

BEFORE THE OIL & GAS COMMISSION

VALLEY ENTERPRISES,

Case No. 709

Appellant,

Review of Chief's Order 2002-11

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

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

Appellee.

Appearances: Shirley McCulley, on behalf of Appellant, Valley Enterprises; Mark G. Bonaventura, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: December 27, 2002

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Valley Enterprises from Chief's Order 2002-11. Chief's Order 2002-11 demanded the forfeiture of bond in the amount of \$15,000, for Valley Enterprises' failure to plug the Snode Well #1.

On October 9, 2002, 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 Valley Enterprises' failure to plug the Snode Well #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. . . . 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 and to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom either for himself or for others.

FINDINGS OF FACT

1. Valley Enterprises is a sole proprietorship owned by Shirley McCulley. Valley Enterprises owns and operates oil & gas wells within the State of Ohio.
2. The Snode Well #1 is located in Noble County, Ohio. Valley Enterprises is registered as the owner of the Snode Well #1. The Snode Well #1 is covered by Valley Enterprises' blanket bond of \$15,000. This bond is comprised of three certificates of deposit.

3 In response to a landowner complaint, the Division of Mineral Resources Management inspected the Snode Well #1 site on April 6, 2001. At that time, the well was found to be idle and incapable of production. Pumping equipment was not present at the well site. On April 6, 2001, Division Inspector Clyde Dobbin issued to Valley Enterprises a Notice of Violation, requiring Valley to produce or plug the well by June 1, 2001.

4. Valley Enterprises did not plug or produce the Snode Well #1 by June 1, 2001. Therefore, on June 19, 2001, the Division Chief issued Order 2001-45. This Order required Valley to place the Snode Well #1 into production within 10 days, or to plug and abandon the well within 30 days. Valley Enterprises did not comply with Chief's Order 2001-45

5 On January 29, 2002, the Division Chief informed Valley Enterprises by letter, that Valley would be placed on " permit hold" as a result of the idle condition of the Snode Well #1. The Division provided Valley with an opportunity for an informal hearing on the proposed " permit hold." Valley did not request an informal hearing.

6. On February 15, 2002, the Division issued Chief's Order 2002-11. This Order found that Valley had failed to plug or produce the Snode Well #1, as ordered by the earlier Chief's Order 2001-45. Chief's Order 2002-11 demanded the forfeiture of the \$15,000 bond. The forfeiture order, was appealed to the Oil & Gas Commission by Valley Enterprises, and is the subject of the immediate decision.

7 Mrs. Shirely McCulley, the sole proprietor of Valley Enterprises, owns several wells in Ohio. The Snode Well #1 is registered with the Division as owned by Valley Enterprises, and is bonded under Valley Enterprises' blanket bond. However, Mrs. McCulley testified that her brother, Roger Barr, is actually the person who purchased and intended to operate the Snode Well #1. Mrs. McCulley stated that the Snode Well #1 was placed on Valley's blanket bond as a favor to her brother.

CONCLUSIONS OF LAW

1. Valley Enterprises is the “ owner” of the Snode Well #1.
2. The Snode Well #1 was not in production from at least April 2001 until around or about August 2002. On June 19, 2001, the Division ordered Valley to plug or produce the Snode Well #1. The well was not plugged or produced within the time period set forth by the Division Chief.
3. The issuance of Chief's Order 2002-11, requiring the forfeiture of Valley Enterprises' blanket 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. This plugging requirement is intended to protect both the environment and other oil & gas producing strata.

The Divisions' official permitting and bonding documents show Valley Enterprises as the owner of Snode Well #1. Therefore, Valley Enterprises' responsibility for this well is established.

There is no dispute that for a substantial period of time, the Snode Well #1 was incapable of production, as the well was not equipped to produce. It is also clear that once Valley Enterprises was ordered to plug or produce the Snode Well #1, Valley did not comply in a timely fashion.

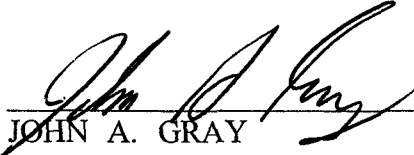
The facts also reveal that the Snode Well #1 was idle and non-productive in violation of O.R.C. §1509 12. The failure of an owner to comply with the plug or produce requirements of O.R.C. §1509 12 is grounds for bond forfeiture under O.R.C. §1509 071. Therefore, the issuance of Chief's Order 2002-11, forfeiting bond, is both lawful and reasonable.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2002-11, forfeiting the bond of Valley Enterprises.



WILLIAM J. TAYLOR, Chairman



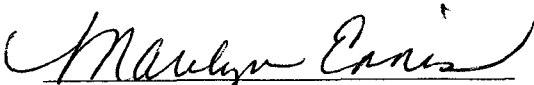
JOHN A. GRAY

RECUSED

JAMES H. CAMERON

ABSTAINED

BENITA KAHN, Secretary



MARILYN ENNIS

Valley Enterprises
Appeal #709

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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