BEFORE THE OIL AND GAS BOARD OF REVIEW
DEPARTMENT OF NATURAL RESOURCES
STATE OF OHIO

Jerry Moore, Inc.
Canton, Ohio,

Appellant

Appeal No. 1

vs.

State of Ohio, acting
by and through the Chief of the Division
of Oil and Gas, Department of Natural
Resources,

Appellee

ENTRY

APPEARANCES: For the Appellant - John N. Teeple
Geiger & Teeple
404 First National Bank Building
Alliance, Ohio

For the Appellee - William B. Saxbe
Ohio Attorney General
by William A. Stehle, Assistant

John C. McDonald
McDonald, Robison & McDonald
63 North 3rd Street
Newark, Ohio, attorney for
Kin-Ark Oil Company and
Stocker & Sitler

This matter came on for hearing before the Oil and Gas Board of Review upon notice of appeal filed herein under date of February 21, 1966, by the appellant, appealing from:

1. Adjudication Order #4 of the Chief of the Division of Oil and Gas denying appellant's application for permit to drill a test well for

Lot 6, First Quarter, Peru Township, Morrow County, Ohio, said well to be located 32.5 feet from adjacent C. and M. Shaver property, said application being State's Exhibit No. 1.

2. Adjudication Order #5 of the Chief of the Division of Oil and Gas denying appellant's application for permit to drill a test well for oil and gas to the Trempealeau formation on the M. R. Cowgill property, Lot 6, First Quarter, Peru Township, Morrow County, Ohio, said well to be located 32.5 feet from adjacent C. and M. Shaver property, including in the proposed drilling unit 4.5076 acres of the adjoining Shaver property and 5.4924 acres of the M. R. Cowgill property, said application being State's Exhibit No. 2.

3. Adjudication Order #5 of the Chief of the Division of Oil and Gas denying appellant's application for permit to drill a test well for oil and gas to the Trempealeau formation on the M. R. Cowgill property, Lot 6, First Quarter, Peru Township, Morrow County, Ohio, said well to be located 110.0 feet from adjacent C. and M. Shaver property, including in the proposed drilling unit 3.333 acres of the Shaver property and 6.667 acres of the M. R. Cowgill property, said application being State's Exhibit No. 5.

4. An order of the Chief of the Division of Oil and Gas denying appellant's request for a hearing to determine the advisability of mandatory pooling of portions of the Cowgill and Shaver properties under Section 1509.27, Ohio Revised Code.

5. An order of the Chief of the Division of Oil and Gas denying appellant's request for a permit to drill a test well for oil and gas to the Trempealeau formation on the M. R. Cowgill property as an exception tract under Section 1509.29, Ohio Revised Code.

Adjudication orders #4 and #5 and the other orders denying requests were issued by Donald L. Norling, Chief of the Division of Oil and Gas, Department of Natural Resources, State of Ohio.

The matters were submitted to the Oil and Gas Board of Review upon the aforementioned notice of appeal and evidence presented at a hearing before the Oil and Gas Board of Review on April 1, 1966, in Hearing Room #4 of the Ohio Departments Building, and upon briefs submitted at the request of the Oil and Gas Board of Review; witnesses testifying and exhibits made in this appeal are listed in the indices to the lengthy transcript of the aforementioned hearing.

The facts in this matter which appear undisputed are:

The appellant, Jerry Moore, Inc., and Lakeshore Pipe Line Company were co-owners of an oil and gas lease on the M. R. Cowgill property, covering 171 acres, more or less, in Lots 6, 7 and 14, First Quarter, Peru Township, Morrow County, Ohio.

Stocker & Sitler, Inc. and Kin-Ark Oil Company were co-owners of an oil and gas lease on the C. and M. Shaver property, covering 200 acres, more or less, in Lots 6, 14, 15 and 16, First Quarter, Peru Township, Morrow County, Ohio, a part of which lease and property is immediately west of part of the aforementioned Cowgill property.

Attached to this order, for the purposes of understanding the facts involved, is a plat of a proposed location of a well, herein called Exhibit X, which was attached to the notice of appeal of appellant filed February 21, 1966, a copy of same being part of State's Exhibit No. 5. Said Exhibit X hereto shows the location of the Cowgill property to the east of the Shaver property and a boundary line between the two properties which is the east line of Lot 15 and the west line of Lot 6 of the First Quarter, Peru Township, Morrow County, Ohio.

Appellant, as co-owner of the oil and gas lease covering the Cowgill property, had seismic work performed thereon and apparently determined it wished to drill upon said Cowgill property somewhere near the west line of said Lot 6. Appellant offered Lake Shore Pipe Line Company the opportunity to participate in such drilling, and Lake Shore declined to participate. Appellant approached Kin-Ark Oil Company, and later, Stocker & Sitler, advising that appellant wished to drill on said Cowgill lease near the west line of Lot 6, the drilling unit to include some of the Shaver property along the east line of Lot 15.

In attempting to obtain a permit to drill on the Cowgill property, appellant filed several applications for permits to drill and made several other requests to the Chief of the Division of Oil and Gas which were denied and are the subject matter of this appeal; such applications and requests being as follows:

a. Appellant first filed with the Division of Oil and Gas on January 5, 1966, an application for permit to drill on the Cowgill

property [illegible] from the boundary line between the Shaver and the Cowgill properties, upon a ten-acre drilling unit located entirely upon the Cowgill property, being State's Exhibit No. 1. The Chief denied this application by Adjudication Order #4 dated January 28, 1966, for the reason that the location of the proposed well was not in accordance with Rule IV of the Division of Oil and Gas governing the issuance of permits for the drilling of wells for the production of oil or gas and the operation thereof effective December 14, 1965, which rule provides in (C)(1)c that no permit shall be issued to drill a well for the production of oil or gas unless the proposed well is located not less than 230 feet from the boundaries of the subject tract or drilling unit.

b. On the same day, January 5, 1966, appellant filed with the Division of Oil and Gas an application for permit to drill upon the same location on the Cowgill property as that described above, i.e., 32.5 feet from the boundary line between the Shaver and Cowgill properties, but the plat accompanying such application discloses a drilling unit comprised of 4.5076 acres of Shaver property and 5.4924 acres of Cowgill property, being State's Exhibit No. 2. This application was not accompanied by a pooling agreement and the permit application recited that the proposed drilling unit was not wholly owned by appellant. In Adjudication Order #5, dated March 8, 1966, the Chief of the Division of Oil and Gas denied such application for permit to drill for the same reason set forth in the denial of application in Adjudication Order #4, and for the reason that no pooling agreement

Revised Code, when a drilling unit is composed of properties having two or more owners.

c. On February 14, 1966, appellant filed with the Division of Oil and Gas an application for permit to drill in substantially the same form and content as that application described in b. above, with the difference that the proposed well location on the Cowgill property was 110 feet from the boundary line of the Shaver property, making the acreage distribution 3.333 acres of Shaver property and 6.667 acres of Cowgill property in the proposed drilling unit, such application being State's Exhibit No. 5. This application was not accompanied by a pooling agreement. A copy of the plat submitted with said application is attached to this order, designated Exhibit X hereto. The Chief denied such application for permit in the same Adjudication Order #5 dated March 8, 1966, described in b. above for the same reasons set forth in b. above.

d. Appellant claims it requested a hearing under Section 1509.27, Ohio Revised Code, to obtain a mandatory pooling order pooling acreage from the Shaver property and the Cowgill property to form the drilling unit described in Exhibit X hereto. After consultation with the Technical Advisory Council created under Section 1509.38 of Ohio Revised Code, the Chief of the Division of Oil and Gas set a date to explore the possibility of voluntary pooling by an informal negotiation type of conference. On the advice of the Attorney General, the Chief of the Division of Oil and Gas cancelled this proposed meeting,

1966, being State's Exhibit No. 7, that "the Chief's denial of a permit to drill a well within 230 feet of the property line when the subject tract and the drilling unit itself will permit a legal location for a well does not give rise to an action under Section 1509.27 and 1509.29, Ohio Revised Code."

e. Appellant claims it requested a permit to drill and an order establishing part of the Cowgill property as an exception tract under Section 1509.29, Ohio Revised Code, although no application for permit showing compliance with said Section 1509.29 was offered in evidence. After consultation with the Technical Advisory Council created under Section 1509.38, Ohio Revised Code, the Chief of the Division of Oil and Gas set a date to explore the possibility of voluntary pooling by an informal negotiation type of conference. On the advice of the Attorney General, the Chief of the Division of Oil and Gas cancelled this proposed meeting, stating as the reason therefor in a letter from the Chief dated March 8, 1966, being State's Exhibit No. 7, that "the Chief's denial of a permit to drill a well within 230 feet of the property line when the subject tract and the drilling unit itself will permit a legal location for a well does not give rise to an action under Sections 1509.27 and 1509.29, Ohio Revised Code."

f. Appellant filed notice of appeal with this Board of Review dated February 21, 1966.

consideration, although it is not clear that all such questions were properly presented to this Board:

I. Is the order of the Chief denying appellant's application for permit to drill a test well for oil and gas to the Trempealeau formation on the M. R. Cowgill property 32.5 feet from the Shaver property, with the proposed ten-acre drilling unit located on the Cowgill property as set forth in appellant's application for permit filed January 5, 1966, being State's Exhibit No. 1, lawful and reasonable?

II. Is the order of the Chief denying appellant's application for permit to drill a test well for oil and gas to the Trempealeau formation on the M. R. Cowgill property 32.5 feet from the Shaver property, with the proposed ten-acre drilling unit composed of 4.5076 acres of Shaver property and 5.4924 acres of Cowgill property as set forth in appellant's application filed January 5, 1966, being State's Exhibit No. 2, lawful and reasonable?

III. Is the order of the Chief denying appellant's application for permit to drill a test well for oil and gas to the Trempealeau formation on the M. R. Cowgill property 110 feet from the Shaver property, with the proposed ten-acre drilling unit composed of 3.333 acres of Shaver property and 6.667 acres of Cowgill property as set forth in appellant's application filed February 14, 1966, being State's Exhibit No. 5, lawful and reasonable?

IV. Was the order of the Chief denying appellant's request that the Chief hold a hearing pursuant to Section 1509.27, Ohio Revised Code, to

consider mandatory pooling of parts of the Cowgill and Shaver properties described in Exhibit X hereto lawful and reasonable?

V. Was the order of the Chief denying the appellant's request for an order establishing part of the Cowgill property as an exception tract and that appellant be granted a permit to drill thereon, pursuant to Section 1509.29, Ohio Revised Code, lawful and reasonable?

VI. In the event that one or more of the orders of the Chief, as recited above in I, II, III, IV and V, are unlawful and/or unreasonable, and therefore should be vacated, is there an order or orders that this Board will make.

. . . . .

Testimony and other evidence presented concerning each of the questions presented to the Board, numbered as are the questions, follow:

I. There was no testimony or other evidence presented in this appeal toward establishing that Adjudication Order #4 was unreasonable or unlawful or should be vacated; nor was any testimony or other evidence offered toward establishing that 32.5 feet was substantial compliance with Rule IV(C)(1)c of the rules of the Division of Oil and Gas governing the issuance of permits for the drilling of wells for the production of oil and gas.

The Board makes the following finding of facts and application thereof concerning Question I:

1. That the location on the Cowgill property of the well for which permit was requested by appellant in its application dated January 5,

1966, the entire ten-acre drilling unit being on the Cowgill property, was 32.5 feet from the boundary line of the Shaver property adjacent to the west.

2. That such well location is not in substantial compliance with Rule IV(C)(1)c of the rules of the Division of Oil and Gas governing the issuance of permits effective December 14, 1965, which rule requires no permit be issued to drill a well for the production of oil or gas unles the proposed well is located not less than 230 feet from the boundaries of the subject tract or drilling unit.

II. There was no testimony or other evidence presented in this appeal toward establishing that Adjudication Order #5 was unreasonable or unlawfu or should be vacated; nor was any testimony or other evidence offered toward establishing that drilling 32.5 feet from a boundary is substantial compliance with Rule IV(C)(1)c of the rules of the Division of Oil and Gas governing the issuance of permits for the drilling of wells for the productior of oil and gas. There was no testimony or other evidence presented that the proposed drilling unit, which included 5.4924 acres of the Cowgill property and 4.5076 acres of the Shaver property immediately adjacent to the west, was accompanied by a pooling agreement entered into by the owners of the Shaver and Cowgill properties and/or oil and gas leases or that such pooling agreement had been entered into.

The Board makes the following finding of facts and application thereof concerning Question II:

1. That the location of the well requested by appellant in its application dated January 5, 1966, on the Cowgill property, including

within the ten-acre drilling unit 5.4924 acres of Cowgill property and 4.5076 acres of Shaver property, was 32.5 feet from the boundary line of the Shaver property adjacent to the west.

2. That such well location is not in substantial compliance with Rule IV(C)(1)c of the rules of the Division of Oil and Gas governing the issuance of permits effective December 14, 1965, which rule requires no permit be issued to drill a well for the production of oil or gas unless the proposed well is located not less than 230 feet from the boundaries of the subject tract or drilling unit.

3. No voluntary pooling agreement was submitted with the application on January 5, 1966, nor was it ever presented to the Chief.

4. No permit could be granted for drilling as neither Rule IV(C)(1)c of the rules of the Division of Oil and Gas permitting issuance of permits for the drilling of wells for the production of oil or gas nor Section 1509.26, Ohio Revised Code, were complied with.

III. There was no testimony or other evidence presented in this appeal toward establishing that Adjudication Order #5 was unreasonable or unlawful or should be vacated; nor was any testimony or other evidence offered toward establishing that drilling 110 feet from a boundary is substantial compliance with Rule IV(C)(1)c of the rules of the Division of Oil and Gas governing the issuance of permits for the drilling of wells for the production of oil and gas. There was no testimony or other evidence presented that the proposed drilling unit, which included 6.667 acres of the Cowgill property

and 3.333 acres of the Shaver property immediately adjacent to the west, was accompanied by a pooling agreement entered into by the owners of the Shaver and Cowgill properties and/or oil and gas leases or that such pooling agreement had been entered into.

The Board makes the following finding of facts and application thereof concerning Question III.

1. That the location of the well requested by appellant in its application dated February 14, 1966, on the Cowgill property, including within the ten-acre drilling unit 6.667 acres of Cowgill property and 3.333 acres of Shaver property, was 110 feet from the boundary line of the Shaver property adjacent to the west.

2. That such well location is not in substantial compliance with Rule IV(C)(1)c of the rules of the Division of Oil and Gas governing the issuance of permits effective December 14, 1965, which rule requires no permit be issued to drill a well for the production of oil or gas unless the proposed well is located not less than 230 feet from the boundaries of the subject tract or drilling unit.

3. No voluntary pooling agreement was submitted with the application on February 14, 1966, nor was it ever presented to the Chief.

4. No permit could be granted for drilling as neither Rule IV(C)(1)c of the rules of the Division of Oil and Gas permitting issuance of permits for the drilling of wells for the production of oil or gas nor Section 1509.26, Ohio Revised Code, were complied with.

17. Appellant contends it requested a hearing on mandatory pooling under Section 1509.27, Ohio Revised Code, and that the Chief of the Divisi of Oil and Gas, upon advice of the Attorney General, denied such request for hearing.

Appellant offered testimony to show geophysical work consisting of seismic reflection had been performed for appellant by Arthur Pollet of Independent Exploration Company on the Cowgill and Shaver properties in Lots 6 and 15, respectively, First Quarter, Peru Township, Morrow County, Ohio; that such geophysical work, in Mr. Pollet's opinion, had located a "Grade A" structure of which approximately five acres was on appellant's Cowgill lease at the western boundary thereof; that drilling of a test well was first recommended by Mr. Pollet at a location 32.5 feet from the boundary line of the Shaver property, and after further seismic work, drilling was recommended by Mr. Pollet at a location 110 feet from the Shaver property; that seismic reflection is a well accepted geophysical tool for locating Trempealeau structural remnants in Peru Township, Morrow County, Ohio; that drilling on the apex of a seismically located structure is vital to obtain maximum oil and gas production; that utilizatio of seismic reflection increases the possibility of finding a Trempealeau structural remnant to a success ratio of four out of five, whereas without seismic work only one structure would be located in ten locations drilled; and that in Peru Township, Morrow County, Ohio, the probability of oil or gas in commercial quantities being in such Trempealeau structural remna when seismically located is two in five or one in two; that estimated reser in such five to eight acre structure on the Cowgill property would be

"around 50 or 55 thousand" barrels of oil; appellant also testified, however, that the proposed location as set forth in Exhibit X hereto, was a wildcat location.

Appellant presented testimony to show it had offered Stocker & Sitler and Kin-Ark the opportunity to participate on an acreage-cost basis in drilling the location 32.5 feet from the Shaver property, as disclosed by State's Exhibit No. 2, or, as an alternative, appellant would pay all of the drilling, completing, equipping and operating costs, and after appellant recovered double its costs therefor, Stocker & Sitler and Kin-Ark Oil Company would receive production attributable to the Shaver property included in the drilling unit. Appellant attempted to indicate that the same offers were present concerning the proposed well location 110 feet from the Shaver property, as disclosed by State's Exhibit No. 5 and Exhibit X hereto; appellant acknowledged that no such specific offers were made concerning the location 110 feet from the Shaver property. Appellant acknowledged that it made no other offers of a basis of voluntary pooling except on an acreage-cost basis or for appellant to pay all drilling, equipping, completing and operating costs and appellant recover double such costs before Stocker & Sitler and Kin-Ark received any money from a well on such location. Appellant called Dr. Norling, Chief of the Division of Oil and Gas, to testify concerning his actions, and particularly, that he had originally scheduled an informal negotiation type meeting to explore the possibility of voluntary pooling of Stocker & Sitler, Kin-Ark and appellant, but that the Attorney General advised that Dr. Norling, as Chief of the Division of Oil and Gas, could not hold such a meeting and it was cancelled. Appellant also called Mr. Richard McConnell, an independent oil and gas operator in Ohio, and

Chairman of the Technical Advisory Council created under Section 1509.38, Ohio Revised Code, who testified that the Technical Advisory Council had recommended the Chief of the Division of Oil and Gas hold an informal negotiation type conference to explore the possibility of voluntary pooling; Mr. McConnell also testified concerning the intent of those drafting the oil and gas conservation statute.

The State offered seven exhibits and no witnesses, and its position appears to be that there are certain statutory conditions which must be met prior to holding a hearing on mandatory pooling and to making an order establishing an exception tract and granting a permit to drill thereon; and that such conditions were not complied with by appellant. The State's position is based primarily on the word "tract," which appears in Section 1509.27 and in 1509.29, Ohio Revised Code, and is defined in Section 1509.01(J), Ohio Revised Code, as "a single, individually taxed parcel of land appearing on the tax list." The State contends such language should be narrowly construed which would prohibit appellant from obtaining the orders and permit it requests because appellant has a "174 acre tract," which is more than enough property on which to drill, and none of the drilling locations and acreage surrounding same are "tracts" of insufficient size and shape within the State's interpretation of the statutory definition.

Stocker & Sitler and Kin-Ark offered testimony that the geophysical work performed for them, as interpreted by Eldon Landes, a seismologist and employee of Kin-Ark, did not disclose a "Grade A" structure on the Cowgill property or on the boundary between the Cowgill and Shaver properties involved; Mr. Landes doubted whether any s .smic structure

that seismic reflection is an accepted geophysical tool in Peru Township, Morrow County, Ohio; that the exact spot for drilling may vary on a given structure if such structure is present; the drilling location selected by appellant was not necessarily correct; the reserve estimate of appellant was not correct; if a structure is present, estimated reserves are 15,500 to 27,000 barrels on a five and one-half acre structure. Stocker & Sitler and Kin-Ark testified that the two alternative bases for voluntarily pooling offered by appellant for the location 32.5 feet from the Shaver property, as set forth above, were not made concerning the location as set forth on Exhibit X hereto, and that Stocker & Sitler and Kin-Ark were still open to further offers to voluntarily pool; Mr. Stocker was very vague concerning what would be acceptable.

It appears accepted by appellant, the State, Stocker & Sitler and Kin-Ark that there are certain conditions to be met prior to the Chief of the Division of Oil and Gas calling a hearing concerning mandatory pooling, but that the difference of opinion is as to what the conditions are and whether they have been complied with under Section 1509.27, Ohio Revised Code. Two conditions are:

a. That a tract of land of insufficient size or shape to meet the requirements for drilling a well thereon as provided in 1509.24 or 1509.25 of the Ohio Revised Code exists; and

b. The owner has been unable to form a drilling unit under agreement provided in Section 1509.26, Ohio Revised Code, on a just and equitable basis.

The State and Stocker & Sitler and Kin-Ark take the position that appellant does not have a "tract" of land of insufficient size or shape within such language, and Stocker & Sitler and Kin-Ark also assert that appellant is not "unable to form a drilling unit under agreement provided in Section 1509.26, Ohio Revised Code," and therefore, appellant cannot obtain a hearing on mandatory pooling under Section 1509.27, Ohio Revised Code.

The meaning of the word "tract" as used in the oil and gas conservation statute has already been the subject of much discussion, and may well continue to be. Although Section 1509.01(J), Ohio Revised Code, states that tract means "a single, individually taxed parcel of land appearing on the tax list," and it would appear that such definition is applicable in Sections 1509.01 to 1509.99, Ohio Revised Code, inclusive, an examination of said sections discloses that the word "tract" is used therein at least thirty-nine times and that in several instances where used a narrow construction of the language, "a single, individually taxed parcel of land appearing on the tax list" would be entirely unworkable, e.g., Section 1509.28, Ohio Revised Code. It is recognized that the word "tract" is an often used word in the oil and gas exploration industry. The facts that such term is commonly used in the oil and gas industry and that it has several meanings can be noted from the lengthy transcript in this appeal where such word appears at least one hundred twenty-four times, a number of which usages, particularly by the State, would not fit a narrow construction of the language used in Section 1509.01(J), Ohio Revised Code. Although alluded to in appellant's opening statement, no testimony or other evidence was presented in this appeal that the one hundred seventy-plus acre Cowgill property was composed of one or

list." If the State and Stocker & Sitler actually were of the opinion that a narrow construction of Section 1509.01(J), Ohio Revised Code, were intended by the legislature, it appears evidence would have been offered concerning the "tax list." No testimony was submitted of the acres of land in the Cowgill and Shaver properties although references were made to a "174 acre tract," and the only evidence concerning same is State's Exhibit 4 and Appellant's Exhibit D, on which the acreage is shown.

This Board is of the opinion, and believes that the Legislature intended, that an integral part of conservation is to encourage development of oil and gas resources in the State of Ohio. As a consequence thereof, this Board questions whether, in the event a party wished to drill a wildcat well in a location similar to that set forth in Exhibit X hereto, and a preponderance of geological and geophysical evidence indicated a test well was warranted, and if all reasonable efforts had been made to voluntarily pool but were unsuccessful, a narrow construction of the definition of the word "tract" would be utilized to prevent such well from being drilled. Such a fact situation is not before this Board at this time however, and it is not necessary to base the orders herein on the definition of the word "tract."

The second condition under Section 1509.27, Ohio Revised Code, as listed above, is of import in this appeal as it appears questionable whether appellant was "unable" to form a drilling unit by a voluntary pooling agreement on a just and equitable basis. Appellant contends that the only effort and offers it needs to make to enter into a voluntary pooling agreement under Section 1509.26, Ohio Revised Code, is to offer a straight cost participation

as set forth in the fourth paragraph of Section 1509.27, Ohio Revised Code.

Although the problem is not presented to the Board in this appeal, it is even questionable whether double the share of costs of drilling, equipping, completing and operating is the only alternative to "cost" for a non-consenting owner of property within a drilling unit who has not elected to be a non-participating owner at the time the Chief enters a mandatory pooling order under Section 1509.27.

The question in this appeal is whether the owner has been unable to form a drilling unit under agreement provided in Section 1509.26 on a just and equitable basis. Inasmuch as the statute does not provide who shall determine whether an owner has been "unable" to form a drilling unit by voluntary pooling under Section 1509.26, Ohio Revised Code, it is the opinion of this Board that unless the parties themselves so agree, the Chief of the Division of Oil and Gas shall determine, preferably after advice from the Technical Advisory Council, whether the owner-applicant has been unable to form such drilling unit under voluntary pooling agreement provided in Section 1509.26, Ohio Revised Code, and whether such owner-applicant has used all reasonable efforts to enter into a voluntary pooling agreement. Using "all reasonable efforts" contemplates both a reasonable offer and sufficient efforts to advise the other owner or owners of same.

It does not appear to this Board that the two alternatives of straight cost or double the share of costs of drilling, equipping, completing and operating are the only alternative bases for voluntary pooling on all wells for

large difference in what is just and equitable in terms of voluntary pooling between participating in an offset well, a developmental well, a semi-wildcat or a wildcat. The question then becomes, what tests does the Chief of the Division of Oil and Gas use to determine whether an owner-applicant has used all reasonable efforts to enter into a voluntary pooling agreement to form such drilling unit. In making such determination the following factors, and possibly others, are pertinent: the geological and geophysical evidence concerning whether the proposed drilling is warranted on the location selected; who is to be the operator and under what operating agreement; what are the economics of the location based upon geological, geophysical and engineering information.

A consideration of correlative rights is vital in examining mandatory pooling as mandatory pooling, by definition, forces a party who is the owner or lessee of property to use that property with another lessee and/or for a purpose or price not acceptable to him. The importance of conservation, and particularly that aspect of conservation which includes the development of the natural resources of this state, is the factor which may tip the scales in favor of forcing such person to have his property utilized against his wishes. Such mandatory pooling should occur only, however, when the statutory conditions have been complied with.

Once it is determined that double the costs of drilling, completing, equipping and operating is not the only alternative to cost participation and that other offers should be made, then the question is what would constitute reasonable efforts to voluntarily pool. It appears that the more the well

etc. the party drilling the well should have to make to have made a reasonable offer, and the more the well approaches being an offset well, the higher the value of the offer which must be made to the party who is forced to contribute to the mandatory pooling. Or, if a recoupment from production is contemplated, the larger the recovery the drilling party should have in the event of a rank wildcat; the nearer the well approaches being an offset well, the lower the penalty on the party who is forced to contribute to mandatory pooling. It is recognition of this fact that apparently led the appellant to attempt to straddle two horses: First, appellant argued a Grade A structure existed that should be drilled and the chances of such structure containing oil were nearly one out of two, which is clearly a better percentage than the usual wildcat well, to establish the well should be drilled; appellant then claimed the well in question to be a wildcat well to establish the reasonableness of its offer of double its costs of drilling, completing, equipping and operating. Stocker & Sitler and Kin-Ark testified that this was not a wildcat well, and State's Exhibit 4 and Appellant's Exhibit D appear to indicate there are more than twenty producing wells within one mile of the location set forth on Exhibit X hereto. Appellant's seismic expert testified that a "Grade A" structure existed, whereas Stocker & Sitler and Kin-Ark's seismic expert testified that he doubted whether any structure existed. Both experts acknowledged that they had worked together in the past and that they considered the other to be an expert, and attributed the difference of opinion to a different interpretation of basically the same seismic data.

Reserve evaluation testimony also leads to a questioning of the reasonableness of the double the share of costs offered. Appellant's

engineer testified estimated reserves from the five-acre structure to be 50,000 to 55,000 barrels of oil. Stocker & Sitler and Kin-Ark testified that based on a five and one-half acre structure, it estimated recovery of oil, if present, to be 15,500 to 27,000 barrels. Stocker & Sitler and Kin-Ark submitted their figures based on an estimated recovery of 129 barrels per acre for 30 feet of pay; appellant testified it was not using volumetric measurement and raised the question of whether some of the 50,000 barrels of oil might be drained from the property to the west. Appellant's attorney suggests the average of these two figures be taken and the result would be approximately 36,500 barrels of oil produced from the five-acre structure. Appellant proposes to recover from Stocker & Sitler and Kin-Ark's leasehold interest double their share of the cost for drilling, equipping, completing and operating the well based on acreage participation. A completed well would cost $36,000.00, according to appellant's testimony, or $46,000.00, according to Stocker & Sitler and Kin-Ark's, and again using the average and a conservative figure of ten per cent for operating costs, the well would need to produce approximately 36,000 barrels of oil (at a price of $2.90 per barrel and allowing for a 1/8 royalty to the landowner) before Stocker & Sitler and Kin-Ark would receive any monies, and they would share only in the last 500 barrels of oil produced from the well.

It is also true that Stocker & Sitler and Kin-Ark's position may be questioned as they state there is not a drillable structure present as the reason for not participating on a voluntary cost basis. One wonders why, if there is no drillable structure, Stocker & Sitler and Kin-Ark are not then willing to allow appellant to drill. Since one of the aims of the oil and gas

cannot play Aesop's dog in the manger for purposes of obstructing development.

This Board is concerned by the action of the Chief in cancelling a previously scheduled informal negotiation type meeting to explore the possibility of voluntary pooling with the appellant and Stocker & Sitler and Kin-Ark. The Board does not understand the reasons for cancelling such meeting, and although recognizing that the statutory duty of the Chief of the Division of Oil and Gas is to administer the oil and gas conservation law, this Board is of the opinion that one of the purposes of the conservation act, and one of the duties of the Chief of the Division of Oil and Gas, is to encourage development of oil and gas resources. It appears to this Board that a meeting of the Chief and members of the Technical Advisory Council with parties who are faced with the possibility of mandatory pooling under Section 1509.27, Ohio Revised Code, would be appropriate, and almost necessary, for the Chief to later call a hearing on mandatory pooling, as this should be the best method for the Chief to make a determination that the party who wants to drill has made all reasonable efforts to voluntarily pool.

The Board makes the following finding of facts and application thereof concerning Question IV:

1. Seismic reflection is a well accepted geophysical tool used for locating subsurface Trempealeau structures in Peru Township, Morrow County, Ohio.

Trempealeau structure in Peru Township, Morrow County, Ohio, is of importance in obtaining maximum oil and gas reserves, if oil and gas are present.

3. There is a substantial conflict between the testimony of appellant's geophysical expert and the geophysical expert of Stocker & Sitler and Kin-Ark as to the existence of a "Grade A" subsurface Trempealeau structure.

4. Appellant offered only two alternatives for Stocker & Sitler and Kin-Ark's participation in drilling a drilling location 32.5 feet from Shaver property: that Stocker & Sitler and Kin-Ark could participate on an acreage-cost basis, or appellant would pay all of the drilling, completing, equipping and operating costs of such well and after appellant had recovered double the amount of such drilling, completing, equipping and operating costs, Stocker & Sitler and Kin-Ark would then own a working interest based on their acreage participation; both offers included the provision that appellant would be the operator of such proposed unit, but no operating agreement was submitted to Stocker & Sitler.

5. Appellant made no specific offer of any basis of participation by Stocker & Sitler and Kin-Ark for voluntary pooling in a drilling location 110 feet from the Shaver property.

6. Stocker & Sitler and Kin-Ark at no time indicated they would not voluntarily pool, nor did Stocker & Sitler and Kin-Ark elect to be non-participating owners under Section 1509.27, Ohio Revised Code.

7. The burden of going forward in making efforts to voluntarily pool is on the party who wishes to drill the well, and, if so made, the other party must make reasonable efforts to negotiate in good faith.

8. Based upon the testimony and other evidence and the findings set forth in numbers 3, 4, 5 and 6 above, the Chief could determine and this Board is of the opinion that appellant did not make all reasonable efforts to voluntarily pool.

V. Appellant contends it requested an order be entered by the Chief of the Division of Oil and Gas establishing an exception tract on the Cowgill property and that appellant be granted a permit to drill on such exception tract under Section 1509.29, Ohio Revised Code, and that the Chief upon the advice of the Attorney General denied such request. Evidence pertaining to Question V which was not also applicable to Question IV heretofore is that of Richard C. McConnell, Chairman of the Technical Advisory Council, who testified that it was his understanding that the intent of those persons drafting the oil and gas conservation statute was that Section 1509.29, Ohio Revised Code, be utilized where there existed a small parcel of land which could not be mandatorily pooled because of surrounding production.

Appellant appears to contend that if mandatory pooling is not allowed under Section 1509.27, Ohio Revised Code, then appellant should be allowed to drill at its selected location under Section 1509.29, Ohio Revised Code, because such section is the only alternative under which such well can be drilled. There is no testimony or other evidence indicating that appellant filed an application for a permit to drill and an order establishing an

plat indicating the exception tract proposed by appellant.

The State and Stocker & Sitler and Kin-Ark contend that there are certain conditions which must be complied with prior to obtaining an order establishing an exception tract and obtaining a drilling permit thereon and again the State relies primarily on the definition of the word "tract" in Section 1509.01(J), Ohio Revised Code, maintaining that appellant does not have such a "tract." Stocker & Sitler and Kin-Ark also rely upon the word "tract" and also contend that appellant is not "unable to enter into a voluntary pooling agreement."

It appears that in addition to filing an application for permit to drill under Section 1509.29, Ohio Revised Code, there are four specific conditions to be complied with prior to obtaining a permit to drill and an order establishing a tract as an exception tract as follows:

1. It must be a tract for which a drilling permit may not be issued, and

2. There must be a showing by the owner-applicant that he is unable to enter into a voluntary pooling agreement, and

3. The owner-applicant must show that he would be unable to participate under a mandatory pooling order, and

4. The Chief must find that such owner would otherwise be precluded from producing oil and gas from his tract because of minimum acreage or distance requirements.

Board will not analyze Question V at length, but makes the following finding of facts and application thereof in connection with Question V:

1. There is no testimony or other evidence offered to indicate appellant filed an application for a permit to drill and order establishing an exception tract under Section 1509.29 nor a plat indicating the exception tract proposed by appellant.

2. The Board hereby adopts and includes herein by reference its finding of facts and applications thereof numbered 1 through 8 inclusive under Question IV hereof.

There were two evidentiary matters objected to at the hearing on April 1, 1966, at which time the Board advised it would permit the appearance and/or testimony to be made at the hearing, but would rule later as to admissibility, as follows:

1. Appellant objected to the presence of Stocker & Sitler and Kin-Ark at said hearing, their offer of evidence, and their being represented by counsel at such hearing. It appears that appellant's position is inconsistent in objecting to such appearance and testimony in that one of appellant's requests of this Board is that it allow a hearing on mandatory pooling so that parts of the Shaver and Cowgill properties be pooled to form a drilling unit as set forth in Exhibit X attached to this Entry. In considering whether all reasonable efforts have been made by appellant to voluntarily pool, the lessees, and, if the lease contains no pooling clause, the landowners, of adjacent tracts to be pooled may and should testify concerning the progress

at the hearing on April 1, 1966, that Stocker & Sitler and Kin-Ark were appearing at his request and, under Section 1509.36, Ohio Revised Code, the State may call witnesses. Finally, appellant appears to have waived any rights, if same existed, to object to the presence of Stocker & Sitler and Kin-Ark or their attorneys inasmuch as its notice of appeal dated February 21, 1966, specifically requests that notice of the hearing be given to Kin-Ark Oil Company, Stocker & Sitler, and their attorneys. The Rules of Practice and Procedure of the Oil and Gas Board of Review, which are in effect at the time this Entry is made, but which were not in effect at the time of institution of Appeal #1 and the hearing thereon, may resolve questions such as this in the future. In any event, appellant's objections to the presence of Stocker & Sitler and Kin-Ark Oil Company and their attorneys in this matter are overruled.

2. Both the State and Stocker & Sitler and Kin-Ark objected to the submission by appellant of evidence concerning geological and geophysical information. As stated more fully elsewhere in this Entry, this Board is of the opinion that evidence of geological and geophysical factors concerning a proposed well location is pertinent in determining whether all reasonable efforts have been made to voluntarily pool under Section 1509.26 and, thus, whether the condition of being unable to voluntarily pool,which is in both Sections 1509.27 and 1509.29, Ohio Revised Code, has been complied with. Therefore, such objections of Stocker & Sitler and Kin-Ark are overruled.

sideration to conservation, safety and correlative rights, as applicable in this appeal, this Board hereby makes the following orders which correspond to the six questions set forth on Pages 8 and 9 of this Entry:

A. The Board affirms the order of the Chief denying appellant's application for permit to drill a test well for oil and gas to the Trempealeau formation on the M. R. Cowgill property 32.5 feet from the Shaver property, with the proposed ten-acre drilling unit located on the Cowgill property as set forth in appellant's application for permit filed January 5, 1966, being State's Exhibit No. 1, and finds that such order was lawful and reasonable.

B. The Board affirms the order of the Chief denying appellant's application for permit to drill a test well for oil and gas to the Trempealeau formation on the M. R. Cowgill property 32.5 feet from the Shaver property, with the proposed ten-acre drilling unit composed of 4.5076 acres of Shaver property and 5.4924 acres of Cowgill property as set forth in appellant's application for permit filed January 5, 1966, being State's Exhibit No. 2, and finds that such order was lawful and reasonable.

C. The Board affirms the order of the Chief denying appellant's application for permit to drill a test well for oil and gas to the Trempealeau formation on the M. R. Cowgill property 110 feet from the Shaver property with the proposed ten-acre drilling unit composed of 3.333 acres of Shaver property and 6.667 acres of Cowgill property as set forth in appellant's application for permit filed February 14, 1966, being State's Exhibit No. 5, and finds that such order was lawful and reasonable.

D. The Board affirms the order of the Chief denying appellant's request that the Chief hold a hearing pursuant to Section 1509.27, Ohio Revised Code, to consider mandatory pooling of parts of the Cowgill and Shaver properties described in Exhibit X hereto and finds that such order was lawful and reasonable.

E. The Board affirms the order of the Chief denying the appellant's request for an order establishing part of the Cowgill property as an exception tract and that appellant be granted a permit to drill thereon pursuant to Section 1509.29, Ohio Revised Code, and finds that such order was lawful and reasonable.

F. Inasmuch as this Board affirms the above listed orders of the Chief, finds such orders are lawful and reasonable, and vacates none of such orders, then this Board does not make any new orders in this Appeal #1.

These orders effective this 15th day of July, 1966.

OIL AND GAS BOARD OF REVIEW

By _____

J. Richard Emens, Secretary, who certifies that the foregoing is a true and correct copy of the Entry in the above matters of the Oil and Gas Board of Review effective July 15, 1966.

EXHIBIT A
to Entry of the
Oil and Gas Board of Review re Appeal #1
dated July 15, 1966

Approved by: _____

File No. _____

Unit Plan
M.K. Cowgill 6.667 Ac E. 5375 %
C & M. Shover - 3.333 Ac = 4.1625 %
Totals - 10.000 Ac 12.5000 % or 1/8