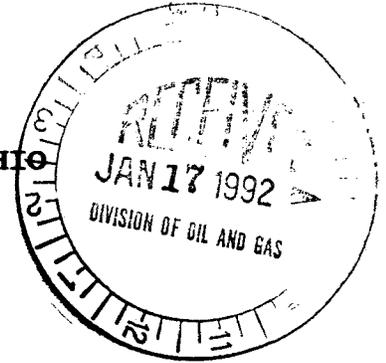


BOARD OF OIL AND GAS REVIEW

DIVISION OF OIL AND GAS

DEPARTMENT OF NATURAL RESOURCES, STATE OF OHIO



Ohio Production Corporation  
6685 Doubletree Avenue  
Columbus, Ohio 43229

Appellant

APPEAL NOS. 397, 400, 401

vs

J. Michael Biddison, Chief  
Division of Oil & Gas  
Ohio Department of Natural Resources  
Fountain Square, Columbus  
Ohio 43224

Appellee

Appearances:

For Appellant: Gary M. Hammond  
Attorney at Law  
21 East Frankfort Street  
Columbus, Ohio  
43206-1069

For Appellee: Lee Fisher  
Attorney General  
By: Todd M. Musheff  
Assist. Attorney General  
Fountain Square, Columbus  
Ohio 43224

### ENTRY

This matter came on for hearing before the Oil and Gas Board of Review on October 6, 1990 in the First Floor Conference Room Building E., Fountain Square, Columbus, Ohio pursuant to a timely Notice of Appeal filed by the Appellant. The appeal was taken from the Orders of the Chief, Division of Oil and Gas, No. 90-24, 90-187 and 90-188 ordering Ohio Production Corporation to plug four wells. The wells are the the Nodine #1, Permit No. 3924, Morrow County, Ohio (Order 90-24), the Seitz # 1, Permit No. 640, Richland County, Ohio (Order 90-188) the Seitz # 2 well (Order No. 90-188) and the O'Hail # 1 well, Permit 646, Richland, County, Ohio (Order 90-187). The appeals were joined for the purposes of the hearing before the Board.

### ISSUES

The specific issue raised in this Appeal is whether the Chief of the Division of Oil and Gas lawfully and reasonably ordered issued the plugging of the four subject wells under the provisions of ORC 1509.12, where, as here:

1. The Nodine #1 well had produced oil by swabbing during the year prior and the Appellant Ohio Production Corporation proposes to continue to produce said well by swabbing.

2. The three Silurian Newburg wells (Seitz #1, #2 and O'Hail #1) which discovered sour gas, have never been completed and have no market until a sour gas scrubbing facility is installed and a gas sales line is constructed.

## BACKGROUND

The facts surrounding the Cambrian Trempeleau oil well, the Nodine #1, in Morrow County are quite different from those for Silurian Newburg gas wells in Richland County,

The Nodine well, drilled in 1989, initially was outfitted with a pumpjack to run off formation gas. The gas was insufficient and the lifting unit was removed. Since that time, fluid, including oil, has been produced by swabbing.

The Richland County wells were drilled to the Silurian Newburg "reef zone". The Seitz No. 1 discovered sour gas, i.e. hydrogen sulfide-rich gas, which requires scrubbing before it is marketable. Subsequently, the Seitz No. 2 and O'Hail wells were drilled. The Seitz No. 1 has been tested and found physically capable of producing 300 MCF/Day. No facility for scrubbing and no gas lines had been put in place by the time of the Board's hearing in this matter.

While the facts are relatively clear, the problem in these appeals is related to understanding what is meant by ORC 1509.12 which requires plugging of a well which has become in capable of producing in commercial quantities. Whether a well is capable of producing in commercial quantities is at least a two part test. The first test is whether the well is physically capable of production. Physical capability factors can be measured. The second test is whether the product is produceable in commercial quantities. The answer may be ascertainable only after other considerations are taken into account, especially in view of fluctuating economic conditions.

## FINDING OF FACTS

Having considering the facts, testimony, arguments and briefs of the Appellant and Appellee, the Board makes the following findings of fact:

1. The Nodine #1 well was capable of producing oil in commercial quantities as of the time of the Chief's Order, according to the facts submitted to the Board. The type of equipment on a well is not necessarily dispositive of the production status of a well. If a well actually produces oil in commercial quantities, regardless of how the well is equipped, it is not a well which is or has become incapable of production in commercial quantities. A Chief's order to plug a well which in fact periodically produces oil in commercial quantities is not a sustainable order.

2. The three Richland County Newburg wells never produced gas in commercial quantities because they have never been completed owing to financial and market factors. The evidence indicates they have or may have the physical capability to produce. The wells will become incapable of producing in commercial quantities when it is clear from the facts that no market exists or will exist in the reasonably foreseeable future and the wells do not meet the exception that they supply household gas. These three wells had not become incapable of producing in commercial quantities at the time of the Chief's Orders to plug them.

## DISCUSSION

The Chief's position regarding the Nodine # 1 well is that without the equipment suggested in the list of criteria the Board stated in Cunningham v. State of Ohio (Board of Review Appeal No. 7), the well is subject to the plug order. The facts in Cunningham were different and the Chief's Order therein dealt with producing wells which had been left idle. Here the Chief did not investigate the commercial aspect of this swab well, that is, he did not determine whether the second part of the test had been met. It does not serve the Chief well to claim a well is idle which in fact produced within a reasonable time before the order. Some day, of course, the Nodine #1 well will become incapable of production in commercial quantities. When that day arrives, be it yesterday, today or another day, the provisions of ORC 1509.12 attach and the operator is obligated to plug the well.

In the case of the three Silurian gas wells, the facts show that the sour gas wells require both a sulphur scrubbing facility and a pipeline to market. The facts are not clear whether there is a substantial likelihood that these particular wells will be produced within a reasonably foreseeable commercial time. The State claims there is no chance; the Appellant claims to be working on the obtaining rights of way and obtaining financial partners. The question is what is a reasonable time under the circumstances in which these arrangements should be made?

A well which has never produced, because it has never been completed, is not immediately a well which has "become

incapable of producing in commercial quantities" because some time and effort are required to put such a well into production, especially where, as here, the wells are wildcat wells and not near a commercial market. The amount of time needed to bring a well into production may vary depending on its location and the market conditions. It is not reasonable to expect completion to market in the same length of time for infill wells, offset production wells, outpost wells and rank wildcat wells. On the other hand, it is clear that some appropriate performance on the part of the operator is needed to bring the gas to market and there should be some evidence of that effort.

Under the facts of this appeal, the Board finds that there was an insufficient amount of time to bring the gas to market and therefore the wells had not become incapable of producing in commercial quantities. However, an indefinite amount of time is not warranted. The Appellant must either complete the wells and produce them, show substantial performance toward that goal, sell the wells to a producer who can and will bring them into production or plug them. A well from which the gas cannot be brought to market, does at some point in time become incapable of production in commercial quantities and is subject to an order to plug under ORC 1509.12 unless it meets one of the exceptions such as supplying gas to the Lessor or the operator has obtained the Chief's permission to let the well stand idle.

Based on these findings of fact and analysis, the Board of Oil and Gas Review determines as follows:

1. The Order of the Chief, No. 90-24 is unreasonable.
2. The Orders of the Chief, Nos. 90-187 and 90-188 are

unreasonable. Accordingly, the Board

**ORDERS**, that Appeal 397 is hereby **AFFIRMED** and that the Adjudication Order 90-24 be and hereby is **OVERTURNED**.

Further, the Board **ORDERS** that Appeals 90-187 and 90-188 are hereby **AFFIRMED** in part and the Board **MODIFIES** Adjudication Orders 90-187 and 90-188 as follows:

The Ohio Production Corporation is hereby permitted to let the Seitz #1, Seitz #2 and O'Hail #1 wells sit idle until December 31, 1993. After that date, if the wells are not producing in commercial quantities, the Chief may issue a new order to plug or produce.



Alan H. Coogan, Chairman

*per phone authorization 12/18/91*

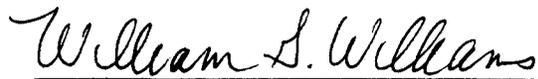


Robert H. Alexander

*per phone authorization  
12/18/91*



Benita Kahn, Secretary



William G. Williams

*per telephone authorization  
of 12/20/91*