

# BEFORE THE OIL & GAS COMMISSION

LOUIS CHODKIEWICZ,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES  
MANAGEMENT,

Appellee,

and

OHIO VALLEY ENERGY SYSTEMS CORP.,  
MARK R. SCOVILLE,  
JERRY ESKER,

Intervenors.

Appeal No. 788

Review of Chief's Order 2007-74  
(Ohio Valley Energy Systems)  
(Glatzer Unit #1 Well)

## FINDINGS, CONCLUSIONS AND ORDER OF THE COMMISSION

Appearances: Louis Chodkiewicz, Appellant *pro se*; Mark G. Bonaventura, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; John K. Keller, Counsel for Intervenor Ohio Valley Energy Systems Corporation; Mark R. Scoville, Intervenor *pro se*; Jerry Esker, Intervenor *pro se*.

## BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Louis Chodkiewicz from Chief's Order 2007-74. Through Chief's Order 2007-74, the Chief of the Division of Mineral Resources Management [the "Division"] **approved** an application for mandatory pooling, associated with the drilling of a well to be known as the Glatzer Unit #1 Well. Mr. Chodkiewicz resides on the property that is the subject of this mandatory pooling order. Ohio Valley Energy Systems Corporation ["Ohio Valley"] applied for mandatory pooling and intends to obtain a permit to drill the Glatzer Unit #1 Well.

Mr. Chodkiewicz filed his appeal of Chief's Order 2007-74 on December 17, 2007. On March 10, 2008, Ohio Valley moved for intervention into this action. On April 8, 2008, the Commission **GRANTED** Ohio Valley's request for intervention, and Ohio Valley has participated in this appeal with full-party status. Ohio Valley's position is adverse to Mr. Chodkiewicz's position.

On April 7, 2008 and April 8, 2008, Mark R. Scoville and Jerry Esker, respectively, moved to intervene into this action. Messrs. Scoville and Esker are neighbors of Mr. Chodkiewicz. The properties on which Messrs. Scoville and Esker reside are not subject to the mandatory pooling order. However, the Glatzer Unit #1 Well will be drilled in their neighborhood. Additionally, Mr. Scoville was approached by Ohio Valley regarding the possible mandatory pooling of his oil & gas rights. Mr. Esker's and Mr. Scoville's interests are aligned with Mr. Chodkiewicz's. On May 12, 2008, the Commission **GRANTED** Messrs. Scoville and Esker's Motions to Intervene. These gentlemen have participated in this proceeding with full-party status.

On July 25, 2008, 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 the commencement of the hearing, Intervenor Ohio Valley moved for the dismissal of this appeal, arguing that Mr. Louis Chodkiewicz lacks standing to appeal, as the property at issue is owned by Gail L. Chodkiewicz, Mr. Chodkiewicz's wife. After brief argument upon this Motion, the Commission **FOUND** that Mr. Chodkiewicz has standing to appeal this matter, as he resides upon the property at issue and holds a dower right in this property. Therefore, the Intervenor's Motion to Dismiss was **DENIED**.

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 approving Ohio Valley's application for mandatory pooling for the well to be known as the Glatzer Unit #1 Well.**

## THE LAW

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

2. O.R.C. §1509.24 provides:

The chief of the division of mineral resources management, with the approval of the technical advisory council on oil and gas . . . 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.

3. 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:

\* \* \*

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

(a) Upon a tract or drilling unit containing not less than twenty (20) acres;

(b) Not less than six hundred (600) feet from any well drilling to, producing from, or capable of producing from the same pool;

(c) Not less than three hundred (300) feet from any boundary of the subject tract or drilling unit.

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

If a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner has been unable to form a drilling unit under agreement as provided in section 1509.26 of the Revised Code, on a just and equitable basis, the owner of such tract may make application to the division of mineral resources management for a mandatory pooling order . . . the chief, if satisfied that the application is proper in form and that mandatory pooling is necessary to protect correlative rights or to provide effective development, use, or conservation of oil and gas, shall issue a drilling permit and a mandatory pooling order complying with the requirements for drilling a well as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable . . .

## FINDINGS OF FACT

1. Ohio Valley intends to drill an oil & gas well in Cuyahoga County, Brecksville Township, Ohio. The proposed well would be located in an urbanized area, within the City of Broadview Heights. The well would be known as the Glatzer Unit #1 Well. The surface installations associated with this well would be located on a 2.85-acre lot owned by Norman and Alice Glatzer. The Glatzers have provided an oil & gas lease to Ohio Valley for the development of this well. The target depth of the proposed well is 3,750 feet. The proposed well would produce from the Clinton Sandstone formation.

2. Gail L. Chodkiewicz, owns a 1.52-acre lot in Cuyahoga County, Brecksville Township, Ohio, located at 8540 Wyatt Road, within the City of Broadview Heights. Mrs. Chodkiewicz owns this property in fee simple, and retains the mineral interests, including oil & gas rights, for this property. Mr. Chodkiewicz resides on this property with his wife. The property is within 300 feet of the proposed Glatzer Unit #1 wellhead. The Chodkiewicz property is situated between, and shares property lines with, the O'Toole and the Bednarski properties.

3. In addition to the 2.85-acre development lease obtained from Norman and Alice Glatzer, Ohio Valley obtained non-development leases<sup>1</sup> from eleven separate landowners. The total leased area covers either 19.48 or 19.34 acres (see Finding of Fact number 4 regarding acreage figures). The leases were obtained to establish a drilling unit<sup>2</sup> for the Glatzer Unit #1 Well. These 12 landowners voluntarily agreed to participate in the Glatzer Unit #1 Well, and leased their oil & gas rights to Ohio Valley, with the understanding that they would share in this well as royalty owners. These lessors are part of the pool,<sup>3</sup> which will support the proposed Glatzer Unit #1 Well.

4. The properties voluntarily pooled to create the tract, which supports the proposed Glatzer Unit #1 Well are:

N & A Glatzer property	2.85 acres	
S Agoston property	1.38 acres	
D & A Bednarski property	1.65 acres	or 1.56 acres
B & J Hill property	1.58 acres	
G Johnson property	1.50 acres	
C & C Langan property	1.55 acres	
V & B Lisco property	1.33 acres	
M Malaniak property	1.72 acres	or 1.67 acres
R & C O'Toole property	1.38 acres	
M Petrulak property	1.58 acres	
D & J Pfeiffer property	1.55 acres	
J Rossello property	<u>1.41 acres</u>	
	19.48 acres	<u>19.34 acres<sup>4</sup></u>

<sup>1</sup> A development lease for oil & gas grants to the lessee the mineral interests in the property and includes the right of ingress and egress for the surface development associated with a well. A non-development 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.

<sup>2</sup> A "drilling unit" is defined at O.R.C. §1509.01(G) as: "the minimum acreage on which one well may be drilled." The law set forth minimum acreage and spacing requirement for oil & gas wells. Specifically, the law requires that the well operator hold leases to the oil & gas interests on a tract of land sufficient to support the well, both in terms of size, set backs and the spacing from other wells. Based upon the proposed depth of the Glatzer Unit #1 Well, Ohio Valley's tract for this well would need to be at least 20 acres in size and would need to include all properties located within a 300 foot radius of the wellhead. See O.A.C. §1501:9-1-04. The Chodkiewicz property is located within 300 feet of the proposed wellhead for the Glatzer Well.

<sup>3</sup> 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...".

<sup>4</sup> Mr. Chodkiewicz presented evidence, raising questions relating to the accuracy of the acreage figures for the Bednarski and Malaniak properties. Ohio Valley is encouraged to verify these figures. However, regardless of the figures used, with the addition of the .83 acre portion of the Chodkiewicz property, the Glatzer Unit meets the 20-acre legal requirement.

5. Between November 27, 2006 and September 18, 2007, representatives of Ohio Valley approached the Chodkiewiczzs, in person and in writing, regarding the leasing of their oil & gas rights, for the development of the Glatzer Unit #1 Well. Ohio Valley offered a \$760 signing bonus to the Chodkiewiczzs, and assured them of their 1/8 royalty interest<sup>5</sup> in production from this well. Ohio Valley's efforts consisted of:

November 27, 2006	Letter & proposed non-development lease sent; no response from the Chodkiewiczzs
soon after November 27, 2006	Personal contact (by Nelson Stoddard of Ohio Valley), Mr. Chodkiewicz was given a revised proposed non-development lease
January 4, 2007	Attempted personal contact, business card and proposed non-development lease left; no response from the Chodkiewiczzs
March 14, 2007	Letter & proposed non-development lease sent; no response from the Chodkiewiczzs
March 20, 2007	Personal contact with Mr. Chodkiewicz (by Bonnie Foster of Ohio Valley); Mr. Chodkiewicz clearly indicated that he did not wish to participate in this project and refused to sign the non-development lease <sup>6</sup>
July 27, 2007	Letter sent; no response from the Chodkiewiczzs
August 20, 2007	Certified letter sent, letter indicated Ohio Valley's intention to initiate a mandatory pooling action; the Chodkiewiczzs responded through their attorney Mr. Grant D. Relic; Attorney Relic proposed that the Chodkiewiczzs would voluntarily pool, if Ohio Valley would pay them \$750,000 for their property and find them a comparable parcel, or pay them \$350,000 as royalties at the time of signing
September 18, 2007	Attempted personal contact with the Chodkiewiczzs' attorney Mr. Grant D. Relic, information left with Mr. Relic's secretary; no response from Mr. Relic

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<sup>5</sup> This is the standard industry royalty rate.

<sup>6</sup> The Chodkiewiczzs have concerns relating to the development of this well, including: concerns about health and safety, concerns about property value depreciation, concerns about the homeowner insurance implications associated with the location of this well and concerns that the surface features associated with this well (which will likely be visible from the rear portion of the Chodkiewicz property) will interfere with the aesthetics of the area.

6. On September 24, 2007, Ohio Valley filed an application with the Division for a mandatory pooling order. The original application for mandatory pooling, requested that four properties be mandatorily pooled into the proposed Glatzer Unit #1 drilling unit.<sup>7</sup> The properties for which mandatory pooling was requested were:

G Chodkiewicz property	.43 acre
M Ayala property	.16 acre
K Janiak property	.06 acre
A DeAngelis property	<u>.02 acre</u>
	.67 acre

Each of these listed properties were proposed for mandatory pooling to comply with the legal requirement that the well operator hold the oil & gas rights on the properties within a 300-foot radius of the wellhead. Upon recommendation of the Division, Ohio Valley relocated the proposed wellhead for the Glatzer Unit #1, and filed a modified application for mandatory pooling on October 23, 2007. As modified, the application for mandatory pooling requested the pooling of only one property: **an .83-acre portion of the Gail L. Chodkiewicz property.** The Chodkiewicz property line is located approximately 175 feet from the proposed Glatzer Unit #1 wellhead. The Chodkiewicz property is separated from the Glatzer property by the 1.38-acre O'Toole property. Under Ohio Valley's modified application, the .83-acre portion of the Chodkiewicz property is necessary for the development of the Glatzer Unit #1 Well, as this acreage provides Ohio Valley with the rights to the oil & gas interests within a 300-foot radius of the proposed wellhead. The Chodkiewicz acreage is also necessary to create a 20-acre tract for this well, and to create a contiguous combination of properties within this drilling unit.

7. Ohio Valley's application for mandatory pooling was referred to the Technical Advisory Council ["TAC"].<sup>8</sup> A hearing before the TAC, upon this application, was conducted on November 13, 2007. Mr. Chodkiewicz appeared before the TAC to oppose the forced pooling of his property. Messrs. Scoville and Esker (who are Intervenor in the instant appeal) also appeared at the TAC hearing.

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<sup>7</sup> Some individuals, such as Mr. Mark Scoville, who were never mandatorily pooled, received letters from Ohio Valley, indicating that their properties would be subject to mandatory pooling. Mr. Scoville is an intervenor in this action. He is not currently subject to mandatory pooling. Yet, he received a certified letter informing him that his property would be mandatorily pooled, even though his property was well beyond the 300-foot radius of the proposed well.

<sup>8</sup> The TAC is created under O.R.C. §1509.38, and is authorized to advise the Division Chief on matters relating to spacing requirements and to advise the Division Chief on specific requests relating to the size and shape of drilling units. The TAC conducts public hearings on applications for mandatory pooling, and advises the Chief on such applications. See O.R.C. §1509.24, §1509.25 and §1509.27.

8. On November 20, 2007, following the TAC hearing, and pursuant to the advice and recommendation of the TAC, the Division Chief issued Chief's Order 2007-74, which mandated the inclusion of a .83-acre portion of the Chodkiewicz property into the drilling unit for the Glatzer Unit #1 Well. Chief's Order 2007-74 held in part:

1) The drilling unit owned by the applicant [Ohio Valley] is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in Section 1509.24 of the Ohio Revised Code, and the applicant [Ohio Valley] has been unable to form a drilling unit under agreement as provided in Section 1509.26 of the Ohio Revised Code on a just and equitable basis.

\* \* \*

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

9. The Glatzer Unit #1 Well will be drilled on property owned by Norman and Alice Glatzer. No surface equipment will be located on the Chodkiewicz property. The wellhead is proposed to be located approximately 175 feet from the closest Chodkiewicz property line. The Chodkiewicz property is separated from the Glatzer property by the O'Toole property. It is likely that production equipment will be visible from the rear portion of the Chodkiewicz property. Ohio Valley plans to screen the surface installations associated with the proposed Glatzer Unit #1 Well by installing a board fence and by planting trees along the north and south property lines of the Glatzer property and around the well structures. Temporary access roads utilized for drilling and installation will be removed and reclaimed. The Glatzer's existing driveway will, thereafter, be used for access.

10. On December 17, 2007, Mr. Louis Chodkiewicz, husband of Gail L. Chodkiewicz, filed with this Commission, a notice of appeal from Chief's Order 2007-74. This Order mandated the pooling of a .83-acre section of the Chodkiewicz property into the drilling unit for the Glatzer Unit #1 Well. This appeal was heard by the Commission on July 25, 2008. Mr. Chodkiewicz appeared for hearing and presented evidence in support of his appeal. Mr. Chodkiewicz was not represented by counsel in the proceeding before this Commission.

## 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. §1509.27 requires the Division Chief to order the mandatory pooling of properties where: (1) a tract of land is of insufficient size or shape to meet the spacing requirements of the law, (2) the Chief finds that the owner of the proposed well has been unable to form a drilling unit under agreement on a just and equitable basis, and (3) mandatory pooling is necessary to protect correlative rights or to provide effective development, use or conservation of oil & gas resources.

3. Without the pooling of the Chodkiewicz property, the Glatzer Unit #1 Well drilling unit is insufficient in size and shape, and does not to meet the spacing requirements of Ohio law.

4. Ohio Valley attempted to enter into voluntary pooling agreements with property owners, including the Chodkiewicz, in order to meet the minimum drilling unit acreage and set-back requirements. Ohio Valley obtained voluntary agreements from all the necessary property owners, except the Chodkiewicz. Ohio Valley attempted to obtain a voluntary oil & gas lease for the Chodkiewicz property. Ohio Valley's offers to the Chodkiewicz were just and equitable.

5. The mandatory pooling order relating to the Glatzer Unit #1 Well is necessary to protect correlative rights of those participating in this project, and is necessary to provide effective development, use or conservation of oil & gas.

6. Chief's Order 2007-74, mandating the pooling of .83 acre of land into the Glatzer Unit #1 drilling unit, is not unlawful or unreasonable.

## 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 Appellant, who own land, which overlies 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 Glatzer Unit #1 Well is proposed to be drilled to a depth of 3,750 feet. For a well of this proposed depth, O.R.C. §1509.24 and O.A.C. §1501:9-1-04 require a 20-acre drilling unit and require that the drilling unit include all property located within a 300-foot radius of the proposed wellhead. Without the inclusion of the .83-acre portion of the Chodkiewicz property, the Glatzer Unit #1 drilling unit does not meet these size and spacing requirements.

Where the spacing requirements are not met, a potential well owner must attempt to create a drilling unit through the voluntary participation of landowners. See O.R.C. §1509.26. If an adequately-sized drilling unit cannot be established by voluntary participation, the owner of the proposed well may apply to the Division Chief for mandatory pooling of some non-leased lands into the drilling unit. See O.R.C. §1509.27. Mandatory pooling will not be ordered unless the conditions set forth in O.R.C. §1509.27 are met.

"Mandatory pooling is designed to permit mineral development of a property of insufficient size and/or shape in order to meet the requirements of state spacing laws. It is used only when sufficient size and shape cannot be achieved. Without mandatory pooling, one landowner can 'veto' the wishes and rights of many others. Mandatory pooling prevents a minority landowner, whose acreage is small but necessary to form a legal drilling unit, from disrupting the majority landowner's ability to develop property. Mandatory pooling is solely designed to protect landowners' correlative rights.<sup>9</sup> It is a tool of last resort."<sup>10</sup>

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<sup>9</sup> "Correlative rights" is defined at O.R.C. §1509.01(I) to mean: "the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense."

<sup>10</sup> This description of mandatory pooling is quoted from an article written by Tom Stewart, Executive Vice President of the Ohio Oil & Gas Association, printed in the Association's March 2008 Bulletin, and part of Appellant's Exhibit M. Footnote added.

At the hearing before this Commission, Mr. Chodkiewicz articulately presented his concerns regarding the installation of the Glatzer Unit #1 Well. While the Commission recognizes that Mr. Chodkiewicz's concerns are genuine, many of the items addressed through his comments are outside the jurisdiction of this Commission.<sup>11</sup> The Commission is authorized only to review the Chief's Order under appeal, in order to determine if the Chief acted reasonably and lawfully. Many of the issues raised by Mr. Chodkiewicz are not directly relevant to the issue of whether Chief's Order 2007-74 complies with the mandatory pooling procedures set forth under O.R.C. §1509.27. Under that section of the law, the Commission may consider:

- (1) Whether the tract of land on which the Glatzer Unit #1 Well is proposed is of insufficient size or shape to meet the requirements of drilling such a well.
- (2) Whether Ohio Valley has been unable to form a voluntary drilling unit on a just and equitable basis.
- (3) Whether mandatory pooling is necessary to protect correlative rights or to provide effective development, use or conservation of oil & gas resources.

The evidence at hearing clearly established that, without the inclusion of the Chodkiewicz property, the drilling unit for the Glatzer Unit #1 Well is insufficient in both size and shape. The Glatzer Unit #1 Well is proposed to be drilled to a depth of 3,750 feet. Without the Chodkiewicz property, the size of the drilling unit is just shy of the 20 acres required for a well of this depth. Even if another property could be voluntarily pooled to meet the 20-acre requirement, the shape of the drilling unit would still require the inclusion of the Chodkiewicz property, due to the fact that a drilling unit for a well of this depth must include all property within a 300-foot radius of the wellhead. The Chodkiewicz property line is approximately 175 feet from the proposed wellhead. Therefore, the inclusion of a portion of the Chodkiewicz property is essential to the development of this well. In fact, the portion of the Chodkiewicz property subject to mandatory pooling is the .83-acre of this 1.52-acre lot falling within the arc of a 300-foot radius drawn around the proposed wellhead.

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<sup>11</sup> Many of Mr. Chodkiewicz's concerns, such as concerns relating to the possible impact of a well on property value or on insurance rates, or his generalized concerns relating to the siting of a well in an urbanized area, are not within this Commission's jurisdiction when reviewing a mandatory pooling order. The Commission, as a creature of statute, has a limited jurisdiction, which is to review the Chief's issuance of the mandatory pooling order in light of the legal requirements set forth in O.R.C. §1509.27. The Commission has no power or authority to change the law or disregard its provisions.

Significantly, a drilling unit may consist of many, separately-owned properties. However, in order to qualify as an appropriate drilling unit, the properties must be contiguous, or abutting. The evidence in this case established that the Chodkiewicz property is situated between the O'Toole property (part of the unit) and the Bednarski property (part of the unit). The Bednarski lot shares a property line with the Chodkiewicz property, but does not adjoin any other property within the Glatzer Unit #1 drilling unit. Thus, in order to include the Bednarski property as part of this drilling unit, the Chodkiewicz property would have to be included, and would have to be of a size and shape, which would "join" the Bednarski property to the rest of the drilling unit in a contiguous fashion.

While Mr. Chodkiewicz has unequivocally indicated that he does not support the installation of the Glatzer Unit #1 Well and that he is opposed to the forced pooling of his property, it is still true that twelve of his neighbors have voluntarily elected to participate in this project. O.R.C. §1509.27 acknowledges the correlative rights of willing participants in such projects and attempts to protect those rights.

As a matter of law, this Commission is not statutorily empowered to evaluate or judge the lease-acquiring methods and techniques of Ohio Valley; however the information presented at hearing indicates that Ohio Valley has used the mandatory pooling procedures of the law, frequently and at times not fully considering the concerns of affected landowners. Ohio Valley is in the business of well development. However, most landowners are not experienced in this area. Considering that most landowners would be unfamiliar with the mandatory pooling provisions of Ohio law, Ohio Valley's approach to the use of mandatory pooling is disconcerting. Evidence presented at hearing indicates that some landowners were needlessly "threatened" with mandatory pooling. For example, Intervenor Mr. Scoville received a certified letter stating that his property could be subject to mandatory pooling, even though his property was not located in an area required to be included in the drilling unit for the Glatzer Unit #1 Well.

Also, the evidence revealed that Ohio Valley's initial application for mandatory pooling for the Glatzer Unit #1 Well included four properties. Upon recommendation of the Division, Ohio Valley relocated the wellhead, which removed three of these properties from the mandatory pooling process. It is unfortunate that Ohio Valley did not, on its own initiative, locate the wellhead so as to minimize the number of properties subject to mandatory pooling. The facts are: 39% of all mandatory pooling requests submitted between February 2006 and July 2008 in the State of Ohio have been submitted by Ohio Valley. The Commission finds this a troubling fact and trend. Mandatory pooling should be a tool of last resort. Ohio Valley is encouraged to take this recommendation to heart, and to be more responsible in its use of the mandatory pooling procedures in the future.

Even with our concerns regarding Ohio Valley's practices vis-à-vis mandatory pooling, the Commission must consider whether the evidence showed that Ohio Valley would be unable, on a just and equitable basis, to form a drilling unit for the Glatzer Unit #1 Well without the addition of the Chodkiewicz property. To determine whether Ohio Valley's efforts to voluntarily pool the Chodkiewicz property were "just and equitable," the Commission must examine what efforts were made to voluntarily include the Chodkiewicz property within the Glatzer Unit #1 drilling unit.

The standard for "just and equitable" efforts has been addressed by this Commission in past cases. In Jerry Moore, Inc. v. State of Ohio, (appeal 1, July 1, 1966), cited in Johnson v. Kell (appeal 370, November 30, 1990, *affirmed* in Johnson v. Kell, 89 Ohio App. 3d, 623 [Franklin County Court of Appeals, 1993]), the Commission held:

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

The evidence in the immediate case revealed that Ohio Valley attempted to contact the Chodkiewiczs several times over a period of almost 10 months. There were four contacts by mail, two personal contacts with Mr. Chodkiewicz and two attempted personal contacts with either the Chodkiewiczs or their legal counsel.

A letter from the Chodkiewiczs' lawyer, in response to Ohio Valley's August 20, 2007 certified letter suggesting mandatory pooling, stated that the Chodkiewiczs would agree to voluntarily pool their oil & gas interests if Ohio Valley would pay them \$750,000 for their property and find them a comparable parcel on which to build a home, or pay them \$350,000 as royalties at the time of signing a lease. After a ten-month period, and in light of the Chodkiewiczs' position as articulated by their counsel, it was not unreasonable for Ohio Valley to proceed with a mandatory pooling action, in order to create an adequate drilling unit for the Glatzer Unit #1 Well. Additionally, based upon industry standards, and the offers made to other landowners in the Glatzer Unit #1 drilling unit, Ohio Valley's offer of a \$760 signing bonus, in addition to the Chodkiewicz's royalty interests, was just and equitable.

Significantly, in assembling a drilling unit, the owner of the proposed well must consider the correlative rights of every participating landowner, not just those who voluntarily pool. The impact on unwilling participants must also be taken into account. See Johnson v. Kell, 89 Ohio App. 3d, 623 [Franklin County Court of Appeals, 1993]. Thus, we must consider not only the correlative rights of the twelve property owners who have voluntarily pooled their oil & gas interests, but also the correlative rights of the Chodkiewiczs. In this regard, the Commission has previously held:

A consideration of correlative rights is vital in examining mandatory pooling as mandatory pooling, by definition, forces a party who is the owner or lessee of property to use that property with another lessee and/or for a purpose or price not acceptable to him. The importance of conservation, and particularly that aspect of conservation which includes the development of the natural resources of this state, is the factor which may tip the scales in favor of forcing such person to have his property utilized against his wishes.

Jerry Moore, Inc. v. State of Ohio (appeal 1, July 1, 1966).

The evidence in this case revealed that Ohio Valley's initial offers to include the Chodkiewicz within the pool for the Glatzer Unit #1 Well included an offer to lease the entire 1.52 lot, not simply the smaller portion of that lot identified for mandatory pooling. This offer by Ohio Valley attempted to protect the Chodkiewicz's correlative rights in their property, and further indicates that Ohio Valley's efforts to include the Chodkiewicz in this pool were "just and equitable."

It is important to note that the Glatzer Unit #1 Well has been identified as being located within an urbanized area.<sup>12</sup> Therefore, additional rules, which include conditions regarding safety, protection of water supplies, the fencing and screening of surface facilities, and the containment and disposal of drilling and production wastes, have been, and will continue to be, applied to this drilling unit. See O.R.C. §1509.03. Also, because this well is proposed for an urbanized area, a pre-permitting inspection of the area was conducted by Division, so that the Division might directly observe the proposed site and make specific recommendations regarding the site.

The Commission **FINDS** that Ohio Valley was unable to form a drilling unit of sufficient size and shape for the Glatzer Unit #1 Well, based upon voluntary participation.

The Commission also **FINDS** that Ohio Valley attempted to join the Chodkiewicz into the pool necessary for this well, and that Ohio Valley's efforts in this regard were just and equitable. The Commission further **FINDS** that Ohio Valley's attempts to lease or voluntarily pool the Chodkiewicz property were, ultimately, unsuccessful.

The Commission **FINDS** that pooling the .83-acre portion of the Chodkiewicz property is necessary to protect correlative rights or to provide effective development, use or conservation of oil & gas resources.

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<sup>12</sup> In O.R.C. §1509.03 an "urbanized area" is defined as: "an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than five thousand in the most recent federal decennial census prior to the issuance of the permit for the well or production facilities."

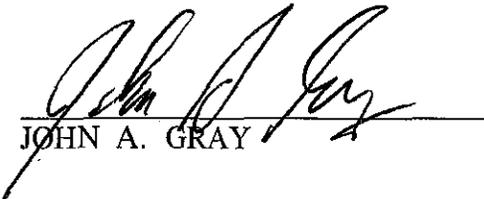
Thus, all of the statutory conditions precedent to the granting of the mandatory pooling application have been met in this case. Pursuant to O.R.C. §1509.27, when these conditions are met, the Chief must grant the mandatory pooling request.

## ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2007-74.

Date Issued: 10/31/08

see attached sheet  
TIMOTHY C. McNUTT, Acting Chair

  
JOHN A. GRAY

  
JAMES H. CAMERON

RECUSED  
M. HOWARD PETRICOFF, Secretary

ABSTAINED  
ROBERT CHASE

### 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:

Louis Chodkiewicz, (Via e-mail [lchadwick@cox.net], Regular Mail and Certified Mail #: 91 7108 2133 3934 5974 5275)  
Mark R. Scoville, (Via Regular Mail and Certified Mail #: 91 7108 2133 3934 5974 5282)  
Jerry Esker, (Via Regular Mail and Certified Mail #: 91 7108 2133 3934 5974 5299)  
Mark G. Bonaventura (Via Fax [614-268-8871] & Inter-Office Certified Mail #: 6469)  
John K. Keller (Via Fax [614-719-4794] and Certified Mail #: 91 7108 2133 3934 5974 5305)

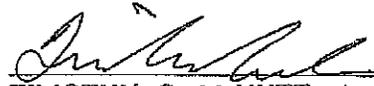
L. Chodkiewicz  
Appeal #788

Thus, all of the statutory conditions precedent to the granting of the mandatory pooling application have been met in this case. Pursuant to O.R.C. §1509.27, when these conditions are met, the Chief must grant the mandatory pooling request.

## ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2007-74.

Date Issued: 10/31/08

  
TIMOTHY C. McNUTT, Acting Chair

\_\_\_\_\_  
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JAMES H. CAMERON

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**BEFORE THE  
OIL & GAS COMMISSION**

LOUIS CHODKIEWICZ,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES  
MANAGEMENT,

Appellee,

and

OHIO VALLEY ENERGY SYSTEMS CORP.,  
MARK R. SCOVILLE,  
JERRY ESKER,

Intervenors.

Appeal No. 788

Review of Chief's Order 2007-74  
(Ohio Valley Energy Systems)

**INDEX OF EVIDENCE  
PRESENTED AT HEARING**

**Before:** Timothy McNutt

**In Attendance:** Jim Cameron, John Gray.

**Appearances:** Louis Chodkiewicz, Appellant *pro se*; Mark G. Bonaventura, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; John K. Keller, Counsel for Intervenor Ohio Valley Energy Systems Corporation; Mark R. Scoville, Intervenor *pro se*; Jerry Esker, Intervenor *pro se*.

**WITNESS INDEX**

**Appellant's Witnesses:**

Louis Chodkiewicz

Statement on Record; Cross Examination



Appellant's Exhibit H	Health and Safety
Appellant's Exhibit I	Insurance
Appellant's Exhibit L	Neighborhood Letters
Appellant's Exhibit LL	Leases
Appellant's Exhibit M	Mandatory Pool Documents
Appellant's Exhibit M-2	Broadview Heights Map 582
Appellant's Exhibit P	Photos
Appellant's Exhibit S	Senate Bill 7
Appellant's Exhibit T-1	Transcript, Technical Advisory Counsel, Proposed Glatzer Well #1, Chodkiewicz Mandatory Pool Hearing, November 13, 2007
Appellant's Exhibit T-2	Transcript, Technical Advisory Counsel, Proposed Berman Well #1, Sobol Mandatory Pool Hearing, November 13, 2007
<b><u>Appellee's Exhibits:</u></b>	
Appellee's Exhibit 1	Application for Mandatory Pooling, with attachments
Appellee's Exhibit 2	Notification of Hearing before the Technical Advisory Council on Oil & Gas, with attachments
Appellee's Exhibit 3	Chief's Order 2007-74, with attachments
<b><u>Intervenor Scoville's Exhibits:</u></b>	
Scoville's Exhibit 1	Summary of Mandatory Pooling Outline
Scoville's Exhibit 2	Mandatory Pooling Procedural Outline, October 19, 2007
Scoville's Exhibit 3	Letter, Husted to Scoville, dated December 19, 2007