

**BEFORE THE
OIL & GAS COMMISSION**

CIRCLEVILLE GAS COMPANY,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee.

Appeal No. 792

Review of Chief's Order
2007-81

**FINDINGS, CONCLUSIONS
& ORDER OF THE
COMMISSION**

Appearances: John R. Wray, Jr., on behalf of Appellant Circleville Gas Company; Mark G. Bonaventura, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: March 17, 2008

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Circleville Gas Company [Circleville] from Chief's Order 2007-81. Chief's Order 2007-81 was issued for Circleville's failure to bring an oil & gas well, known as the Apperson-Torbert Well No. 1, into compliance with Ohio law. Chief's Order 2007-81 demanded the forfeiture of the performance bond posted by Circleville in support of its oil & gas operations.

On February 29, 2008, this cause came on for hearing before four members of the Oil & Gas 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 ordering the forfeiture of bond for Circleville Gas Company's failure to plug or produce the Apperson-Torbert Well No. 1.**

THE LAW

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

2. O.R.C. §1509.07 provides *inter alia*:

. . . [A]n owner of any well, before being issued a permit under section 1509.06 of the Revised Code, shall execute and file with the division of mineral resources management a surety bond conditioned on compliance with the restoration requirements of section 1509.072, the plugging requirements of section 1509.12, the permit provisions of section 1509.13 of the Revised Code, and all rules and orders of the chief relating thereto, in an amount set by rule of the chief.

The owner may deposit with the chief, instead of a surety bond, cash in an amount equal to the surety bond as prescribed pursuant to this section or negotiable certificates of deposit or irrevocable letters of credit, . . . having a cash value equal to or greater than the amount of the surety bond as prescribed pursuant to this section.

3. O.R.C. §1509.071 provides for the forfeiture of bond:

(A) When the chief of the division of mineral resources management finds that an owner has failed to comply with the restoration requirements of section 1509.072, plugging requirements of section 1509.12, or permit provisions of section 1509.13 of the Revised Code, or rules and orders relating thereto, the chief shall make a finding of that fact and declare any surety bond filed to ensure compliance with those sections and rules forfeited in the amount set by rule of the chief. The chief thereupon shall certify the total forfeiture to the attorney general, who shall proceed to collect the amount of the forfeiture.

4. O.R.C. §1509.12 provides in part:

Unless written permission is granted by the chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged, but no well shall be required to be plugged under this section that is being used to produce oil or gas for domestic purposes, or that is being lawfully used for a purpose other than production of oil or gas. When the chief finds that a well should be plugged, the chief shall notify the owner to that effect by order in writing and shall specify in such order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order. . .

5. O.R.C. §1509.01(K) defines an "owner" as:

. . . the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under this chapter.

6. O.R.C. §1509.31 addresses assignments or transfers of oil & gas leases, and provides:

Whenever the entire interest of an oil and gas lease is assigned or otherwise transferred, the assignor or transferor shall notify the holders of the royalty interests, and, if a well or wells exist on the lease, the division of mineral resources management, of the name and address of the assignee or transferee by certified mail, return receipt requested, not later than thirty days after the date of the assignment or transfer. When notice of any such assignment or transfer is required to be provided to the division, it shall be provided on a form prescribed and provided by the division and verified by both the assignor or transferor and by the assignee or transferee. . .

* * *

The owner holding a permit under section 1509.05 of the Revised Code is responsible for all obligations and liabilities imposed by this chapter and any rules, orders, and terms and conditions of a permit adopted or issued under it, and no assignment or transfer by the owner relieves the owner of the obligations and liabilities until and unless the assignee or transferee files with the division . . . a surety bond, negotiable certificates of deposit or irrevocable letters or credit, or cash, . . .

FINDINGS OF FACT

1. The Apperson-Torbert Well No. 1 is located in Morgan County, Bloom Township, Ohio. Circleville obtained this well on June 26, 1996, from Pyro Resource Management, Inc. A Form 7 is on file with the Division of Mineral Resources Management, establishing Circleville as the owner of the Apperson-Torbert Well No. 1.

2. Circleville has never produced the Apperson-Torbert Well No. 1. And, no production records have been filed with the Division for this well.

3. On June 28, 1996, a Notice of Violation was issued on this well. In 1997, a Chief's Order was issued ordering the well to be plugged. This Chief's Order was extended at Circleville's request.

4. On December 13, 2004, the Division conducted an inspection of the Apperson-Torbert Well No. 1. At that time, Division Inspector David Ball found the well to be idle and incapable of production. The Inspector observed that there was no production equipment connected to the well. On December 13, 2004, Notice of Violation 1103116349 was issued to Circleville. The Notice of Violation set an abatement deadline of January 17, 2005, to bring the well into compliance. The well was not plugged or produced by January 17, 2005.

5. In February 2006, Circleville plugged the Apperson-Torbert Well No. 1 back to the Berea formation. However, the well has not been completely plugged.

6. In March 2006, Circleville assigned the oil & gas lease for this well to B.J.B., Inc. This assignment was lost or misplaced, and never recorded. On October 30, 2007, Circleville again assigned the oil & gas lease for this well to B.J.B., Inc. Mr. Wray testified that the second assignment was recorded. However, neither Circleville nor B.J.B., Inc. filed a Change of Owner Form (Form 7) with the Division. B.J.B., Inc. has never filed a surety bond with the Division.

7. On September 11, 2007, the Division inspected the Apperson-Torbert Well No. 1, and found it to be idle and incapable of production. As a result of this inspection, on September 27, 2007, the Division issued Chief's Order 2007-55 to Circleville. This Chief's Order stated that the Apperson-Torbert Well No. 1 "remains incapable of commercial production." The Order required Circleville to plug the well within 30 days or produce the well within 10 days.

8. On December 17, 2007, the Division inspected the Apperson-Torbert Well No. 1, and found it to be idle and incapable of production. The Division determined that Circleville had not complied with Chief's Order 2007-55. Therefore, on December 26, 2007, Chief's Order 2007-81 was issued to Circleville, demanding the forfeiture of the bond covering this well. Circleville appealed the forfeiture order to the Oil & Gas Commission, and that appeal is the subject of the immediate decision.

CONCLUSIONS OF LAW

1. Circleville Gas Company is the "owner" of the Apperson-Torbert No. 1, pursuant to the documents maintained by the Division.

2. Circleville Gas has been ordered to either plug or produce the Apperson-Torbert Well No. 1

3. Circleville has never produced the Apperson-Torbert Well No. 1. The Apperson-Torbert Well No. 1 is not equipped to produce oil & gas in commercial quantities.

4. Circleville has partially, but not completely, plugged the Apperson-Torbert Well No. 1.

5. The issuance of Chief's Order 2007-81, requiring the forfeiture of Circleville's bond, was not unreasonable or unlawful.

DISCUSSION

Before being issued a permit, the owner of any oil & gas well in the State of Ohio must post a performance bond. The purpose of the bond is to ensure that well owners comply with the laws and rules regulating the production of oil & gas. See O.R.C. §1509.071. O.R.C. §1509.071 specifically states that this bond is conditioned upon compliance with the plugging requirements of O.R.C. §1509.12. O.R.C. §1509.12 requires the plugging of wells that are incapable of producing oil or gas in commercial quantities.

To determine if a well is incapable of commercial production, the Division Chief, and this Commission, may look to certain criterion. Lack of surface and in-hole equipment necessary for commercial production indicates that a well is incapable of production. Likewise, the Chief and Commission may consider how recently a well has been produced in evaluating whether the well is incapable of production. See State v. Baldwin Producing Corp, case no. 76 AP-892 (Ct. of App. for Franklin Cty., March 10, 1977).

The testimony at hearing revealed that Circleville has **never** produced the Apperson-Torbert Well #1. Therefore, the well has not been produced since at least 1996, when Circleville acquired the well. Additionally, the evidence, including photographs of the well in 2004 and in 2008, showed that the well is not even connected to production equipment.

Circleville's appeal asserts that the Apperson-Torbert Well No. 1 has been assigned to a new owner, and that the new owner should be responsible for this well. However, the Divisions' official permitting and bonding documents continue to show Circleville as the owner of the Apperson-Torbert Well No. 1. While Circleville may have assigned the oil & gas lease to B.J.B., Inc., the ownership information for this well on file with the Division has not been revised. O.R.C. §1509.31 provides that an assignment or transfer of a lease does not relieve the well owner (as reflected in the Division's files) of its obligations or liabilities under Chapter 1509, unless a change of ownership is documented with the Division. Circleville has not filed a change of ownership form, and therefore, remains the party responsible for the Apperson-Torbert Well No. 1.

At hearing, Circleville argued that the landowner does not want the well plugged, and that the landowner is currently forbidding Circleville from working on the well because of soft ground conditions. Again, this well has been idle and incapable of production for over ten years. The Commission is not persuaded by the suggestion that the current soft ground conditions are a valid excuse for why this well has not been brought into compliance with the law.

The facts in this appeal reveal that the Apperson-Torbert Well No. 1 has been idle and non-productive for several years in violation of O.R.C. §1509.12. The failure of an owner to comply with the plug or produce requirements of O.R.C. §1509.12 is grounds for bond forfeiture under O.R.C. §1509.071. Therefore, the issuance of Chief's Order 2007-81, forfeiting bond, is both lawful and reasonable, under the facts of this case.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2007-81, forfeiting the bond of Circleville Gas Company.

 /5/
M. HOWARD PETRICOFF
Secretary & Acting Chairman

 /5/
JOHN A. GRAY

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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:

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Mark G. Bonaventura, Via Inter-Office Certified Mail #: 6418