gas Well Drilling Activities and to Place Moratorium on Issuance of Permits for Same within Boundaries of Munroe Falls  
(8) A Resolution Requesting Governor Strickland to Place a Moratorium on the Issuance of Permits for Oil and/or Gas Well Drilling in the City of Munroe Falls until Further Studies of the Natural Resources, Including Drinking Water, Can be Obtained, and Declaring an Emergency; Resolution # 2008-04, passed January 2, 2008  
(9) Cuyahoga Falls City Council, Minutes of Council Meeting, January 28, 2008

Appellant's Exhibit E	API Well Permit, 34-153-2-3024-00-00 (second permit); issued November 17, 2008, with attached conditions
Appellant's Exhibit F	Two Photographs, Cuyahoga River in the Area of the Sonoco Property
Appellant's Exhibit G	Map, City of Cuyahoga Falls Protection Area, Metropulos (part Exhibit I)
Appellant's Exhibit H	Aquifer Susceptibility Map; Pollution Potential, DRASTIC Index
Appellant's Exhibit I	Metropulos Power Point, Protecting Your Drinking Water: Ohio's Source Water Assessment and Protection Program; March 2007
Appellant's Exhibit J	API Well Permit, 34-153-2-3024-00-00 (first permit); issued October 18, 2007
Appellant's Exhibit K	Surety Bond, D&L Energy, December 15, 1999; Certificate of Liability Insurance, D&L Energy, January 22, 2008
Appellant's Exhibit L	WITHDRAWN

Appellant's Exhibit M	Response to Public Records Request, "Documents Considered to Determine if Permit Would Present a Danger to the Public"
Appellant's Exhibit N	Response to Public Records Request, "EPA Documents Considered in Issuing Permit"
Appellant's Exhibit O	Resolution # 2008-04, A Resolution Requesting Governor Strickland to Place a Moratorium on the Issuance of Permits for Oil and/or Gas Well Drilling in the City of Munroe Falls Until Further Studies of the Natural Resources, including Drinking Water, Can be Obtained, and Declaring An Emergency; City of Munroe Falls City Council; passed January 2, 2008
Appellant's Exhibit P	Cuyahoga Falls City Council; Minutes of Meeting; January 28, 2008
Appellant's Exhibit Q	Signed Petition to Suspend all Oil and Gas Well Drilling Activities and to Place Moratorium on Issuance of Permits for Same Within Boundaries of Munroe Falls
Appellant's Exhibit R	Four Photographs, Cuyahoga Falls well field during flooding event
<b><u>Appellee's Exhibits:</u></b>	
Appellee's Exhibit 1	Map, Ohio EPA, Oil & Gas Wells Within Public Water System Source Water Protection Inner Management Zones, with listing of active oil & gas wells within one-year time of travel zones
Appellee's Exhibit 2	E-Mail, Kell to Shelton, forwarding e-mail, Baker to Kell; re: EPA comments on proposed SONOCO Products oil and gas well in Munroe Falls; January 22, 2008
Appellee's Exhibit 3	Application for Issuance of API Well Permit, 34-153-2-3024-00-00 (first permit); applied for on August 20, 2007

Appellee's Exhibit 4	E-Mail, Metropulos to Opritza, re: Topographic Map of Cuyahoga Falls Well Field; October 1, 2007
Appellee's Exhibit 5	Revised Plat for Sonoco Well #1, October 12, 1007
Appellee's Exhibit 6	API Well Permit, 34-153-2-3024-00-00 (first permit); issued October 18, 2007, with attached conditions
Appellee's Exhibit 7	Letter, dated February 21, 2008, Opritza to Lupo, with attached corrected API Well Permit, 34-153-2-3024-00-00 (first permit)
Appellee's Exhibit 8	Application for Re-Issuance of API Well Permit, 34-153-2-3024-00-00 (second permit); applied for on October 28, 2008
Appellee's Exhibit 9	API Well Permit, 34-153-2-3024-00-00 (second permit); issued November 17, 2008, with attached conditions
Appellee's Exhibit 10	Wellbore Schematic, Sonoco Products No. 1 Well Conditions
Appellee's Exhibit 11	Water Well Logs in the area of Sonoco #1 Well or the area of the Cuyahoga Falls Water Wells, with location map
Appellee's Exhibit 12	List of Wells Drilled Near Drinking Water Source Protection Areas; Opritza Study
Appellee's Exhibit 13	Map, Portion of USGS Map showing Cuyahoga Falls Municipal Water Wellfield
Appellee's Exhibit 14	Aerial Photograph of Sonoco Property, showing location of proposed Sonoco #1 Well
Appellee's Exhibit 15	Aerial Photograph of Munroe Falls, showing Cuyahoga Falls Municipal Water Wells and Source Water Protection Zones
Appellee's Exhibit 16	Photograph, Sonoco Property, taken April 13, 2009

Appellee's Exhibit 17	Photograph, Sonoco Property, taken April 13, 2009
Appellee's Exhibit 18	Photograph, Sonoco Property, taken April 13, 2009
Appellee's Exhibit 19	Photograph, Sonoco Property, taken April 13, 2009
Appellee's Exhibit 20	Photograph, Sonoco Property, taken April 13, 2009
Appellee's Exhibit 21	Photograph, Sonoco Property, taken April 13, 2009
Appellee's Exhibit 22	Photograph, Sonoco Property, taken April 13, 2009

**Intervenor's Exhibits:**

Intervenor's Exhibit X	Spill Prevention Control & Countermeasure Plan for Production Facilities, Sonoco #1 Well, December 17, 2008
Intervenor's Exhibit Y	Emergency Response Plan, D&L Energy Inc., current as of April 15, 2009
Intervenor's Exhibit Z	Prioritizing Wetland Restoration Potential in the Tributaries of the Cuyahoga River Area of Concern, Cuyahoga River Community Planning Organization, June 2008