

**BEFORE THE  
OIL & GAS COMMISSION**

ALSID OIL & GAS,

Appellant,

-vs-

DIVISION OF OIL & GAS,

Appellee.

~~Appeal No. 650~~

Review of Chief's Order 98-41

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

Appearances: Alfred Levine, on behalf of Alsid Oil & Gas.; Raymond Studer, Assistant Attorney General, Counsel for Appellee Division of Oil & Gas.

Date Issued: January 11, 1999

DIVISION OF OIL AND GAS

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**BACKGROUND**

This matter came before the Oil & Gas Commission upon appeal by Alsid Oil & Gas [Alsid] from Chief's Order 98-41. Chief's Order 98-41 required Alsid to plug or produce certain oil & gas wells, which wells were determined by the Division to be incapable of producing oil or gas in commercial quantities.

On October 28, 1998, 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.

After a review of the Record, the Oil & Gas Commission makes the following findings of fact and conclusions of law.

## ISSUE

The issue presented by this appeal is: **Whether the issuance of Chief's Order 98-41, requiring the plugging of certain wells, which wells had been determined by the Division to be incapable of producing oil and/or gas in commercial quantities, was lawful and reasonable.**

## 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. §1509.12 provides *inter alia*:

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 . . . No owner shall fail or refuse to plug a well within the time specified in the order. . .

## FINDINGS OF FACT

1. Alsid is the owner of certain wells, including the Steiner Well #3 and the Locke Well #1, which wells are located in Stark County, Ohio.

2. Alsid did not request permission from the Chief of the Division of Oil & Gas to allow the Steiner Well #3 or the Locke Well #1 to stand idle. Alsid did not present firm, reasonable plans prior to the issuance of Chief's Order 98-41 showing that these wells will be produced.

3. The Division's records indicate that the Steiner Well #3 and the Locke Well #1 have not produced oil or gas in commercial quantities since approximately 1984.

4. The Division has inspected the well sites for the Steiner Well #3 and the Locke Well #1, and has investigated the wells' capacity for commercial production.

5. There is no sales meter or storage tank at the Steiner Well. There is no sales line or sales meter at the Locke Well. The wellhead at both the Steiner and the Locke Wells has deteriorated and rusted. Neither well is being used for domestic purposes.

6. Alsid made no good faith attempts to produce the Steiner Well #3 and the Locke Well #1 prior to the issuance of Chief's Order 98-41.

7. On April 15, 1998, Chief's Order 98-41 was issued to Alsid. This Chief's Order contained the following findings:

(1) Alsid Oil & Gas is the owner of the [Steiner Well #3 and the Locke Well #1].

(2) An inspection conducted on April 8, 1998, revealed that the above reference wells are incapable of producing oil and/or gas in commercial quantities.

## 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. §1509.12 requires the plugging wells, which are or become incapable of producing oil or gas in commercial quantities. That section of law provides in pertinent 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, but no well shall be required to be plugged under this section which is being used to produce oil or gas for domestic purposes, or which is being lawfully used for a purpose other than production of oil or gas. When the chief finds that a well should be plugged, he 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. Each day on which such a well remains unplugged thereafter constitutes a separate offense.

3. Based on the evidence presented at hearing, it was neither unlawful nor unreasonable for the Chief of the Division of Oil & Gas to determine that the Steiner Well #3 and the Locke Well #1 have become incapable of producing oil and/or gas in commercial quantities.

4. The issuance of Chief's Order 98-41 to Alsid Oil & Gas was not unlawful or unreasonable.

## **DISCUSSION**

Ohio's oil and gas law requires the plugging of wells that are incapable of producing oil or gas in commercial quantities. See O.R.C. §1509.12.

To determine whether the Division Chief has reasonable grounds to believe that a well is incapable of producing oil or gas in commercial quantities, this Commission has developed a five point test. State of Ohio v. Baldwin Producing Corporation, No. 76AP-892 (Court of Appeals, Franklin County [March 10, 1997]). The Baldwin test requires consideration of five criteria, which are:

1. Has the owner of the well requested permission from the Chief for the well to stand idle and presented firm, reasonable plans which he is capable of carrying out, to produce oil or gas in commercial quantities?

2. How recently the well has, in fact, produced oil or gas in commercial quantities and how much oil or gas has been sold?
3. Is the well equipped sufficiently with both surface and inhole equipment to allow for commercial production?
4. How recently have actual good faith on site attempts been made to produce the well in commercial quantities?
5. Has the state caused investigation to be made on the well site?

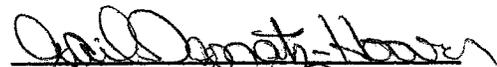
See also Lake Underground Storage v. Mason, appeal #487 (June 27, 1996).

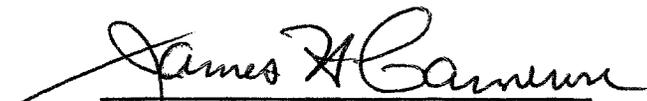
The Commission has applied the Baldwin test to the facts presented by this appeal. The Commission **FINDS** that it was neither unlawful or unreasonable for the Chief to determine that the Steiner Well #3 and the Locke Well #1 are incapable of producing oil and/or gas in commercial quantities. Therefore, the Commission further **FINDS** that it was both lawful and reasonable to require that Alsld plug the Steiner Well #3 and the Locke Well #1 in accordance with O.R.C. §1509.12.

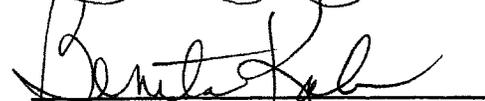
## **ORDER**

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 98-41.

  
WILLIAM J. TAYLOR, Chairman

  
GAIL IGNATZ-HOOVER

  
JAMES H. CAMERON

  
BENITA KAHN, Secretary

\*ABSTAINED\*  
JOHN A. GRAY

## **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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