

BEFORE THE OIL & GAS COMMISSION

B & D DRILLING,	:	Appeal Nos. 672 & 673
	:	
Appellant,	:	Review of Chief's Orders 99-115
	:	& 99-116
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES	:	<u>ORDER DENYING APPELLEE'S</u>
MANAGEMENT,	:	<u>MOTION TO SUBMIT</u>
	:	<u>ADDITIONAL EVIDENCE</u>
	:	<u>AND FINDINGS, CONCLUSIONS</u>
Appellee.	:	<u>& ORDER OF THE COMMISSION</u>

Appearances: Richard A. Yoss, Counsel for Appellant B & D Drilling; Raymond Studer, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: January 5, 2001

BACKGROUND

These matters came before the Oil & Gas Commission upon appeal by B & D Drilling from Chief's Orders 99-115 and 99-116. Chief's Orders 99-115 and 99-116 required B & D Drilling to plug two wells located in Washington County, Ohio. These wells are known as the Smith Wells #3 and #4. Chief's Orders 99-115 and 99-116 identify B & D Drilling as the "owner" of these wells. The Chief's Orders also contain a finding that as of June 16, 1999, the Smith Wells # 3 and #4 were incapable of producing oil and/or gas in commercial quantities.

On May 24, 2000, 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.

RULING ON MOTION TO SUBMIT ADDITIONAL EVIDENCE

To determine ownership of the Smith Wells, the Division of Mineral Resources Management conducted a title search. The Division's Chain of Title Report failed to produce all of the transfers of the lease at issue. At least one link in the chain of title appears to be missing. The Division in issuing Chief's Orders 99-115 and 99-116 relied on this incomplete chain of title, to link B & D Drilling to the Smith Wells.

At hearing, the Division offered to further research the chain of title. The Commission **declined** to leave the Record open for further title search. Nevertheless, on June 9, 2000, the Division filed a Motion for Leave to File Additional Evidence, accompanied by three additional lease assignments. Appellant objected to this submission.

The Commission **FINDS** that the evidence that is relevant to our consideration of whether the Division Chief acted lawfully and reasonably in issuing Chief's Orders 99-115 and 99-116 is the information that the Chief actually relied upon in issuing those orders. It is the Chief's knowledge at the time of his decision, that is critical to the Commission's review of that decision. If the title search relied upon by the Chief was flawed, the Commission must evaluate that title search to determine if the Chief acted lawfully and reasonably in issuing enforcement orders based upon that search.

The Commission hereby **DENIES** the Division's request to submit additional evidence. The Commission's decision shall be based solely upon information entered into the Record at the Commission's May 24, 2000 hearing.

ISSUE

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in identifying B & D Drilling as “owners” of certain wells and ordering B & D Drilling to plug said 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. §1509.12 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. . .

3. 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. The Smith Lease was created on October 18, 1921, in an assignment from E.A. Smith to The Ohio Fuel Supply Company. The Smith Lease covered a 40-acre tract of land in Washington County, Ohio.

2. In or about 1953, two wells were drilled on the Smith Lease. These wells are identified as Smith Well #3 and Smith Well #4. The permit to drill these wells was held by Smoot Farm Oil Company.

3. The chain of title relied upon by the Chief in issuing Chief's Orders 99-115 and 99-116, did not reflect an assignment of the Smith Lease to Smoot Farm.¹ The chain of title does reflect transfers after Smoot Farm held the Smith Lease. On July 24, 1973, the Smith Lease was assigned to Paul and Walter Beaver, *dba* B & D Drilling Company, a partnership. On July 29, 1977, Paul and Walter Beaver, *dba* B & D Drilling Company, a partnership, assigned the Smith Lease to B & D Drilling Company, a corporation.

4. Neither B & D Drilling Company, the partnership, nor B & D Drilling Company, the corporation, ever produced the Smith #3 or #4 Well. B & D Drilling Company never filed for a Change of Ownership from Smoot Farm Oil Company. In fact, Paul and Walter Beaver of B & D Drilling never even entered upon the property associated with the Smith Lease.

5. On September 7, 1979, the surface owner Cecil Brown filed an Affidavit of Forfeiture against B & D Drilling relating to the Smith #3 and #4 Wells. The Affidavit of Forfeiture states that prior to September 7, 1979, B & D Drilling "... failed to produce oil or gas in paying quantities and pay royalties thereon for a period in excess of five (5) years." B & D Drilling Company did not contest or in any way answer this Affidavit.

¹ It is this break in title, which the Division attempted to correct through its Motion to Submit Additional Evidence. This Motion has been denied by the Commission.

6. Since filing the Affidavit of Forfeiture, the landowner has produced wells on the Smith Lease for domestic purposes. In May 1997, with permission of the landowner, a gas line was installed from a well on the Smith Lease to a cabin located on the property. In December 1998, with the permission of the landowner, a well on the Smith Lease was swabbed.

7. The Division inspected Smith Well #3 in June 1999. The inspection report indicates that at the time of inspection, Well #3 was equipped with tubing and rods and a scissors jack. However, there was no power source to Well #3. The inspection report further indicates that there was no domestic production at the time of inspection.

8. The Division inspected Smith Well #4 in June 1999. The inspection report indicates that at the time of inspection, Well #4 was equipped with tubing and rods. However, there was no pumpjack at the well and no production lines. The inspection report indicates that there was no domestic production at the time of inspection.

9. Chief's Orders 99-115 and 99-116 were issued to B & D Drilling in September 1999, and required B & D Drilling to plug Smith Wells #3 and #4.

10. On August 3, 1998, B & D Drilling Company, the corporation, was legally dissolved.

CONCLUSIONS OF LAW

1. By assignment, B & D Drilling Company became the owner of the Smith #3 and #4 Wells.

2. By operation of the Affidavit of Forfeiture filed by landowner Cecil Brown, and by the fact that the landowner owned the property and took affirmative actions to produce the wells located thereon, the landowner Cecil Brown or his heirs, became "owners" of the Smith #3 and #4 Wells.

3. Following the landowner's filing of the Affidavit of Forfeiture, B & D Drilling no longer possessed the right to produce the Smith #3 and #4 Wells. Thereby, after September 7, 1979, B & D Drilling no longer qualified as an "owner" of the Smith #3 and #4 Wells

4. Following the filing of the Affidavit of Forfeiture, the Smith #3 and #4 Wells were capable of producing oil and gas, and indeed were produced by, or with the permission of, the landowner.

5. The evidence presented at hearing, did not establish when the two Smith Wells became incapable of producing oil and gas in commercial quantities.

6. The Chief did not produce adequate evidence to establish that Smith Well #3 or Smith Well #4 became incapable of producing oil and gas in commercial quantities prior to or during B & D Drilling's ownership of the wells, *i.e.*, between 1973 and 1979.

7. The issuance of Chief's Orders 99-115 and 99-116 to B & D Drilling was unlawful and unreasonable under the facts of this case, where B & D Drilling's ownership of the wells was terminated by the landowner's filing of an Affidavit of Forfeiture; where the landowner took affirmative actions to establish his "ownership" of the wells and has, in fact, produced the wells; and where the Chief failed to establish through evidence that the wells were incapable of commercial production at any time during B & D Drilling's ownership of these wells.

DISCUSSION

Ohio oil & gas law requires the plugging of wells that are incapable of producing oil or gas in commercial quantities. See O.R.C. §1509.12. This plugging requirement is intended to protect both the environment and other oil and gas producing strata.

The evidence established that these wells, although obtained by B & D Drilling in the 1970's, have never been produced by B & D Drilling. Indeed, the evidence showed that B & D Drilling had never even entered upon the property at issue.

The evidence revealed that during the past 30 years, the only production from these wells has been undertaken by the landowner, Cecil Brown, his heirs or assigns. In an Affidavit of Forfeiture filed by the landowner Cecil Brown, Brown identified himself as the successor lessor of the Smith lease. In that Affidavit, Brown declared the Smith Wells abandoned by B & D Drilling. Thereafter, with the permission of landowner Cecil Brown these wells were produced.

O.R.C. §1509.12 defines a well owner as a person who has the right to produce a well. More than one entity may qualify as an "owner." In this case, it appears that both B & D Drilling and landowner Cecil Brown fit the legal definition of an "owner," as both B & D Drilling and Cecil Brown possessed the right to produce these wells. However, the duty to plug a nonproductive well only attaches to those owners who own the well at the time or after it was become incapable of commercial production. Houser v. Brown, 29 Ohio App. 3d 358 (Franklin Cty., 1986).

In this appeal, the Chief failed to produce evidence of when the wells became incapable of production. In order for the duty to plug to attach to B & D Drilling, the wells would have to have become incapable of commercial production either before or during B & D Drilling's ownership of these wells. B & D Drilling owned the Smith Wells from 1973 until 1979. The evidence did not establish that the wells were, or became, incapable of production during this critical period. The evidence did establish that the wells were produced subsequent to the Affidavit of Forfeiture that was filed by the landowner, Cecil Brown, on September 7, 1979. Therefore, the evidence does not support the issuance of Chief's Order 99-115 and 99-116 to B & D Drilling.

The Commission **FINDS** that, given the facts of this case, the Chief's decision to order B & D Drilling to plug Smith Well #3 and Smith Well #4 is not lawful or reasonable. Therefore, the Chief's issuance of Chief's Order 99-115 and Chief's Order 99-116 was not proper.

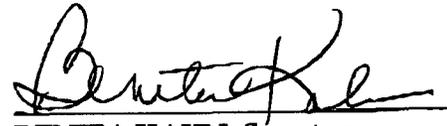
ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **VACATES** the Division's issuance of Chief's Orders 99-115 and 99-116 to B & D Drilling Company and **REMANDS** these matters to the Chief to take actions consistent with this decision.


WILLIAM J. TAYLOR, Chairman

ABSTAINED
MARILYN ENNIS


JAMES H. CAMERON


BENTA 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:

Richard A. Yoss
Certified Mail #: 7000 0600 0028 2170 4351

Raymond Studer
Inter-Office Certified Mail #: 5669