

BEFORE THE OIL & GAS COMMISSION

GARY HARRIS &
GROUP MAINTENANCE,

Appellants,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee.

Case No. 714

Review of Chief's Order
2003-11

FINDINGS, CONCLUSIONS & ORDER OF THE COMMISSION

Appearances: Bruce Smith, Counsel for Appellants Gary Harris & Group Maintenance Corp., Mark G. Bonaventura, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: October 27, 2003

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Gary Harris and Group Maintenance Corp. [Group Maintenance] from Chief's Order 2003-11. Chief's Order 2003-11 demanded the forfeiture of bond in the amount of \$15,000, for Group Maintenance's failure to plug or produce certain oil & gas wells. The three wells at issue are the Dzurı #2 Well, the Schwan-Adams #1 Well and the Bailey #1 Well.

On June 25, 2003, this cause came on for hearing before four members of the Oil & Gas Commission. At the commencement of hearing, Counsel for Appellants informed the Commission that Gary Harris was unavailable for hearing on this date. Therefore Appellants' Counsel moved for a continuance of the hearing. This motion was opposed by the Division, which had appeared with witnesses.

The Commission Chairman denied the request for continuance, but allowed Appellant Gary Harris to participate by telephone. Mr Harris was contacted by telephone and participated via speaker-phone for the duration of the hearing. Counsel for Appellant Harris did attend the hearing, and was able to fully examine Mr Harris. Counsel for Mr. Harris was also given the opportunity to confer privately with Mr. Harris, when requested.

At hearing, both the Appellant and Appellee 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 Group Maintenance's failure to plug or produce certain wells.**

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, stating:

(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. Gary Harris is the President of Group Maintenance Corporation. Group Maintenance began operations in 1986. At that time, the company acquired 80 – 90 oil & gas wells. Several of these wells have been sold or plugged.

2. Group Maintenance owns the Dzuri #2 Well (Ashtabula County permit 440), the Schwan-Adams #1 Well (Portage County permit 1790) and the Bailey #1 Well (Ashtabula County permit 460).

3. The Dzuri #2 Well, the Schwan-Adams #1 Well and the Bailey #1 Well are covered by Group Maintenances' blanket bond of \$15,000. This is a cash bond.

4. The Dzuri #2 Well was produced in 1996, 1997, 1998 and 1999. This well was also produced for 3 days in 2002 and 3 days in 2003. However, the 2002 and 2003 production was not in a commercial quantity. In August 2000, the Division Inspector issued a Notice of Violation to Group Maintenance, citing pollution and contamination and noting that the well was idle. The Notice of Violation required Group Maintenance to plug or produce this well by October 6, 2000. This was not accomplished. On December 7, 2001, Chief's Order 2001-83 was issued to Group Maintenance, requiring that the Dzuri #2 Well be either plugged or produced. The well was not plugged, nor was it produced in commercial quantities. The Dzuri #2 Well is currently idle and incapable of commercial production. Equipment necessary for production at this well is either not present, or if present, is inoperable. The vegetation surrounding the well site is overgrown. Group Maintenance did not comply with Chief's Order 2001-83. Group Maintenance is attempting to sell this well.

5. The Schwan-Adams #1 Well was drilled in 1984, and was produced in the early 1990's. In June 1996, Group Maintenance and Gary Harris entered into a Consent Judgment in the Court of Common Pleas for Ashtabula County, Ohio (case no. 95 CV 466), agreeing to produce the Schwan-Adams #1 Well by November 15, 1996, or plug this well by December 15, 1996. The well was not plugged, nor was it produced. Group Maintenance did not comply with the Consent Judgment. The Schwan-Adams #1 Well is currently idle and incapable of commercial production. Equipment necessary for production at this well is either not present, or if present, is inoperable. The well site is covered with overgrown vegetation.

6. The Bailey #1 Well has not been produced since 1986. In November 1995, a Notice of Violation was issued to Group Maintenance, which ordered the Bailey #1 Well to be plugged or produced by December 1995. This was not accomplished. In June 1996, Group Maintenance and Gary Harris entered into a Consent Judgment in the Court of Common Pleas for Ashtabula County (case no. 95 CV 466), agreeing to plug the Bailey #1 Well by November 15, 1996. This well has not been plugged. Therefore, Group Maintenance did not comply with the Consent Judgment. The Bailey #1 Well is currently idle and incapable of commercial production. Equipment necessary for production at this well is either not present, or if present, is inoperable. The vegetation at the well site is overgrown. Group Maintenance is attempting to sell this well.

7. On January 31, 2003, the Division issued Chief's Order 2003-11. This Order found that Group Maintenance had failed to plug or produce the Dzuri #2 Well, the Schwan-Adams #1 Well and the Bailey #1 Well. Chief's Order 2003-11 demanded the forfeiture of Group Maintenance's \$15,000 blanket bond. The forfeiture order, was appealed to the Oil & Gas Commission by Gary Harris and Group Maintenance, and is the subject of the immediate decision.

CONCLUSIONS OF LAW

1. Gary Harris or Group Maintenance is the owner of the Dzuri #2 Well, the Schwan-Adams #1 Well and the Bailey #1 Well.

2. The Dzuri #2 Well, the Schwan-Adams #1 Well and the Bailey #1 Well are currently idle and incapable of commercial production.

3. In December 2001, Gary Harris or Group Maintenance was ordered by the Division of Mineral Resources Management to plug or produce the Dzuri #2 Well. Gary Harris or Group Maintenance was required by the terms of a Consent Judgment filed in the Court of Common Pleas for Ashtabula County in June 1996, to plug or produce the Schwan-Adams #1 Well by December 1996. Gary Harris or Group Maintenance was required by the terms of a Consent Judgment filed in the Court of Common Pleas for Ashtabula County in June 1996 to plug the Bailey #1 Well by November 1996. None of these wells were plugged or produced within the designated time periods.

4 Appellant Gary Harris, Group Maintenance did not present any evidence to establish that the issuance of Chief's Order 2003-11, requiring the forfeiture of Group Maintenance's blanket bond, was 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.

The parties do not dispute that Group Maintenance is the owner of the Dzuri, Schwan-Adams and Bailey Wells. Therefore, Group Maintenance's responsibility for these wells is established.

It is also undisputed that Group Maintenance was ordered to plug or produce the Dzuri Well by January 2002, and did not comply with this mandate. Group Maintenance was required to plug or produce the Schwan-Adams Well by December 1996, and did not comply with this mandate. Also, Group Maintenance was ordered to plug the Bailey Well by November 15, 1996, and did not plug this well by that date.

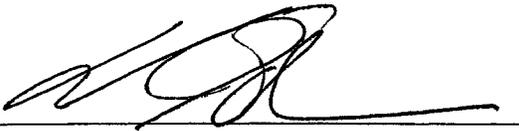
The evidence at hearing revealed that for a substantial period of time, these three wells have been idle and incapable of commercial production. To determine if a well is incapable of commercial production the Division Chief, and this Commission, may look to certain criterion. See *State v. Baldwin Producing Corp.*, case no. 76 AP-892 (Ct. of App. for Franklin Cty., March 10, 1977).

The lack of surface and in-hole equipment necessary for commercial production indicates that a well is incapable of production. See *State v. Baldwin Producing Corp.*, *supra*. Testimony and photographs presented at hearing show that these wells are not equipped for commercial production. The Chief and the Commission may also consider how recently, and in what amounts, the wells have been produced. See *State v. Baldwin Producing Corp.*, *supra*. The evidence at hearing indicated that the Dzuri Well was produced to a limited extent in the 1990's and, more recently in 2002 and 2003. However, the recent production was not in a commercial quantity. The Schwan-Adams Well was also produced, to a limited extent, during the early 1990's. Group Maintenance has never produced the Bailey Well.

The non-productive condition of the Dzuri, Schwan-Adams and Bailey Wells violates O.R.C. §1509.12. And, 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 2003-11, 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 2003-11, forfeiting the bond of Group Maintenance.



WILLIAM J. TAYLOR, Chairman

ABSTAINED

JOHN A. GRAY



JAMES H. CAMERON



BENITA KAHN, Secretary



MARILYN ENNIS

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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