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

A. Joseph Vohlers

and

Margaret H. Vohlers,

Appellants

APPEAL NO. 20

vs.

The State of Ohio, Acting by and through the Chief of the Division of Oil and Gas, Departmentof Natural Resources,

Appellee

APPEARANCES: For the Appellants - Appellants on behalf of themselves

For the Appellee - William J. Brown, Attorney General of the State of Ohio By: Fred R. Kass, Assistant Attorney General, Fountain Square, Columbus, Ohio 43224

ENTRY

This matter came on for hearing before the Oil and Gas Board of Review upon notice of appeal filed herein under date of April 11, 1975, by the Appellants, appealing from Adjudication Order No. 211 as issued by Harry L. Armstrong, Chief, of the Division of Oil and Gas, ordering that the well described therein be properly plugged and abandoned in accordance with Section 1509.15, Revised Code. Said well is described in said order as Well No. 1, in the City of North Ridgeville, Lorain County, State c Ohio, old lots 7-8 on the former Terrell lease, now lot 233, located in a stream bed in the back of a portion of said lot being parcel number 07-00-007-130-086. The order states that all plugging operations shall commence within forty-five (45) days of the receipt of this order and shall be completed within ninety (90) days of said receipt. Adjudication Order No. 211 was issued on March 20, 1975.

Appellants filed their appeal to Adjudication Order No. 211 by notice of appeal dated April 11, 1975.

The matters were submitted to the Oil and Gas Board of Review upon the aforementioned notice of appeal, a hearing date having been set and later postponed upon the Oil and Gas Board of Review's own motion. A final hearing date was set for Friday, May 23, 1975, at 10:30 a.m., E.S.D.T., in the Conference Room on the first floor, Building C, Department of Natural Resources, Fountain Square, Morse Road, Columbus, Ohio, at which time evidence was presented to the Oil and Gas Board of Review. Witnesses testifying and exhibits filed in this appeal are listed in the indices to the transcript of the aforementioned hearing.

This appeal was erroneously numbered Appeal No. 19 by the Board when notice of hearing was sent to all parties. This was corrected at the time of hearing to reflect the proper appeal number, being Appeal No. 20.

The facts in this matter which appear undisputed are:

1. That A. Joseph Vohlers and Margaret H. Vohlers are the owners of a thirty (30) foot strip of ground being part of lot 233 in Mills Creek Subdivision, Section "B" in the City of North Ridgeville, County of Lorain and State of Ohio.

2. That the thirty (30) foot strip of ground owned by the Appellants, A. Joseph Vohlers and Margaret H. Vohlers, serves as a drainage ditch which has water running through it continuously.

3. Within this drainage ditch on the strip of ground owned by the Appellants, there is a water surface area of approximately five (5) feet in diameter where a bubbling condition occurs.

4. That the Appellants obtained title to lot 233, which included the thirty (30) foot strip of real estate in question in this appeal, by general warranty deed set forth in Appellee's

Exhibit "G" recorded in Volume 1012 at page 234 of the Deed Records of Lorain County, Ohio.

5. That there was a well known as the Violetta Terrell Well No. 1 located on old lots 7 and 8 in Ridgeville Township, Lorain County, Ohio.

6. That Violetta Terrell executed an oil and gas lease to Ohio Gas Producing Co. on February 21, 1935 and recorded in Volume 40 at page 607 of the Lease Records of Lorain County, Ohio, for a term of five (5) years and as long thereafter as operations for oil and gas or either of them are being conducted on the premises of Cioletta Terrell or oil and gas or either of them is produced from said land by the Lessee. Said lease being set forth in Appellee's Exhibit "E".

7. That a cancellation of the lease set forth in the paragraph above was presented for record by Ohio Gas Producing Company and Kemrow Company on June 12, 1941 and recorded in Volume 25 at page 161 of the Release Records of Lorain County, Ohio. Said lease cancellation is set forth in Appellee's Exhibit "F" and purported to release the interests of the two named companies in the above mentioned lease.

8. That a gas well known as Well No. 1 on the Violetta Terrell property in lots 7 and 8, Ridgeville Township, Lorain County, Ohio, was drilled and completed by Kemrow Company-Schneider and Wyles of Wooster, Ohio, on December 21, 1935. A well record of said well is set forth in Appellee's Exhibit "H".

9. That the gas well known as Well No. 1 on the Violetta Terrell property located in lots 7 and 8, Ridgeville Township, Lorain County, Ohio, was abandoned on or about the year 1941.

10. That Harry L. Armstrong, Chief, Division of Oil and Gas, Department of Natural Resources, issued Adjudication Order No. 211 on March 20, 1975, ordering A. Joseph Vohlers and Margaret H. Vohlers to cause the well known as Well No. 1, in the City

of North Ridgeville, Loraine County, State of Ohio, old lots 7-8 on the former Terrell lease, now lot 233, located in a stream bed in the back of the portion of said lot being parcel number 07-00-007-130-086 to be properly plugged and abandoned in accordance with Section 1509.15, Revised Code, with plugging operations to commence within forty-five (45) days of receipt of said order and to be completed within ninety (90) days of said receipt. Said Adjuciation Order stated that it was based on the following Findings of Fact:

> "(a) The well described in this order has been idle since at least 1968.
>
> (b) Public records and investigation show that A. Joseph Vohlers and Margaret H. Vohlers are the owners of the aforementioned well.
>
> (c) Gas is leaking from said well creating potential health and safety hazards."

Said Adjudication Order No. 211 further contained the following:

> CONCLUSIONS OF LAW
>
> This order is authorized by Section 1509.12, Revised Code, which states 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 in which to comply. No owners shall fail or refuse to plug a well within the time specified in the order."

Said Adjudication Order No. 211 is set forth in Appellee's Exhibit "A".

11. That there is no oil or gas well equipment including inhole equipment such as casing located on the property of the Appellants that is the subject matter of this appeal.

It appears to this Board that the following questions are presented for its consideration:

I. Is the order of the Chief directing that A. Joseph Vohlers and Margaret H. Vohlers shall cause the well described in Adjudication Order No. 211 to be properly plugged and abandoned in accordance with Section 1509.15, Revised Code, with plugging operations to commence within forty-five (45) days of receipt of the Order and to be completed within ninety (90) days of the receipt of the Order, lawful and reasonable?

II. In the event that Adjudication Order No. 211 is unlawful and/or unreasonable and therefore should be vacated, is/are there any order or orders that this Board will make?

Testimony and other evidence offered concerning the questions presented to the Board are as follows:

APPELLANTS' TESTIMONY

Appellant A. Joseph Vohlers, testified on behalf of the Appellants that there did not appear to be any well existing on their property. Further, the appellant testified that neither he nor his wife, Appellant Margaret H. Vohlers, had the right to drill for oil or gas on the property that they owned that was involved in the subject matter of Adjudication Order No. 211.

The appellant also testified that he had suffered financial loss in the sale of his house due to the Adjudication Order that had been issued by the State of Ohio and that plugging the well, if any well existed, would be costly since it appeared that there was no casing existing at the site of the alleged well. Appellant introduced Appellants' Exhibits 1 through 7 regarding documentation of real estate values and transactions concerning the sale of their residence. Appellant further testified that he has sold lot 233 on which his residence was located and that in order to sell his residence he had to reserve a thirty (30) foot

strip of ground on which is located a drainage ditch which has water running through it continuously. Further, Appellant testified that there was no physical evidence of a well being present on his property and that he could not smell any gas in the vicinity except when wind conditions were just right.

The majority of appellants' testimony was merely argumentative rather than being addressed to the factual issues and consequently was of little value to the Board of Review in reaching a decision in this appeal.

APPELLEE'S TESTIMONY

A major part of the Appellee's evidence was in the form of testimony by its witness, Inspector Elmer Clinesmith, concerning the investigations made by him at the property owned by the Appellants in North Ridgeville, Ohio.

The Appellee attempted to show that there previously had been an oil and gas well located on the property known as the Violetta Terrell property located on Lots 7 and 8 in Ridgeville Township, Lorain County, Ohio. The Appellee attempted to show that the Violetta Terrell property was now comprised of the Mill Creek Subdivision "D" on which the Appellants' property is located. The appellee attempted to show the connection of the Terrell property and the Appellants' property by testimony of Inspector Clinesmith and through Exhibits that it offered.

The Appellee attempted to introduce a map by Exhibit "B" showing Clinton Gas well locations in Ridgeville Township, Lorain County, Ohio, through its witness, Inspector Clinesmith. Inspector Clinesmith did not know who drew in the well locations on the map presented in Appellee's Exhibit "B". Further, Inspector Clinesmith stated that this map did not show the location of any shallow wells, such as shale gas wells, that were drilled in Ridgeville Township, Lorain County, Ohio.

Appellee's witness, Inspector Clinesmith, testified to a bubbling condition in the drainage ditch located on the Appellant's

property in North Ridgeville, Ohio. Inspector Clinesmith testified that the bubbling was limited to an area approximately five (5) feet in diameter and was a continuous action similar to a boiling condition.

The Appellee attempted to show the dangerousness of the bubbling condition in the drainage ditch on the Appellant's property by having its witness, Inspector Clinesmith, testify to the gas concentration coming from the bubbling water. Inspector Clinesmith indicated that he had used a funnel mechanism directly over the bubbling condition in order to determine what the gas content reading was for that area. Inspector Clinesmith testified that he obtained his gas content readings by concentrating the air over the bubbling condition in a funnel and passing it through a narrow orifice. Inspector Clinesmith testified that passing the air over the bubbling condition through the narrow end of the funnel would produce a reading indicating a high explosive level.

Further, the Appellee presented evidence through Exhibit "H" which showed the well completion record for the Violetta Terrell lease to Ohio Gas Producing Co. This well completion record was dated December 21, 1935 and indicated that there were gas shows during the drilling of this well at a depth of 100 feet, 150 feet, and 530 feet all within shale formations under the Terrell property and a gas show at 1295 feet in the Lime formation under the Terrell property. The well completion record indicated that there was gas produced in the Clinton sand formation at a depth of 2464 feet.

FINDINGS OF FACT

This Board makes the following Findings of Fact and application thereof concerning question I set forth on page 5 hereof.

1. This Board finds that the facts are as set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 on pages 2 through

4 hereof.

2. This Board finds that there is no well involved in this appeal that is capable of producing oil and gas in commercial quantities.

3. This Board finds that the gas that is seeping in the stream bed as testified to in this appeal is not coming from any well as that term is defined in Section 1509.01 (A), Revised Code of Ohio.

4. This Board finds that although the Appellee, through its witnesses testified that there had been a gas well in the area during the period of 1935 to 1941, the Appellee could not fix the exact location of the well.

5. This Board finds that the Appellants are not the owners of any well as that term is defined in Section 1509.01 (K) of the Revised Code Of Ohio.

The questions presented in this appeal by the Appellants are questions of first instance for this Board. This Board has heard several appeals involving Section 1509.12 of the Revised Code of Ohio but all of those appeals have dealt with existing oil and gas wells and involved the question of whether or not any well or wells is/are capable of producing in commercial quantities. Therefore, the Board is of the opinion that the guidelines set forth in the Board's entries in Appeals No. 7, 8, 13, 16, 17 and 18 are not applicable to this appeal.

It is the opinion of this Board that the Appellee bears the burden of proof in the appeal before this Board. The general rule that a party asserting the affirmative of an issue bears the burden of proof applies in adjudication proceedings before administrative agencies, O. Jur. 2d, Administrative Law and Procedure, Section 103. In this matter there has been no adjudication proceeding in the Division of Oil and Gas, the order appealed from having been issued

ex parte. The only opportunity for the Appellants' to have an evidentuary hearing was at the hearing before this Board pursuant to Ohio Revised Code Section 1509.36. Although there may be an appeal to the Court of Common Pleas of Franklin County, Ohio, pursuant to Ohio Revised Code Section 1509.37, that section specifically provides that: "In the hearing of the appeal the court is confined to the record as certified to it by the board" (except for newly discovered evidence). Furthermore, since this Board is an administrative body with jurisdiction to afford the Appellants a full hearing, and has the power to vacate the order appealed from and to make instead "the order which it finds the chief should have made" (ORC Section 1509.36), there is no presumption in favor of the rulings or orders of the Appellee. See Bloch vs. Glander, 151 O. St. 381, 86 N.E. 2d 318 (1949). Thus, the Appellee had the burden of proving before this Board, by preponderance of the evidence, the affirmative facts found in the order appealed from. Specifically the Appellee had the burden of proving (i) that the Appellants are the owners of the well described in the order appealed from and (ii) that gas is leaking from said well creating a potential health and safety hazard.

The order appealed from does not find that the Appellants are the owners of said well, but only finds the evidentiary facts that "Public Records and investigation show that A. Joseph Vohlers and Margaret Vohlers are the owners of the aforementioned well". If said order is to be sustained as lawful and reasonable, it should contain an explicit finding that the appellants are the owner of the well within the meaning of Ohio Revised Code, Section 1509.12.

The Appellants in their appeal denied that there is in fact a well existing on this property as claimed by the Appellee. The term well is defined in Section 1509.01 (A) of the Revised Code as follows:

> (a) "Well" means any borehole, whether drilled or bored, within the state for production, extraction, or injection of any gas or liquid mineral, excluding potable water to be used as such, but including natural or artificial brines and oil , field waters, sewage, and any liquid used in or resulting from any process or industry, manufacture, trade, business or agriculture.

The Appellee produced no persuasive evidence that there was or had been a borehole in the vicinity on the Appellants' property. The evidence presented of the bubbling of gas was not inconsistent with either the conclusion that there was a borehole on land in the vicinity not belonging to the Appellants or with the conclusion that there was no borehole at all and that the gas bubbling came from natural sources. Furthermore, except for the Appellee's Exhibit "B" discussed below, there was no evidence offered from which this Board could infer that, even if there was a borehole, it was the well described in the order appealed from. There was testimony to the fact that the drainage ditch as described by the Appellants and the Appellee had been man made somewhere during the period of 1967 or 1968. Further, through the testimony produced by the Appellee it appeared that the bubbling phenomena noted in the stream bed had been observed in the last two or three years. There was no evidence produced that it had been observed from the moment the drainage ditch was constructed.

The Board finds that it is not an unusual occurrence in nature to have natural gas seeping to the surface from a shallow reservoir of gas. The Appellee, through its Exhibit "H", showed evidence that there was shale gas in this vicinity at depths of 100 feet, 150 feet, 530 feet, and 1295 feet.

Further, the Board finds from the testimony of the Appellee's witness, Inspector Elmer Clinesmith, that the bubbling phenomena in the stream bed was coming from an area with a radius of five feet, which testimony would tend to show that the bubbling was

in fact not coming from a borehole as referred to in the definition of a well, since the well production record set forth in Appellee's Exhibit "H" showed that the surface casing used in the Terrell Well consisted of ten inch pipe. If in fact there was a borehole in this area then the bubbling phenomena should be limited to a much smaller area.

The Appellee attempted to show a well existing on the Appellant's property by the use of an old township map that was on file with the Appellee which has spotted on it the approximate location of Clinton gas wells in that particular township. This map was introduced by the Appellee as the Appellee's Exhibit "B". There was no foundation laid by the State as to how the wells were located on the map and who located the same. Further, the Appellee's witness, Inspector Elmer Clinesmith, stated that there were no shale gas wells located on the map but only the deeper Clinton gas wells. Consequently, the Board is admitting the Appellee's Exhibit "B" only as to the fact that such Exhibit was in the possession of the Appellee and that it purports to identify the township and county as stated on the map. Further, the Appellee through its Exhibit "C" and Exhibit "D" attempted to show the corresponding location of the Appellant's property and the property formerly owned by one Violetta Terrell upon which a gas well as described in Appellee's Exhibit "H" was drilled. The Appellee's Exhibit "C" was stipulated to and is admitted into evidence. Appellee's Exhibit "D" was not stipulated and, there having been no proper foundation laid for its admission, will not be considered in evidence by this Board.

Section 1509.12 of the Ohio Revised Code provides in part that: "when the chief finds that a well should be plugged, he shall notify the owner to that affect by order in writing...." The Board notes that the term "owner" is defined in Section

1509.01 (K) of the Revised Code. It is stated there that:

> "(K) "Owner" unless referring to a mine, means 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 produced therefrom either for himself or for others."

However, Section 1509.12 initially refers to the "owner of any well" and it may be that the term is not covered by the definition contained in Section 1509 (K). It should be noted that when the Ohio Legislature first adopted a provision mandating the abandonment and plugging of non-productive wells, that duty was imposed upon the "owner or operator of such well or wells". See former Ohio General Code, Section 898-193, as amended, effecti September 1, 1951. It should also be noted that the term "owner or operator of any oil well or wells" can be traced back at least to former Ohio General Code, Section 898-188a, an act of 193 which is an earlier version of present Section 1509.12, and that the definition of Section 1509.01 (K) was not adopted until 1965.

If the term "owner of any well" means something other than "owner" as defined in Section 1509.01 (K), it would seem to mean that person (or those persons) who actually own the sell itself, rather than someone who has the right to drill on the land. If that is the case, it could be concluded that the Appellants, as owners of the land in question, are also the owners of any well located on that land. The Board finds, however, on the basis of the evidenve presented that there is no well located on the lands of the Appellants. Further, the Appellee preceded on the theory that the Appellants were "owners" within the meaning of Section 1509.01 (K), but did not present evidence sufficient to support such a finding. The State alleges in its Adjudication Order No. 211 that the Appellants

> "are the owners of a certain well known as Well No. 1, in the City of North Ridgeville, Lorain County, State of OHio, Old Lot 7-8 on the former Terrell Lease now Lot 233, located in a stream bed on the back of a portion of said lot being parcel number 07-00-007-130-086."

Although the Appellee made such allegations in its Adjudication order it was unable to prove the existance of any well on the Appellants' property or that the Appellants were in face the owner as defined in Section 1509.01 (K). The Appellee introduced the warranty deed by which the Appellants obtained title to the property referred to in its Adjudication Order No. 211. That deed was entered as Appellee's Exhibit "G". In this deed it is stated in Article VI, Section 10 of the Restrictions set forth in said deed that:

> "Section 10. Oil and Mining Operations.
>
> No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot."

The Board finds therefore on the basis of the Appellee's own exhibit that the Appellants were prohibited from drilling on their lot and from producing and appropriating any gas therefrom and that the Appellants are therefore not the owner within the meaning of Section 1509.01 (K).

Further, the Appellee did not attempt to produce any title opinion or abstract as evidence for the Board to consider as to existence of any current outstanding oil or gas leases covering the premises of the Appellant which would show that the Appellant was or was not the owner as defined in Section 1509.01 (K) of the Revised Code. The Appellee attempted to show that there were no oil or gas leases on the premises of the Appellant by introducing an oil and gas lease dated in 1935 by Exhibit "E" and subsequently released in 1941 by an instrument admitted in evidence as Exhibit "F". The fact that there had been an oil and gas lease on the premises of which the Appellants' property was once a part does not go to prove the absence of any other oil and gas leases covering the Appellants' property. Moreover, the

exhibits offered into evidence by the Appellee indicates that the oil and gas lease had been assigned, but these assignments were not offered into evidence. The evidence of the state of the title offered by the Appellee is so incomplete that the Board cannot even conclude that all interest in the oil and gas lease in eviden had in fact been released. In this connection the Board suggest that, since the burden of proof of affirmative facts rests upon the party alleging them, in future appeals in which the question of "ownership" is controverted, the party claiming that someone is an "owner" should be prepared to offer competent evidence as to the state of the title in question such that the Board can make a determination as to title. Although the rules of evidence may be relazed in appeals before the Board in matters of fact involving questions within the expertise of the Board, the question of ownership is a question of the type traditionally decided by courts of law and the normal rules of evidence relating to such question shall be followed in appeals before the Board. Attention of counsel is also directed to Ethical Considera tions and Disciplinary Rules of the Code of Professional Responsibility, namely, EC 5-9 and EC 5-10, and DR 5-102.

The appeal by the Appellants from Adjudication Order No. 211 raises certain questions that neither the Appellants nor the Appellee directed themselves to but that the Board feels inclined to comment on without necessarily deciding the questions. The Appellee by the testimony adduced and with its Exhibit "F" attempted to show that the gas well once existing on the property owned by one Violetta Terrell had been abandoned in approximately 1941. Further, it appeared that the well had been plugged at that time. In the years before 1951 it appears that there are no records available as to what wells were actually plugged and how the wells were plugged. The Board feels that it may not have been the intent of the legislature in adopting Section 1509.12 of the Revised Code of Ohio, to cover wells that had been abandoned prior to September 1, 1951. Until 1951, there was no

Ohio statute which mandated the plugging of an inoperative well. Former Sections 898-188a (adopted in 1933) and 898-193 (adopted in 1941) of the Ohio General Code, which were in affect at the time the well described in that order appealed from was abandoned, provided only that:

> "Unless written permission is granted by the chief, Division of Mines, no owner or operator of any oil well or wells shall permit said well or wells to stand without diligently pumping or flowing same for a period of more than ninety (90) days. Upon notice of the chief, division of mines, to any owner or operator of any well or wells that the casing or tubing in such well or wells is leaking fresh or salt water into the oil or gas bearing sand or rock, such owner or operator shall immediately repair such casing or tubing or abandon and plug such well according to the provisions of this act."

Section 898-192 of the General Code did provide that before a well was abandoned it must be plugged, but this liability extended only to the person who abandoned a well, not to a subsequent owner of the land on which the abandoned well was located. It was not until Section 898-193 that the General Code was amended, effective September 1, 1951, so that the owner or operator of an inactive well was required to plug that well. Section 898-193 as amended in 1951 reads as follows:

> "Unless written permission is granted by the chief, division of mines, no owner or operator of any oil well or wells shall permit said well or wells to stand without diligently pumping or flowing same for a period of more than six (6) months. No owner or operator of any well or wells shall permit defective casing or tubing in such well or wells to leak fluids or gas which may cause damage to other permeable strata. Upon notice from the chief, division of mines, such owner or operator shall immediately repair such tubing or casing or plug and abandon such well or wells according to all provisions of law.
>
> Unless written permission is granted by the chief, division of mines, all wells which have ceased to be productive of gas for domestic or commercial purposes and have not been operated for a period of six months, such owner or operator of such well or wells shall immediately abandon and plug such well or wells according to the provisions of law.

Thus from 1941, when the well described in the order appealed from was abandoned, until September 1, 1951, no one, other than

the party who abandoned that well was under a duty to plug it. There was a duty to flow inactive wells, but no duty to plug them. There is, of course, no evidence that the well described in said order was not properly plugged when it was abandoned. It seems unlikely that the legislature intended to apply the 1951 amendment retroactive to wells such as the one in question that had been abandoned long before 1951. This conclusion is strenghtened by the fact that the last paragraph of Section 1509. of the Revised Code could be interpreted to the effect that oil or gas wells abandoned prior to September 1, 1951 are not subject to being ordered plugged by the Chief of the Division of Oil and Gas as provided by the other provisions of Section 1509.12 but that the process set forth in that paragraph must be followed. Further, it would appear that there is no statutory authority for the Chief of the Division of Oil and Gas to order a well that has been properly plugged and abandoned to be replugged. Then there is also the question as to whether or not a well that was properly plugged and abandoned remains a "well". All of thes questions tend to support the contention of the Appellants that the order appealed from is unlawful and unreasonable, but the Board is of the opinion that these questions need not be answered for the proper disposition of this appeal.

During the hearing both the Appellants and the Appellee made numerous objections to offers of testimony and at that time the Board indicated that it would rule later on the admissability of such testimony. Upon review of the several objections, this Board rules that the Appellee's Exhibit "D" is not admissible and shall not be considered in evidence and Appellee's Exhibit "B" shall be considered in evidence only as to the fact that it was in the possession of the Division of Oil and Gas and that it purports to represent a certain township in a certain county. Upon review of the remaining objections, this Board rules that the remaining testimony is admissible although such

testimony was not determinative in the decision of the Board.

IN CONCLUSION

Based upon the applicable law and the facts submitted and giving due consideration to the rights of all of the parties in this appeal, the Board hereby makes the following orders which correspond with the two questions set forth on pages 4 and 5 of this Entry:

I. The Board finds the order of the Chief of the Division of Oil and Gas in his Adjudication Order No. 211 to be unreasonable and unlawful.

II. The Board further orders that Adjudication Order No. 211 be and the same shall be vacated from and as of the date of this Entry. The Board finds no other order that the Chief should have made concerning the Appellants in this appeal.

These orders effective this 22nd day of August, 1975.

OIL AND GAS BOARD OF REVIEW

James J. Morgan, Chairman

C. Arthur Morrow, Secretary

Elmer Templeton

Peter Junger

Charles Graham

COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

A. JOSEPH VOHLERS, et al :

Appellants-Appellees :

vs. : Case No. 75CV-10-4423

CHIEF, DIVISION OF OIL AND GAS OHIO DEPARTMENT OF NATURAL RESOURCES :

Appellee-Appellant :

D E C I S I O N

Rendered this 29th day of November, 1976.

TYACK, J.

This is an appeal by the Chief of the Division of Oil and Gas from an order of the Oil and Gas Board of Review wherein the Appellant's adjudication order #211 was found to be unreasonable and unlawful. The Oil and Gas Board of Review vacated Order #211 of the Chief of the Division of Oil and Gas.

The Court has reviewed and studied the record and the exhibits in his case and concurs with the finding and decision of the Oil and Gas Board of Review.

The Court finds that the decision of the Oil and Gas Board of Review is supported by more than sufficient probative evidence and is in accordance with law.

Counsel shall prepare and file proper Judgment Entry as per court rule.

/s/ GEORGE E. TYACK, JUDGE

Appearances:

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