

**BEFORE THE  
OIL & GAS COMMISSION**

WATERLOO COAL COMPANY,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES  
MANAGEMENT,

Appellee.

Appeal No. 732

Review of Chief's Order  
2004-32

**ORDER OF COMMISSION  
DENYING MOTION TO  
DISMISS APPEAL**

Appearances: Neal S. Tostenson, Counsel for Appellant Waterloo Coal Co., Holly N. Deeds, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued:

4/5/05

This matter came before the Oil & Gas Commission upon appeal by Waterloo Coal Company [Waterloo] from Chief's Order 2004-32. Chief's Order 2004-32 ordered the forfeiture of surety bond in the amount of \$15,000. Chief's Order 2004-32 was issued for Waterloo's failure to comply with Chief's Orders 2002-36, 2002-37 and 2002-38, which ordered Waterloo to plug or produce certain oil & gas wells.

On June 1, 2004, Waterloo filed a notice of appeal with the Oil & Gas Commission from Chief's Order 2004-32. On September 17, 2004, Appellee Division filed a Motion to Dismiss this appeal for failure to state grounds upon which relief can be granted. Appellant Waterloo responded to this Motion on September 27, 2004.

## ORDER

The Oil & Gas Commission has read and considered the Appellee's Motion to Dismiss. The Commission has also reviewed its prior orders and decisions. The Commission finds that the Appellee's arguments are not well taken. WHEREFORE, the Commission **DENIES** Appellee's Motion and appeal no. 732 shall proceed to hearing.

  
WILLIAM J. TAYLOR, Chairman

  
JOHN A. GRAY

  
JAMES H. CAMERON

  
MARILYN ENNIS

**DISTRIBUTION:**

Neal S. Tostenson  
Holly Deeds  
Lyndon Property Insurance Co., Inc.

# BEFORE THE OIL & GAS COMMISSION

WATERLOO COAL COMPANY,

Appeal No. 732

Appellant,

Review of Chief's Order  
2004-32

-vs-

DIVISION OF MINERAL RESOURCES  
MANAGEMENT,

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

Appellee.

Appearances: Neal S. Tostenson, Counsel for Appellant Waterloo Coal Co., Holly N. Deeds, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: Sept 16, 2005

## **BACKGROUND**

This matter came before the Oil & Gas Commission upon appeal by Waterloo Coal Company [Waterloo] from Chief's Order 2004-32. Chief's Order 2004-32 demanded the forfeiture of surety bond in the amount of \$15,000. Chief's Order 2004-32 was issued for Waterloo's failure to comply with Chief's Orders 2002-36, 2002-37 and 2002-38, which ordered Waterloo to plug or produce certain oil & gas wells.

On May 4, 2005, this cause came on for hearing before three 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 Waterloo Coal Company's failure to plug certain oil & gas 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:

(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. Waterloo Coal Company [Waterloo] is primarily a coal and limestone mining operation. In February 1991, Waterloo acquired mineral leases for the Bethel and Vittorio properties, with the intent of mining pursuant to these mineral leases. At the time of obtaining the mineral leases, five oil & gas wells were present on these properties.

2. Pursuant to the mineral leases, and according to the records of the Division, five oil & gas wells were transferred into the name of Waterloo Coal Company in 1991. Three of these wells are located on the Bethel property in Vinton County, Madison Township, Ohio. Two of these wells are located on the Vittorio property in Vinton County, Madison Township, Ohio. The wells are located between 5 and 7 miles outside of McArthur, Ohio.

3 Waterloo has never produced the Bethel and Vittorio wells. Waterloo has been unable to find a source to take the gas. In order to produce the wells, gas lines would have to be laid to transport the gas produced. These lines have not been installed. Also, other equipment necessary for production is lacking at the well sites.

4 Waterloo is the current owner of these five wells. Waterloo has tried in the past to sell these wells. Waterloo has negotiated with GEMAC Exploration Company, which company may be interested in taking over the wells. An agreement has been drafted for this transfer, but at the time of hearing, the agreement had not been accepted by GEMAC.

5 In February 2002, following inspection by the Division of Mineral Resources Management, Notices of Violation [NOVs] were issued to Waterloo. The NOVs alleged that two Bethel wells (#1 and #2) and one Vittorio well (#2) were idle and incapable of production, noting that no production lines were connected to the wells, or that the production lines were parted. The NOVs ordered Waterloo to plug or produce these wells. Waterloo did not comply with the NOVs.

6 On June 24, 2002, the Division issued Chief's Orders 2002-36, 2002-37 and 2002-38. These Orders required Waterloo to plug or produce the Bethel #1 Well, the Bethel #2 Well and the Vittorio #2 Well. The Chief's Orders required Waterloo to produce the wells within 10 days, or, in the alternative, to plug the wells within 30 days. Waterloo requested, and received, extensions on these Chief's Orders, ultimately extending the plug or produce deadline until April 15, 2004

7 On May 5, 2004, the Division issued Chief's Order 2004-32. This Order found that Waterloo had failed to plug or produce the Bethel #1 Well, Bethel #2 Well and Vittorio #2 Well, as ordered by the earlier Chief's Orders 2002-36, 2002-37 and 2002-38. Chief's Order 2004-32 demanded the forfeiture of the \$15,000 blanket bond covering these wells. The forfeiture order, was appealed to the Oil & Gas Commission by Waterloo, and is the subject of the immediate decision.

8 The Division Inspector visited the well sites on May 2, 2005, and found that the Bethel #1 Well, Bethel #2 Well and Vittorio #2 Well remain idle and incapable of production.

## CONCLUSIONS OF LAW

1. Waterloo Coal Company is the "owner" of the Bethel #1 Well, Bethel #2 Well and Vittorio #2 Well.

2. The Bethel #1 Well, Bethel #2 Well and Vittorio #2 Well were not in production from at least February 1991 until May 2, 2005. On June 24, 2002, the Division ordered Waterloo to plug or produce these three wells. The wells were not plugged or produced within the time period set forth by the Division Chief.

3. The issuance of Chief's Order 2004-32, requiring the forfeiture of Waterloo's 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.

The Divisions' official permitting and bonding documents show Waterloo Coal Company as the owner of the Bethel #1 Well, Bethel #2 Well and Vittorio #2 Well. Therefore, Waterloo's responsibility for these wells is established.

There is no dispute that for a substantial period of time, the three wells at issue were not produced and that the wells were not equipped to produce. It is also clear that once Waterloo was ordered to plug or produce the wells at issue, Waterloo did not comply in a timely fashion.

Waterloo has argued that it is primarily a mining operation and that the wells at issue were transferred to the company under a mineral lease. Waterloo had obtained this lease with the intent of obtaining mining rights. Waterloo has never attempted to produce the wells at issue. Indeed, over the years, Waterloo has made efforts to transfer these wells to an oil & gas operator. However, Waterloo has not successfully executed such a transfer.

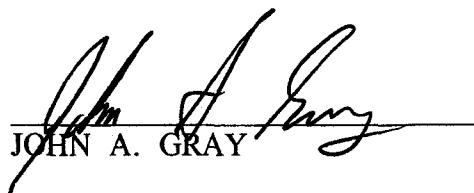
Waterloo has also argued that the wells at issue may be capable of production, but merely lack the equipment to effectuate such production. This Commission has historically and consistently held, that lack of proper equipment is evidence of the incapability of a well to produce. Baldwin Producing Corporation v. Division of Oil & Gas, Appeal No. 13 (1974); *aff'd* State of Ohio vs. Baldwin Production Corporation, No. 76AP-892 [Court of Appeal, Franklin County, March 1977].

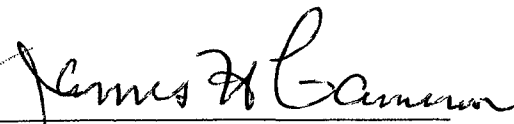
The facts reveal that the Bethel #1 Well, Bethel #2 Well and Vittorio #2 Well were idle and non-productive in violation of O.R.C. §1509.12. The failure of an owner to comply with the plug or produce requirements of O.R.C. §1509.12 is grounds for bond forfeiture under O.R.C. §1509.071. Therefore, the issuance of Chief's Order 2004-32, 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 2004-32, forfeiting the bond of Waterloo Coal Company

  
WILLIAM J. TAYLOR, Chairman

  
JOHN A. GRAY

  
JAMES H. CAMERON



Waterloo Coal Co.  
Appeal #732

## **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:**

Neal S. Tostenson  
Certified Mail # 7000 0600 0028 2172 4823

Holly Deeds  
Inter-Office Certified Mail # 6188

Lyndon Property Insurance Co., Inc.