

# BEFORE THE OIL & GAS COMMISSION

AVA GAS CORPORATION,	:	Appeal No. 796
	:	
Appellant,	:	
	:	Review of Chief's Order 2008-04
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES	:	<b><u>FINDINGS, CONCLUSIONS</u></b>
MANAGEMENT,	:	<b><u>&amp; ORDER OF THE</u></b>
	:	<b><u>COMMISSION</u></b>
Appellee.	:	

Appearances: Lonnie Watson, on behalf of Appellant Ava Gas Corporation; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: October 28, 2009

## **BACKGROUND**

This matter came before the Oil & Gas Commission upon appeal by Ava Gas Corporation ["Ava"] from Chief's Order 2008-04. Chief's Order 2008-04 was issued for Ava's failure to bring an oil & gas well, known as the B. Nau Well #2, into compliance with Ohio law. Chief's Order 2008-04 demanded the forfeiture of the performance bond posted by Ava in support of its oil & gas operations.

On September 30, 2009, 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 issues presented by this appeal are: **Whether Ava Gas Corporation is commercially producing the B. Nau Well #2. Whether the Chief acted lawfully and reasonably in ordering the forfeiture of bond for Ava Gas Corporation's failure to plug or commercially produce the B. Nau Well #2.**

## 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. §1509.11, addresses the filing of annual production statements with the Division, and provides in pertinent part:

The owner of any well producing or capable of producing oil or gas shall file with the chief of the division of mineral resources management, on or before the first day of March, a statement of production of oil, gas, and brine for the last preceding calendar year in such form as the chief may prescribe.

## **FINDINGS OF FACT**

1. The B. Nau Well #2 is located in Noble County, Enoch Township, Ohio. Ava obtained this well in 1993. Ava is identified as the owner of the B. Nau Well #2, pursuant to documents on file with the State of Ohio, Division of Mineral Resources Management.

2. The B. Nau Well #2 was drilled in January 1983 by the Frederick Petroleum Corporation. The well was drilled to an approximate depth of 4000 feet.

3. The B. Nau Well #2 is one of nine wells owned by Ava. As required by law, Ava has posted a \$15,000 blanket bond with the Division of Mineral Resources Management in support of these wells.

4. The B. Nau Well #2 does not provide domestic oil or gas to any home in the area of the well.

5. Mr. Lonnie Watson, owner of Ava Gas Corporation, has only produced the B. Nau Well #2 by a method known as "swabbing." Swabbing is a production method that does not require the installation of production equipment at the wellhead. During swabbing operations, the production equipment is brought to the well by a swab truck. Swabbing does not, generally, produce large quantities of oil. Since January 1, 2006, Ava has only swabbed the B. Nau Well #2 one time.

6. The production reports on file with the Division of Mineral Resources Management show the following reported production quantities for the B. Nau Well #2, since Ava acquired this well in 1993:

1993	no production reported, report not submitted
1994	no production reported, report not submitted
1995	no production reported, report not submitted
1996	no production reported, report not submitted
1997	no production reported, report not submitted
1998	no production reported, report not submitted
1999	no production reported, report not submitted
2000	no production reported, report not submitted
2001	no production reported, report not submitted
2002	no production reported, report not submitted
2003	no production reported, report not submitted
2004	no production reported, report not submitted
2005	8 barrels of oil, 35 barrels of brine reported
2006	no production reported
2007	no production reported
2008	10 barrels of oil reported

7. Mr. Watson testified that Ava swabbed the B. Nau Well #2: (1) in 2005, producing approximately 16 barrels of oil, (2) in 2008, producing approximately 14 barrels of oil,<sup>1</sup> and in (3) in 2009, producing an unknown quantity of oil.

8. On July 22, 2004, Division Inspector David Ball conducted an inspection of the B. Nau Well #2 site. On that date, Inspector Ball observed that no production equipment was connected to the well. Inspector Ball determined the well to be idle and incapable of production.

9. On July 26, 2004, a Notice of Violation ["NOV"] was issued to Ava. The NOV described the B. Nau Well #2 as incapable of production, and ordered the well to be plugged or produced. The NOV further noted that failure to comply with the mandates of the NOV could result in the forfeiture of bond. The NOV set an abatement deadline of September 22, 2004, to bring the well into compliance. The well was not plugged or commercially produced by September 22, 2004.

10. On August 1, 2005, Division Inspector David Ball again conducted an inspection of the B. Nau Well #2. Inspector Ball testified that the condition of the well site had not changed since his July 2004 inspection. Inspector Ball determined that the well remained idle and incapable of production.

11. On August 22, 2005, Chief's Order 2005-84 was issued, finding that the B. Nau Well #2 was incapable of producing in commercial quantities. The Order required Ava to plug the B. Nau Well #2 within 30 days or produce the well within 10 days. The well was not plugged or commercially produced within the designated time periods. Chief's Order 2005-84 was not appealed to the Oil & Gas Commission.

12. Between August 22, 2005 and April 11, 2008, Ava swabbed the B. Nau Well #2 two times in 2005, and did not swab the well at all in 2006 and 2007.

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<sup>1</sup>While Mr. Watson testified that the B. Nau Well #2 produced 16 barrels of oil in 2005 and 14 barrels of oil in 2008, the reports filed by Ava with the Division reported the production of 8 barrels of oil in 2005 and 10 barrels of oil in 2008.

13. On January 23, 2008, the Division conducted an inspection of the B. Nau Well #2, and found the well to be idle and incapable of commercial production. The Division determined that Ava had not complied with Chief's Order 2005-84. Therefore, on April 11, 2008, Chief's Order 2008-04 was issued to Ava, demanding the forfeiture of the bond covering this well. Ava appealed the forfeiture order to the Oil & Gas Commission, and that appeal is the subject of the immediate decision.

## CONCLUSIONS OF LAW

1. Ava Gas Corporation is the "owner" of the B. Nau Well #2, pursuant to documents maintained by the State of Ohio, Division of Mineral Resources Management.

2. Between 1993 and 2004, Ava failed to file annual production reports with the State of Ohio, Division of Mineral Resources Management, as required by law.

3. Between 2004 and 2008, Ava reported production of 18 barrels of oil from the B. Nau Well #2. The production of 18 barrels of oil over this period does not constitute commercial production.

4. The issuance of Chief's Order 2008-04, requiring the forfeiture of Ava Gas Corporation'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 criteria. Lack of surface and in-hole equipment necessary for commercial production indicates that a well is incapable of production. Likewise, in evaluating the productivity of a well, the Chief, and this Commission, may consider how recently a well has been produced and the quantity of product sold from the well. See State v. Baldwin Producing Corp, case no. 76 AP-892 (Ct. of App. for Franklin Cty., March 10, 1977).

The testimony of Division Inspector David Ball established that, during at least four inspections of the B. Nau Well #2 site, the well was not equipped to commercially produce gas or oil. Photographs taken on July 17, 1996, June 1, 2006 and September 24, 2009, showed that the B. Nau Well #2 was not connected to production equipment on these dates. Mr. Watson, however, testified on behalf of Ava, that his method of producing the B. Nau Well #2 – swabbing – does not require the installation of production equipment at the well head.

Even assuming that the lack of production equipment does not establish a swab well to be non-productive, the Division and Commission may also look to evidence of how recently, and in what quantities, a well has actually been produced. Well owners are required by law to submit annual reports indicating well production. See O.R.C. §1509.11. Notably, Ava has failed to comply with this statutory mandate for at least twelve of the sixteen years during which the well has been registered to this owner. Mr. Watson admitted that he failed to file these reports, and apologized for this failure. However, this does not change the fact that Ava failed to comply with the law, nor does it follow that the Division should not be able to rely upon such production records (or lack of records) in determining the productivity of a well.

The evidence in this appeal revealed that Ava acquired the B. Nau Well #2 in 1993. Between 1993 and 2008 – a sixteen-year period – Ava reported production of only 18 barrels of oil from the B. Nau Well #2. In testimony, Mr. Watson suggested that the well may have produced as much as 30 barrels of oil during this period.

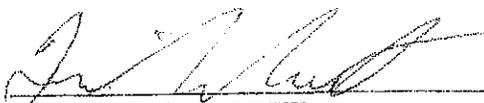
The Division worked patiently with Ava from July 22, 2004 until April 11, 2008, giving Ava appropriate time to address the concerns raised by the Division. However, Ava did not correspondingly respond, as evidenced by the fact that Ava swabbed the B. Nau Well #2 only two times between August 22, 2005 (when Chief's Order 2005-84 was issued, ordering Ava to plug or produce the well) and April 11, 2008 (when Chief's Order 2008-04 was issued, ordering the forfeiture of bond).

At hearing, Mr. Watson asserted that the landowner does not want the well plugged, and that Ava's occasional swabbing of the B. Nau Well #2 does generate some income. While this may be true, the law requires that all non-domestic wells must be capable of commercial production. The reported production for the B. Nau Well #2 over the past sixteen years has been 18 barrels of oil and 35 barrels of brine, or, by Mr. Watson's account, 30 barrels of oil. The Commission is not persuaded that these amounts constitute commercial production.

The facts in this appeal reveal that the B. Nau Well #2 has failed to produce oil in commercial quantities 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 2008-04, forfeiting bond, is both lawful and reasonable, under the facts of this case.

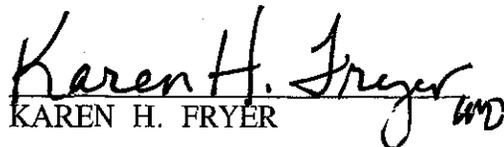
## ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2008-04, forfeiting the bond of Ava Gas Corporation.

  
TIMOTHY C. McNUTT  
Secretary & Acting Chairman

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M. HOWARD PETRICOFF

  
ROBERT W. CHASE

  
KAREN H. FRYER

  
JAMES H. CAMERON

## **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:**

Lonnie Watson, Via Certified Mail #: 91 7108 2133 3936 6684 7922 & Regular Mail  
Molly Corey, Via Inter-Office Certified Mail #: 6540

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-vs- : :  
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DIVISION OF MINERAL RESOURCES : :  
MANAGEMENT, : : **INDEX OF EVIDENCE**  
: : **PRESENTED AT HEARING**  
Appellee. : :

**Before:** Timothy C. McNutt

**In Attendance:** James Cameron, Robert W. Chase, Karen H. Fryer

**Appearances:** Lonnie Watson, on behalf of Appellant Ava Gas Corporation; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management

## **WITNESS INDEX**

### **Appellant's Witnesses:**

Lonnie Watson Statement on Record; Cross Examination

### **Appellee's Witnesses:**

David Ball Direct Examination; Cross Examination

## EXHIBIT INDEX

### Appellant's Exhibits:

- Appellant's Exhibit 1                      Copy of check # 2731 issued by Ava Gas Enterprises, LLC to Tom Sailing, in the amount of \$117.50 dated January 19, 2009, with notation 1.25 barrel oil at \$94.50 a barrel.
- Appellant's Exhibit 2                      Receipt #1201, dated December 8, 2005 to Tom Sailing for 1 barrel of oil from November 2005
- Appellant's Exhibit 3                      Receipt #1202, dated December 8, 2005 to Tom Sailing for 1 barrel of Oil from October 2005

### Appellee's Exhibits:

- Appellee's Exhibit A1                      Photograph, B. Nau Well #2; taken September 24, 2009
- Appellee's Exhibit A2                      Photograph, B. Nau Well #2; taken September 24, 2009
- Appellee's Exhibit A3                      Photograph, tank associated with B. Nau Well #2; taken September 24, 2009
- Appellee's Exhibit A4                      Photograph, B. Nau Well #2 and associated tank; taken September 24, 2009
- Appellee's Exhibit B                      Order of the Court of Noble County, State of Ohio, ex rel. Jim Petro vs. Lonnie Watson, case no. 202-1174, Court of Common Pleas for Nobel County, Ohio, issued February 19, 2004
- Appellee's Exhibit C                      List of Wells Owned by Ava Gas Corporation, dated July 15, 2009
- Appellee's Exhibit D                      Division Inspection Report, dated July 22, 2004
- Appellee's Exhibit E                      Notice of Violation # 1477097607; issued July 26, 2004

Appellee's Exhibit F

Division Inspection Report, dated August 1, 2005

Appellee's Exhibit G

Chief's Order 2005-84, issued August 22, 2005

Appellee's Exhibit H

Production Report List for B. Nau Well #2

Appellee's Exhibit I

Chief's Order 2008-04, issued April 11, 2008

Appellee's Exhibit J

Photograph, B. Nau Well #2, taken July 17, 1996

Appellee's Exhibit K

Photograph, B. Nau Well #2, taken June 1, 2006

Appellee's Exhibit L

Well Completion Record, B. Nau Well #2,  
completed February 6, 1983