

BEFORE THE OIL & GAS COMMISSION

EMMA RITA ASHMUS,	:	
	:	
Appellant,	:	Appeal No. 797
	:	
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES	:	Review of Chief's Order 2008-31
MANAGEMENT,	:	(Ohio Valley Energy Systems)
	:	
Appellee,	:	
	:	
and	:	<u>FINDINGS, CONCLUSIONS</u>
	:	<u>AND ORDER OF THE</u>
OHIO VALLEY ENERGY SYSTEMS CORP.,	:	<u>COMMISSION</u>
	:	
Intervenor.	:	

Appearances: Emma Rita Ashmus, Appellant *pro se*; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; John K. Keller, Michael J. Settineri, Counsel for Intervenor Ohio Valley Energy Systems Corporation.

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Emma Rita Ashmus from Chief's Order 2008-31. Through Order 2008-31, 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 Kleppel Unit Well #1. Ms. Ashmus resides on the property, which 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 and operate the Kleppel Unit Well #1.

Ms. Ashmus filed her appeal of Chief's Order 2008-31 with the Commission on June 24, 2008. On August 26, 2008, Ohio Valley moved for intervention into this action. On September 16, 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 Ms. Ashmus' position.

On October 31, 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 Ms. Ashmus had failed to comply with the notice requirements contained in the Commission's procedural rules.¹ Ohio Valley questioned whether Ms. Ashmus had provided notice of the Commission's hearing to any interested persons. Ms. Ashmus testified that she provided notice to the City of Broadview Heights, through a certified mailing. She also testified that she informed her neighbor Mr. Brindza of the Commission hearing. Beyond this, Ms. Ashmus made no further attempts to notify interested persons. The Commission initially **reserved** ruling upon this Motion, and proceeded to hearing. Intervenor Ohio Valley raised this Motion again at the conclusion of the hearing. The Commission has not granted Intervenor's Motion, and intends to rule upon the merits of this appeal.

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 Kleppel Unit Well #1.**

¹ The language of O.A.C. §1509-1-06 (which was in effect when the Notice of Hearing for this matter was issued, and which is referenced within that Notice of Hearing) states in pertinent part:

The appellant shall be responsible for notifying all interested persons as defined in rule 1509-1-14 of the Administrative Code of the place where, and the date and time when, the hearing [before the Oil & Gas Commission] will be held, and such notice shall be given by appellant by registered or certified mail, return receipt requested, not less than ten days in advance of hearing unless otherwise determined by the oil and gas commission; the appellant shall furnish to the oil and gas commission at the hearing return receipts or other sufficient proof of rendering such notice to all interested persons.

"Interested persons" are defined as persons having pecuniary or proprietary interests directly affected by an appeal before the Commission. See O.A.C. §1509-1-14. (The Commission's procedural rules were amended effective September 30, 2008. The notice requirements of O.A.C. §1509-1-06 are now found at O.A.C. §1509-1-15. The definition of "interested persons" is now found at O.A.C. §1509-1-02(I) and O.A.C. §1509-1-13.)

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;

* * *

(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 Kleppel Unit Well #1. The surface installations associated with this well would be located on a 9.39-acre lot owned by Kenneth G. & Connie M. Kleppel. The Kleppels have provided an oil & gas lease to Ohio Valley for the development of this well. The target depth of the proposed well is 3700 feet. The proposed well would produce from the Ohio Shale Formation, through the Clinton Sandstone.

2. Emma Rita Ashmus has lived in the Broadview Heights area for over 50 years, and owns approximately 1.25² acres of land located at 8337 Eastwood Drive. This lot is approximately 100 feet wide by approximately 630 feet deep. The property spans from Eastwood Drive towards the Chippewa Creek, and includes a ravine in the area of the creek. The Ashmus home is situated on the front portion of the property, along Eastwood Drive. The original Ashmus parcel was approximately 200 feet deep, measuring from Eastwood Drive. Ms. Ashmus purchased the rear portion of this property (approximately an additional 400 feet beyond the original rear property line) in order to control and preserve the ravine behind her home.

² There was no testimony given at hearing as to the total acreage of the Ashmus property. The figure of 1.25 acres was taken from statements made at the TAC hearing in May 2008. A scaling of the maps introduced at hearing indicates that the Ashmus property covers between 1.25 and 1.5 acres of ground.

3. Ms. Ashmus owns her property in fee simple, and retains the mineral interests, including oil & gas rights, for this property. The property is within 300 feet of the proposed Kleppel Unit Well #1 wellhead.

4. In addition to the 9.39-acre development lease obtained from Kenneth G. & Connie M. Kleppel, Ohio Valley obtained non-development leases³ from twelve separate landowners. The total leased area covers 23.75 acres. The leases were obtained to establish a drilling unit⁴ for the Kleppel Unit Well #1. These thirteen landowners voluntarily agreed to participate in the Kleppel Unit Well #1, 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,⁵ which will support the proposed Kleppel Unit Well #1.

5. The properties voluntarily pooled to create the tract, which will support the proposed Kleppel Unit Well #1 are:

K & C Kleppel property	9.39 acres
L & A Aguiar, Trustees, property	.55 acre
D & M Brindza property	.76 acre
L Cozza & J Simmons-Cozza property	.57 acre
R & P Dey property	.45 acre
K & R Everett property	.59 acre
JRL Investments, Inc. property	5.82 acres
D Larson property	.90 acre
J & L Leyden property	.83 acre
J Liptak & C Cuccarese-Liptak property	.47 acre
R & L Maher property	1.67 acres
D & C McDermott property	1.39 acres
S & S Zepp property	<u>.36 acre</u>
	23.75 acres

6. With the addition of the .47-acre portion of the Ashmus property, the total amount of acres included in the drilling unit for the Kleppel Unit #1 Well is 24.22 acres.

³ 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.

⁴ 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 Kleppel 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 Ashmus property is located within 300 feet of the proposed wellhead for the Kleppel Well.

⁵ 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...".

7. The Ashmus property abuts the McDermott, JRL Investments, Inc., Dey, Brindza and Kleppel properties. All of these properties are included within the drilling unit for the Kleppel Unit Well #1.

8. Between October 23, 2007 and February 29, 2008, representatives of Ohio Valley approached Ms. Ashmus, in person, by telephone and in writing, regarding the leasing of her oil & gas rights, for the development of the Kleppel Unit Well #1. Ohio Valley initially offered a \$400 signing bonus to the Ms. Ashmus, and assured her of her 1/8 royalty interest⁶ in production from this well. The signing bonus was later raised to \$1000. Ohio Valley's efforts consisted of:

October 23, 2007	Letter & proposed non-development lease sent; \$400.00 signing bonus and royalty interest offered; no response received from Ms. Ashmus
February 6, 2008	Letter & proposed non-development lease sent; \$400.00 signing bonus and royalty interest offered; no response received from Ms. Ashmus
February 8, 2008	Personal contact between Ohio Valley and Ms. Ashmus; representatives of Ohio Valley visited Ms. Ashmus at her home; Ms. Ashmus indicated that she was not interested in a well being drilled in the area of her home and that she would not voluntarily participate in this project
February 19, 2008	Attempted personal contact with Ms. Ashmus; Ohio Valley left a business card and pamphlet at the Ashmus residence, requesting a meeting
February 20, 2008	Attempted personal contact with Ms. Ashmus; Ohio Valley left a business card and pamphlet at the Ashmus residence, requesting a meeting
February 21, 2008	Attempted personal contact with Ms. Ashmus; Ohio Valley left a business card and pamphlet at the Ashmus residence, requesting a meeting
February 21, 2008	Personal contact with Ms. Ashmus at her home; Ohio Valley offered to increase the signing bonus to \$1000.00 and continued to offer the royalty interest; Ms. Ashmus stated that she was not interested in participating in this project, and indicated that she did not wish to be contacted again regarding this project

⁶ This is the standard industry royalty rate.

February 29, 2008	Telephone contact with Ms. Ashmus at her home; Ohio Valley reiterated its offer to increase the signing bonus to \$1000.00 and continued to offer royalties; Ms. Ashmus stated that she was not interested in participating in this project, and requested that Ohio Valley stop approaching her on this subject
March 3, 2008	Certified letter sent to Ms. Ashmus; letter offered Ms. Ashmus a \$400 signing bonus and royalty interests; letter indicated Ohio Valley's intention to initiate a mandatory pooling action; the letter was returned to Ohio Valley as unclaimed
March 19, 2008	Letter sent to Ms. Ashmus; letter offered Ms. Ashmus a \$1000 signing bonus and royalty interests

9. On April 1, 2008, Ohio Valley filed an application with the Division for a mandatory pooling order. The application for mandatory pooling, requested that one property, the Emma Rita Ashmus property, be mandatorily pooled into the proposed Kleppel Unit Well #1 drilling unit. Only **.47 acre of the Emma Rita Ashmus property** was proposed for mandatory pooling. The .47-acre area was 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. The .47 acre portion of the Ashmus property is necessary for the development of the Kleppel Unit #1 Well, as this acreage provides Ohio Valley with all the rights to the oil & gas interests within a 300-foot radius of the proposed wellhead.

10. Ohio Valley's application for mandatory pooling was referred to the Technical Advisory Council ["TAC"].⁷ A hearing before the TAC, upon this application, was conducted on May 13, 2008. Ms. Ashmus was notified of this hearing, but did not appear before the TAC to oppose the forced pooling of her property, as she was attending a family funeral on that day. However, at the request of Ms. Ashmus, or her son, certain items were presented to the TAC through Division employee George Mychkovsky. The TAC unanimously recommended that the Division Chief approve Ohio Valley's application for mandatory pooling.

⁷ 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.

11. On May 23, 2008, following the TAC hearing, and pursuant to the advice and recommendation of the TAC, the Division Chief issued Chief's Order 2008-31, which mandated the inclusion of a .47-acre portion of the Ashmus property into the drilling unit for the Kleppel Unit Well #1. Chief's Order 2008-31 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.

12. The Kleppel Unit Well #1 will be drilled on property owned by Kenneth and Connie Kleppel. No surface equipment will be located on the Ashmus property. Approximately 150 feet of the rear portion of the Ashmus property (in the area of the ravine associated with Chippewa Creek) abuts the Kleppel property. Other portions of the Ashmus property are separated from the Kleppel property by the Dey and Brindza properties. The Kleppel wellhead is proposed to be located approximately 175 feet from the closest Ashmus property line, and approximately 670 feet from the Ashmus residence. The tank batteries associated with the Kleppel Well will be located approximately 300 feet from the closest Ashmus property line, and approximately 900 feet from the Ashmus residence. The rear portion of the Ashmus property is wooded, as are most of the neighboring properties. It is unlikely that production equipment will be visible from the Ashmus residence. Ohio Valley plans to screen the surface installations associated with the proposed Kleppel Unit Well #1 by installing fencing and by planting trees around the well structures.

13. The Kleppel Unit #1 Well is proposed to be drilled in an urbanized area. Therefore, additional conditions have been attached to the drilling and operation of this well. These items have been articulated in an Urbanized Area Permit Conditions Form on file with the Division.

14. On June 24, 2008, Emma Rita Ashmus filed with this Commission, a notice of appeal from Chief's Order 2008-31. The Order under appeal mandated the pooling of a .47-acre section of the Ashmus property into the drilling unit for the Kleppel Unit Well #1. This appeal was heard by the Commission on October 31, 2008. Ms. Ashmus, her son Lee Ashmus and Danielle Barille of State Representative Josh Mandle's office, appeared on behalf of Ms. Ashmus for hearing and presented evidence in support of Ms. Ashmus' appeal. Ms. Ashmus 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 Ashmus property, the Kleppel Unit Well #1 drilling unit is insufficient in 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 Ms. Ashmus, 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 Ms. Ashmus. Ohio Valley attempted to obtain a voluntary oil & gas lease for the Ashmus property. Ohio Valley's offers to the Ms. Ashmus were just and equitable.

5. The mandatory pooling order relating to the Kleppel Unit Well #1 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 2008-31, mandating the pooling of .47 acre of land into the Kleppel Unit Well #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 Kleppel Unit Well #1 is proposed to be drilled to a depth of 3700 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 .47-acre portion of the Ashmus property, the Kleppel Unit Well #1 drilling unit does not meet these 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. It is a tool of last resort. See Chodkiewicz v. Division & Ohio Valley Energy, Mark Scoville and Jerry Esker, #788 (Oil & Gas Commission, October 31, 2008, quoting from an article written by Tom Stewart, Executive Vice President of the Ohio Oil & Gas Association, printed in the Association's March 2008 Bulletin).

At the hearing before this Commission, Ms. Ashmus articulately presented her concerns regarding the installation of the Kleppel Unit Well #1. The concerns articulated by Ms. Ashmus include: 1) impacts upon the serenity and scenic beauty of the Chippewa Creek ravine area, 2) possible impacts upon the ability of Chippewa Creek to act as a flood control device, 3) health and safety concerns related to the installation of a well in a residential or urbanized area, 4) the preservation of this site as an animal sanctuary, 5) the preservation of this site for future generations, 6) the possibility that this site has historical significance, and 7) the erosion of home rule. While the Commission recognizes that Ms. Ashmus' concerns are genuine and deep-felt, many of the items addressed through her comments are outside the jurisdiction of this Commission.⁸ 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 Ms. Ashmus are not directly relevant to the issue of whether Chief's Order 2008-31 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 Kleppel Unit Well #1 is proposed is of insufficient size or shape to meet the requirements of drilling such a well.

⁸ Many of Ms. Ashmus' concerns, such as those concerns relating to the erosion of home rule or her 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.

(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 Ashmus property, the drilling unit for the Kleppel Unit Well #1 is insufficient in shape. Significantly, the size of the drilling unit is sufficient even without the inclusion of the Ashmus property. The Kleppel Unit Well #1 is proposed to be drilled to a depth of 3700 feet. Without the Ashmus property, the spacing and set-back requirements of the law cannot be met, 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 Ashmus property line is approximately 175 feet from the proposed wellhead. Therefore, the inclusion of a portion of the Ashmus property is essential to the development of this well. In fact, the portion of the Ashmus property subject to mandatory pooling is the .47-acre portion of this lot falling within the arc of a 300-foot radius drawn around the proposed wellhead.

While Ms. Ashmus has unequivocally indicated that she does not support the installation of the Kleppel Unit Well #1 and that she is opposed to the forced pooling of her property on a philosophical basis, it is still true that thirteen of her 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.

Significantly, the mandatory pooling provisions of law are not considered a forced "taking" of property. Rather, mandatory pooling ensures that landowners holding oil & gas rights within the vicinity of a well are fairly compensated for their neighbors' decision to allow the drilling and operation of a well. While Ms. Ashmus is clearly opposed to this well on a deep and philosophical basis, and is sincerely concerned about the protection and preservation of her property for future generations, the installation of the Kleppel Well should not interfere with the use or enjoyment of her property. Rather, mandatory pooling will simply ensure that she receives the benefit of the operation of this well. While Ms. Ashmus has clearly stated that she has no interest in receiving any financial benefits from this well, the law is written to assure that these benefits are available to her.

In this appeal, 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 Kleppel Unit Well #1 Well without the addition of the Ashmus property. To determine whether Ohio Valley's efforts to voluntarily pool the Ashmus property were "just and equitable," the Commission must examine what efforts were made to voluntarily include the Ashmus property within the Kleppel Unit Well #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 Ms. Ashmus several times over a period of more than five months. There were four contacts by mail, five personal contacts or attempted personal contacts, and one contact by telephone.

After a five-month period, and in light of Ms. Ashmus' unequivocal position, as she clearly articulated to Ohio Valley, it was not unreasonable for Ohio Valley to proceed with a mandatory pooling action, in order to create an adequate drilling unit for the Kleppel Unit Well #1. Additionally, based upon industry standards, Ohio Valley's offers of a \$400 and a \$1000 signing bonus, in addition to Ms. Ashmus' royalty interests, was just and equitable.

It is important to note that the Kleppel Unit Well #1 has been identified as being located within an urbanized area.⁹ 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 shape for the Kleppel Unit Well #1, based upon voluntary participation.

The Commission also **FINDS** that Ohio Valley attempted to join the Ms. Ashmus 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 Ashmus property were, ultimately, unsuccessful.

The Commission **FINDS** that pooling the .47-acre portion of the Ashmus property is necessary to protect correlative rights or to provide effective development, use or conservation of oil & gas resources.

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.

⁹ 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."

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2008-31.

Date Issued: Nov. 18, 2008

See attached sheets
JOHN A. GRAY, Acting Chair

ROBERT CHASE

JAMES H. CAMERON

RECUSED

M. HOWARD PETRICOFF, Secretary

ABSTAINED

TIMOTHY McNUTT

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:

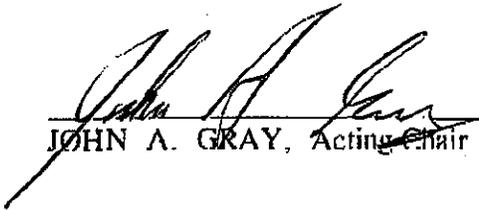
Emma Rita Ashmus (Via Certified Mail #: 91 7108 2133 3934 5935 2183 & Regular Mail)
Molly Corey (Via Inter-Office Certified Mail #: 6474)
John K. Keller, Michael J. Settineri (Via Certified Mail #: 91 7108 2133 3934 5935 2190)

E.R. Ashmus
Appeal #797

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2008-31.

Date Issued: 11/18/08



JOHN A. GRAY, Acting Chair

ROBERT CHASE

JAMES H. CAMERON

RECUSED

M. HOWARD PETRICOFF, Secretary

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E.R. Ashmus
Appeal #797

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2008-31.

Date Issued: 11/18/08

JOHN A. GRAY, Acting Chair



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E.R. Ashmus
Appeal #797

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2008-31.

Date Issued: 11/19/2008

JOHN A. GRAY, Acting Chair

ROBERT CHASE


JAMES H. CAMERON

RECUSED
M. HOWARD PETRICOFF, Secretary

ABSTAINED
TIMOTHY McNUTT

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:

Emma Rita Ashmus (Via Certified Mail #: 91 7108 2133 3934 5935 2183 & Regular Mail)
Molly Corey (Via Inter-Office Certified Mail #: 6474)
John K. Keller, Michael J. Settineri (Via Certified Mail #: 91 7108 2133 3934 5935 2190)

BEFORE THE OIL & GAS COMMISSION

EMMA RITA ASHMUS,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee,

and

OHIO VALLEY ENERGY SYSTEMS CORP.,

Intervenor.

Appeal No. 797

Review of Chief's Order 2008-31
(Ohio Valley Energy Systems)

INDEX OF EVIDENCE PRESENTED AT HEARING

Before: John A. Gray

In Attendance: Jim Cameron, Robert Chase

Appearances: Emma Rita Ashmus, Appellant *pro se*; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; John K. Keller, Michael J. Settineri, Counsel for Intervenor Ohio Valley Energy Systems Corporation.

WITNESS INDEX

Appellant's Witnesses:

Emma Rita Ashmus

Statement on Record; Cross Examination

Appellee's Witnesses:

George Mychkovsky

Direct Examination; Cross Examination

Intervenor Ohio Valley's Witnesses:

No witnesses

EXHIBIT INDEX

Commission's Exhibits:

Commission's Exhibit 1 Aerial Photo, Plot Plan with Contours, Kleppel Unit No. 1

Appellee's Exhibits:

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 Partial Transcript of Hearing before the Technical Advisory Council on Oil & Gas (portion addressing Ashmus property) May 13, 2008

Appellee's Exhibit 4 Chief's Order 2008-31, issued May 23, 2008, with attachments

Appellee's Exhibit 5 Urbanized Area Permit Conditions, Kleppel Unit #1 Well