

BEFORE THE OIL & GAS COMMISSION

WILLIAM C. BARTELS, <i>et al.</i> ,	:	Appeal No. 662
	:	
Appellants,	:	
	:	Review of Chief's Order 99-11
-vs-	:	(Energy Resources of America)
	:	
DIVISION OF OIL & GAS,	:	
	:	
Appellee.	:	<u>FINDINGS, CONCLUSIONS</u>
	:	<u>& ORDER OF THE</u>
	:	<u>COMMISSION</u>

Appearances: Carl A. Anthony, Thomas L. Rosenberg, Counsel for Appellants William C. Bartels, *et al.*; Raymond Studer, Assistant Attorney General, Counsel for Appellee Division of Oil & Gas.

Date Issued: 8/27/99

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by William C. Bartels, Connie Bartels and Thomas L. Fountaine from Chief's Order 99-11. Chief's Order 99-11 granted the mandatory pooling of 3.45 acres of land for the drilling of a well to be known as the Agland Unit #1D. The applicant for the permit to drill the Agland #1D Well is Energy Resources of America, Inc.

On June 30, 1999, 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 issuance of Chief's Order 99-11, mandating the pooling of 3.45 acres into the Agland Unit #1D, was lawful and reasonable.**

To make this determination, the Commission will consider the following: (1) Whether the Agland Unit #1D, without the mandatorily pooled acreage, is of insufficient size or shape to meet the requirements for drilling a well thereon. (2) Whether Energy Resources has been unable to form a drilling unit under agreement for voluntary pooling. (3) Whether a mandatory pooling order for the Agland Unit #1D is necessary to protect correlative rights or necessary to provide effective development, use or conservation of oil & gas.

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. §1509.27 provides *inter alia*:

If a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner has been unable to form a drilling unit under agreement provided in section 1509.26 of the Revised Code, on a just and equitable basis, the owner of such tract may make application to the division of oil and gas for a mandatory pooling order. . . the chief, if satisfied that the application is proper in form and that mandatory pooling is necessary to protect correlative rights or to provide effective development, use, or conservation of oil and gas, shall issue a drilling permit and a mandatory pooling order. . .

3. O.R.C. §1509.24 provides:

The chief of the division of oil and gas, with the approval of the technical advisory council on oil and gas . . . may adopt, amend, modify, or rescind rules relative to minimum acreage requirements for drilling units and minimum distances from which a new well may be drilled . . . from boundaries of tracts, drilling units, and other wells for the purpose of conserving oil and gas reserves.

4. O.A.C. §1501:9-1-04 addresses the spacing of wells and provides:

(A) General spacing rules:

(1) The division of oil and gas shall not issue a permit for the drilling of a new well . . . unless the proposed well location and spacing substantially conform to the requirements of this rule.

* * *

(4) A permit shall not be issued unless the proposed well satisfies the acreage requirements for the greatest depth anticipated.

* * *

(C) Location of wells:

* * *

(4) No permit shall be issued to drill, deepen, reopen, or plug back a well for the production of the oil or gas from pools from four thousand feet or deeper unless the proposed well is located:

(a) Upon a tract or drilling unit containing not less than forty acres;

(b) Not less than one thousand feet from any well drilling to, producing from, or capable of producing from the same pool;

(c) Not less than five hundred feet from any boundary of the subject or drilling unit.

FINDINGS OF FACT

1. Energy Resources of America, Inc. [Energy Resources] intends to drill an oil well in Mahoning County, Ohio. The well will be a directionally drilled well, with the surface drill site located approximately 1245 feet from the bottom of the well hole. The target depth of this well is 5450 feet. The well will produce from the Clinton formation.

2. William C. & Connie Bartels, Appellants herein, own 5.213 acres of land in Mahoning County, Ohio. Thomas L. Fountaine, Appellant herein, owns 0.62 acres of land in Mahoning County, Ohio.

3. Energy Resources has leased 40.6 acres of land from 22 separate landowners for the Agland Unit #1D. The Division Chief has mandated the inclusion of an additional 3.45 acres into this drilling unit, for a total drilling unit size of 44.05 acres.

4. The 3.45 acres of land mandatorily pooled into the Agland Unit #1D are owned by William & Connie Bartels (2.2 acres), Thomas L. Fountaine (0.62 acres) and Janet M. Palumbo (0.63 acres).

5. Pursuant to the spacing requirements of Ohio law, the drilling unit for the Agland #1D Well must include all property within 500 feet of the target bottom of the well hole. In order to meet this spacing requirement, the drilling unit for the Agland #1D Well must include the properties of Thomas L. Fountaine (0.62 acres), Janet M. Palumbo (0.63 acres) and at least 2.2 acres of the William C. & Connie Bartels property, for a total additional acreage of 3.45 acres.

6. During the spring of 1998, a representative of Energy Resources approached Mr. Bartels regarding the leasing of the oil & gas rights on a portion of the Bartels' property into the Agland #1D Unit. Mr. Bartels did not want to participate in this project. On July 28, 1998, Energy Resources sent a letter to the Bartels, asking for an oil & gas lease on the Bartels property. In the alternative, Energy Resources offered a working interest in the Agland #1D Well to the Bartels. Energy Resources also corresponded with Mr. & Mrs. Bartels' lawyer. Both Mr. Bartels and his counsel advised Energy Resources that Mr. Bartels would not lease the property, regardless of the offer made. Mr. Bartels continues to oppose any participation in this project.

7. During the spring of 1998, a representative of Energy Resources approached Mr. Fountaine regarding the leasing of the oil & gas rights on Mr. Fountaine's property into the Agland #1D Unit. On October 23, 1998, Energy Resources sent a letter to the Mr. Fountaine, asking to lease the oil & gas on his property. In the alternative, Energy Resources offered a working interest in the Agland #1D Well to Mr. Fountaine. Mr. Fountaine did not chose to participate in this project.

8. On October 27, 1998, a letter requesting a lease or offering a working interest in the Agland #1D Well was sent to Janet M. Palumbo. Ms. Palumbo has not voluntarily participated in this project. Her acreage has been force pooled. However, Ms. Palumbo has not appealed the pooling order.

9. On November 16, 1998, Energy Resources submitted an application for mandatory pooling to the Division.

10. A hearing was held before the Technical Advisory Committee on February 9, 1999. The Technical Advisory Committee recommended that Energy Resources' application for mandatory pooling be granted.

11. On February 17, 1999, the Division Chief issued Chief's Order 99-11. This order mandated the pooling of 2.2 acres of the William C. & Connie Bartels' property, 0.62 acres of the Thomas L. Fountaine property, and 0.63 acres of the Janet M. Palumbo property into the Agland #D Unit.

12. The pooling of the 3.45 acres mandated under Chief's Order 99-11 protects the correlative rights of the 22 landowners who have leased their oil & gas rights to Energy Resources for the drilling of the Agland #1D Well. The pooling order also protects the correlative rights of those landowners subject to the mandatory order.

13. The pooling of the 3.45 acres mandated under Chief's Order 99-11 provides for the effective development, use and conservation of oil & gas.

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. §1509.27 requires the Division Chief to order the mandatory pooling of properties where a tract of land is of insufficient size or shape to meet the spacing requirements of the law.
3. Without the pooling of the Fountaine, Palumbo and a portion of the Bartels properties, the Agland #1D Unit was of an insufficient shape to meet the spacing requirements of the law.
4. Energy Resources reasonably and diligently attempted to obtain oil & gas leases for the properties subject to the mandatory pooling order. Energy Resources' offers were just and equitable.
5. Energy Resources unsuccessfully attempted to enter into voluntary pooling agreements with the property owners who are subject to the mandatory pooling order.
6. The mandatory pooling order relating to the Agland #1D Unit is necessary to protect correlative rights and is necessary to provide effective development, use or conservation of oil & gas.
7. The Chief's Order mandating the pooling of 3.45 acres of land into the Agland #1D Unit was not unlawful or unreasonable.

DISCUSSION

Ohio oil & gas law is designed to protect both the public interest in the conservation and efficient development of oil & gas resources and the private property interests of those, like the Appellants, who own land that overlies deposits of oil & gas.

The law requires that wells be drilled on tracts of land meeting certain set-back, acreage and spacing requirements. See O.R.C. §1509.24. Where the spacing requirements can not be met, a person interested in drilling a well must first attempt to create a drilling unit through the voluntary participation of landowners. See O.R.C. §1509.26. If a drilling unit can not be established by voluntary participation, the Chief may order the mandatory pooling of some lands into the drilling unit. See O.R.C. §1509.27. Mandatory pooling will not be ordered unless the conditions set forth in O.R.C. §1509.27 are met.

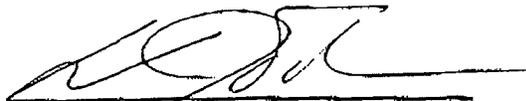
In the instant case, without mandatory pooling, the Agland #1D Well could not meet the requirement of being located at least 500 feet from the boundaries of the drilling unit. An additional 3.45 acres was needed to meet this spacing requirement. The Appellants herein own 2.82 acres of this needed ground.

The evidence presented at hearing supports the Chief's determination that Energy Resources made reasonable and diligent efforts to lease or voluntarily pool the 3.45 acres at issue. The Commission finds that Energy Resources' offers were just and equitable. See O.R.C. §1509.26. However, these attempts to lease or voluntarily pool were unsuccessful.

Thus, all of the statutory conditions precedent to the granting of the mandatory pooling application were met. Pursuant to O.R.C. §1509.27, when these conditions are met, the Chief must grant the mandatory pooling request.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 99-11.



WILLIAM J. TAYLOR, Chairman

GAIL IGNATZ-HOOVER

JAMES H. CAMERON

ABSTAINED
BENITA KAHN, Secretary

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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Via FAX [330-533-8474] & Regular Mail

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