

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

NORMAN J. SCHADE,
Appellant

vs.

APPEAL NO. 22

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

APPEARANCES: For the Appellant - Messers. Busick,
Cooper & Hall
By: Herbert E. Adams,
714 Court Street
Freemont, Ohio 43420

For the Appellee - William J. Brown,
Attorney General
of the State of Ohio
By: Alex Thomas,
Assistant Attorney General

ENTRY

This matter came on for hearing before the Oil and Gas Board of Review on Friday, May 21, 1976, in the conference room on the first floor, Building C, Department of Natural Resources, Fountain Square, Morse Road, Columbus, Ohio 43224, pursuant to a notice of appeal dated February 24, 1976, and filed herein by the Appellant who appeals from Adjudication Order No. 219, dated February 9, 1976 and issued by Theodore A. De Brosse, Acting Chief of the Division of Oil and Gas, Department of Natural Resources, State of Ohio, which order directed the Appellant to cause the approximately forty-eight wells described in said order to be properly plugged and abandoned.

A hearing date had earlier been set for April 2, 1976, and then adjourned upon the motion of this Board.

The order that is the subject of this appeal (which order is hereinafter sometimes referred to as the "Order") reads as follows:

ADJUDICATION ORDER NO. 219

That Norman J. Schade, or his agent, shall cause the following described wells to be properly plugged and abandoned:

1. Being the existing wells, approximately 4, drilled on the lease known as Lela Wegman, formerly A.J. Wegman, located S 1/2 NE 1/4 Sec. 12, Freedom Township, Wood County, Ohio;
2. Being the existing wells, approximately 1, drilled on the lease known as Fred Wegman, located NW 1/4 NE 1/4 Section 12, Freedom Township, Wood County, Ohio;
3. Being the existing wells, approximately 4, drilled on the lease known as Arthur and Fred Hartman, formerly William and Henry Hartman, located S 1/2 SE 1/4 Sec. 12, Troy Township, Wood County, Ohio;
4. Being the existing wells, approximately 8, drilled on the lease known as Ralph Magrum, formerly Carl Rock and H.P. Neeb, located Sec. 20, Washington Township, Sandusky County, Ohio;
5. Being the existing wells, approximately 10, drilled on the lease known as Bertha Planert, formerly John Nieset, located W 1/2 NE 1/4 Sec. 20, Washington Township, Sandusky County, Ohio;
6. Being the existing wells, approximately 6, drilled on the lease known as Keith Carr, formerly William Burk and John Mancinotti, located SW 1/4 NW 1/4 Sec. 20, Washington Township, Sandusky County, Ohio;
7. Being the existing wells, approximately 10, drilled on the lease known as Irvin Noss, formerly John Noss, located NE 1/4 NW 1/4 Sec. 20, Washington Township, Sandusky County, Ohio;
8. Being the existing wells, approximately 5, drilled on the lease known as David R. Magrum, formerly Howard W. Beatty, located SE 1/4 Sec. 30, Washington Township, Sandusky County, Ohio;

All necessary actions and plugging and abandoning operations must be commenced not later than thirty (30) days after receipt of this order and continued with all due diligence until compliance is satisfied.

This action is based on the following:

1. Records on file with the Division of Oil and Gas show that Norman J. Schade is the owner of the aforementioned wells.
2. Investigation of the wellsites by a representative of the Division of Oil and Gas revealed that there has been no effort made to produce these wells commercially in a diligent and workmanlike manner for over two (2) calendar years.
3. Section 1509.12, Revised Code, states "...Unless written permission is granted by the Chief, any well which is ... incapable of producing oil or gas in commercial quantities shall be plugged..."

The following witnesses testified at the hearing:

A. Called by the Appellant:

1. Norman J. Shade, the Appellant;

B. Called by the Appellee:

1. Grover C. Blauser, Oil and Gas Well Inspector for the Division of Oil and Gas;
2. Tommy L. Reay, Law Enforcement Coordinator for the Division of Oil and Gas;
3. James Barnett, Supervisor of Inspection for the Division of Oil and Gas;
4. Irvin N. Noss, retired, the fee owner of one of the parcels on which the subject wells are located; and
5. Harry Armstrong, retired, the former Chief of the Division of Oil and Gas.

The questions considered by the Board are:

1. Is the Order lawful and reasonable?
2. In particular, is the Order authorized by Section 1509.12 of the Ohio Revised Code?
3. If the Order is unlawful or unreasonable or both, what order, if any, should the Chief of the Division of Oil and Gas have made?

Section 1509.12 of the Ohio Revised Code provides in relevant parts as follows:

No owner of any well shall permit defective casing or tubing in such well to leak fluids or gas which may cause damage to other permeable strata. Upon notice from the chief of the division of oil and gas, such owner shall immediately repair such tubing or casing or plug and abandon such well.

Unless written permission is granted by the chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged, but no well shall be required to be plugged under this section which is being used to produce oil or gas for domestic purposes, or which is being lawfully used for a purpose other than production of oil or gas. When the chief finds that a well should be plugged, he shall notify the owner to that effect by order in writing and shall specify in such order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order. Each day on which such a well remains unplugged thereafter constitutes a separate offense.

Where the plugging method, as outlined in sections 1509.01 to 1509.19, inclusive, of the Revised Code, cannot be applied or if applied would be ineffective in carrying out the protection which the law is meant to give, the oil and gas well inspector or, if the well is located in a coal bearing township, the gas storage well inspector may designate the method of plugging to be used. The abandonment report shall show the manner in which the well was plugged.

THE HEARING:

After the close of testimony, in the open hearing room in the presence of this Board but out of the presence of the reporter, the parties to this appeal agreed to enter into a stipulation to the effect that the Order should be affirmed by this Board, but that execution of the Order should be stayed subject to certain conditions. Thereafter an undated stipulation received by the Board on June 23, 1976, signed by both the Appellant and the Appellee (by the Acting Chief of the Division of Oil and Gas) and by their respective attorneys was filed herein. Said stipulation reads as follows:

AGREEMENT AND STIPULATIONS

This Agreement entered into between
Appellant and Appellee

WITNESSETH; that

WHEREAS, Appellant agrees and stipulates that Adjudication Order #219 be upheld in its entirety, except that the following minor changes and additions be made; to wit, that

(1) the number of existing wells on the Noss lease listed in paragraph 7 of the Order be 8 instead of 10; and

(2) the adverb "approximately" be stricken from all eight paragraphs of the Order; and

(3) the Order shall be amended to state therein that its terms shall also apply to heirs, successors and assigns of Norman J. Schade.

NOW, THEREFORE, in consideration of the above stipulations, Appellee, Division of Oil and Gas, by its Chief, agrees and consents to an indefinite stay of execution of said Order, providing further that Appellant perform and agree to the following conditions and tests:

(1) Appellant is to do temporary pre-plugging cleanup and repair work on those of his wells as designated by the Division of Oil and gas; and

(2) Appellant has designated 1/4 barrell of oil per well as being a commercial quantity of oil production obtained at a given time from a given well; and

(3) Appellant agrees to submit to the following test which shall determine whether or not a well produces oil in commercial quantities, as defined above by Appellant.

(a) On a given day and before an inspector from the Division of Oil & Gas, Appellant shall pump or attempt to pump a given well until at least 1/4 barrel of oil is obtained from that well. If 1/4 barrel of oil cannot be produced after a few hours of pumping, the well shall be designated as idle and to be plugged.

(b) One week later, if 1/4 barrel or more of oil was obtained from the above well, Appellant shall pump or attempt to pump from the same well to see if 1/4 barrel can again be obtained. If 1/4 barrel of oil cannot be produced after a few hours of pumping, the well shall be designated as idle to be plugged.

(c) Appellant shall properly plug one idle and abandoned well per year.

At the hearing the following evidence was presented.

The appellant, Mr. Schade, testified that he is the leaseholder of the leases listed in the Order, but he then presented evidence that (i) he had sold his interest in one of the wells listed in paragraph No. 7 of the Order, said well being on the lease known as "Irvin Noss", and (ii) that the "Irvin Noss" lease had been forfeited. The evidence with respect to the one well was a certified copy of a Partial Release of Oil and Gas Lease, dated June 30, 1975, executed by Norman Schade, and recorded September 3, 1975, in Release Records of Sandusky County, Ohio in Volume 17 at Page 233. Said certified copy was marked as Appellant's Exhibit 1 and is hereby received in evidence. The evidence with respect to the entire "Irvin Noss" lease was a certified copy of an Affidavit of Forfeiture, subscribed and sworn to on October 20, 1975, by Irvin N. Noss, and recorded October 22, 1975, in Release Records of Sandusky, Ohio, Volume 17 at Page 284. Said certified copy was marked as Appellant's Exhibit 2 and is hereby received in evidence. The Appellant insisted that he had no further responsibility with respect to the one well that is the subject of Plaintiff's Exhibit 1, but did not claim that the affidavit of forfeiture deprived him of the right to produce gas from the remaining wells on the Irvin Noss lease. That the Appellant still claims ownership of the wells in question is evidence by Joint Exhibit No 1, a certified copy of an amended complaint filed by the Appellant in Sandusky County Common Pleas Court on January 13, 1976, praying that the attempted forfeiture be declared null and void.

The Appellant testified that there were less wells on the leases in question than are shown in the Order, that eleven or twelve of the wells were capable of producing without further work as of the date of the hearing and that he had produced some oil that was stored in a tank. He also testified that he had not sold any oil produced from the wells in question within the last two years. He admitted that some of the wells were not capable of production and that others would require repairs before they could be produced. He also testified as to work that had been done on the wells in an effort to get them into a condition where they could produce. The Appellant also offered five photographs marked as Appellant's Exhibits 3 through

7, inclusive, as to which the Appellant testified and which are received in evidence as to the condition of the wells and seven affidavits marked as Appellant's Exhibits 8 through 14, inclusive, that are received in evidence only to show either (i) that those affiants who are fee owners of some of the subject leases do not object to the maintenance of the wells in question or (ii) that work as described therein was performed on the wells as testified by the Appellant.

The Appellee presented testimony by its witnesses as to the existence of the wells listed in the Order and their physical condition and as to the efforts of the Division of Oil and Gas to obtain compliance with section 1509.12.

The Appellee offered the following exhibits which were received in evidence without objection:

- 1.) State Exhibits A through C, inclusive: maps;
- 2.) State Exhibit D: the Order; and
- 3.) State Exhibits E through K, inclusive: certified copies of documents relating to the ownership of the leases referred to in the Order.

The Appellee offered copies of various documents which are maintained in the files of the Division of Oil and Gas, which were marked as State Exhibits L through GG, inclusive, and NN through LL, which are received in evidence to show their own existence and to illustrate the testimony adduced at the hearing but not to show the truth of any statement contained therein.

The Appellee offered a copy of a letter from the Appellant to Inspector Blauser which was stipulated to be a true copy of the original letter and is received in evidence as State Exhibit HH.

The Appellee also offered five Polaroid photographs which were marked State Exhibits II through MM, inclusive, as to which Mr. Reay testified and which are received in evidence.

Besides the testimony of witnesses who are present or former employees of the Division of Oil and Gas, the Appellee also presented the testimony of Irvin N. Noss who testified that he owns the land subject to the lease described in paragraph No. 7 of the Order. This witness testified that he had obtained a court order requiring the Appellant to remove his equipment from the lease, which equipment was being used to produce other wells besides those referred to in said

paragraph No. 7. The witness also testified that the Appellant's interest in said lease had been forfeited but insisted that the Appellant was still obligated to plug the wells on the lease.

In connection with the testimony of Mr. Noss, the parties offered copies of the pleadings in the action brought by the Appellant against Mr. Noss in the Common Pleas Court of Sandusky County in which the Appellant seeks to have the forfeiture declared null and void and Mr. Noss has counterclaimed for an order requiring the Appellant to plug the wells on the land of Mr. Noss. Said pleadings were marked as Joint Exhibit 1 and are received in evidence. The parties also offered the summons and complaint in the Forcible Entry and Detainer Action brought in the Sandusky County Court, Second Division, by Mr. Noss against the Appellant, which are received in evidence as Joint Exhibit 2.

DISCUSSION

Before the parties entered into their stipulation, it was the opinion of this Board that, except for the question of the exact number of wells involved, the Order was neither unlawful nor unreasonable. It appeared possible that the Appellant could secure some marginal production from some of the wells. It is clear, however, that the wells have been allowed to remain idle and that most are in disrepair. The mere possibility, as opposed to a probability, of some production is not sufficient evidence that a well is capable of producing oil or gas in commercial quantities. There was also evidence that at least one of the wells has defective casing or tubing that permits leakage from the well into an adjacent aquifer.

On the other hand, it would clearly be desirable to have an orderly program for the plugging and abandonment of the wells in question. Immediate enforcement of the order in its entirety might prove to be impossible for financial reasons. Those wells which present a risk of leakage into other permeable strata demand the highest priority, while no harm will be done if the Appellant attempts to produce oil from the wells that are in better condition. An order providing for such systematic plugging and abandonment could, however, not be administered without the cooperation of the Appellant.

Fortunately the stipulation of the parties now makes such an order feasible. It should be understood however that, in the absence of the stipulation, the original Order was not unlawful and unreasonable.

The question of the number of wells is more troublesome, although the problems are avoided because of the stipulation. It is suggested that, whenever possible, an order to plug and abandon wells should state the number of wells with precision. The use of the word "approximately" in connection with the number of the wells is likely to make the entire order unreasonable since it would be impossible for the owner of the wells to determine exactly what was required at the time of the order.

With regard to the wells on the lease as to which the affidavit of forfeiture was filed, the position of the Appellant that he still has the right to produce those wells estops him from claiming that he is not the owner.

It should be noticed that one or more persons may be subject to the obligation to plug and abandon a well. The fact that the Appellant has been ordered to plug and abandon the wells described in the Order does not imply that a similar order could not be issued to another person who now is, or hereafter becomes, an owner of the wells in question. To preclude the necessity of another order in the event of transfer of title to the wells it would, however, be advisable for all such orders to be directed to the named owners, their heirs, successors and assigns.

FINDINGS OF FACT

This Board finds, on the basis of the evidence and the stipulation of the parties, that:

1.) The wells described in the order (except that the number of wells listed in paragraph 7 of the Order should be eight rather than ten) were reasonably found by the Appellee to be incapable of producing oil or gas in commercial quantities.

2.) It would be reasonable in view of the stipulation to give the Appellant an opportunity to demonstrate that the wells, or some of them, are capable of producing in commercial quantities.

3.) The Appellant is the owner of the wells described in finding No. 1, above.

4.) The parties have agreed in a written stipulation as to the manner in which this matter should be disposed of.

IN CONCLUSION

Based upon the applicable law and the facts as found and the stipulation of the parties, this Board hereby makes the following orders:

I. This Board finds the Order of the Chief of the Division of Oil and Gas to be unreasonable and unlawful in the following particulars:

- a.) The number of wells subject to the Order; and
- b.) The period within which the Order is to be enforced,

II. This Board further orders that Adjudication Order No. 219 be, and the same hereby is, vacated from and as of the date of this entry.

III. This Board further orders that the Chief of the Division of Oil and Gas should have made the order set out in paragraph No. IV below.

IV. This Board further orders:

That Norman J. Schade, his heirs, successors and assigns, or his agent, shall cause the following described wells to be properly plugged and abandoned:

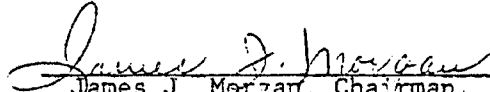
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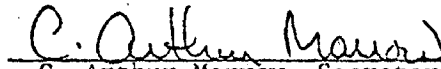
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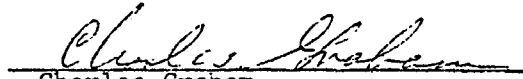
All necessary actions and plugging and abandoning operations must be commenced not later than thirty (30) days after receipt of this order and continued with all due diligence until compliance is satisfied. Provided, however, that this order shall be stayed pursuant to the Agreement and Stipulations of the parties which is quoted in full in this Entry and is hereby made a part of this order.

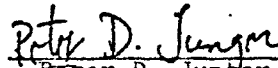
These orders effective this ^{19th}
day of November 19th, 1976.

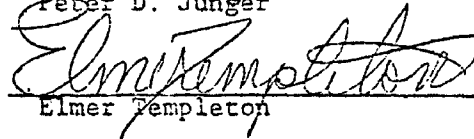
OIL AND GAS BOARD OF REVIEW


James J. Morgan, Chairman


C. Arthur Morrow, Secretary


Charles Graham


Peter D. Junger


Elmer Templeton

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

NORMAN J. SCHADE,

Appellant

vs.

APPEAL NO. 22

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

Appellee

ORDER

Pursuant to an Agreement and Stipulations entered into by the Appellant and Appellee which were incorporated in the Final Entry issued by this Board on November 19, 1976, the Appellant and Appellee agreed that the staying of the Adjudication Order No. 219 would immediately cease upon Appellant's default in the performance of stipulated duties therein. The Appellee, having filed a Motion with this Board on May 11, 1977, and the Board, having given notice to the Appellant of such Motion on May 29, 1977, and the Board, having received no response from the Appellant, is obligated by the terms and conditions of the Agreement and Stipulations set forth in its Final Entry to lift the stay of the Adjudication Order No. 219.

IT IS HEREBY ORDERED that the stay of the Adjudication Order No. 219 be, and the same hereby is, immediately removed and the Adjudication Order No. 219, as amended by this Board in its Final Entry on November 19, 1977, is hereby declared to be of full force and effect.

This order effective this
14th day of June, 1977.

OIL & GAS BOARD OF REVIEW

By: C. Arthur Morrow
C. Arthur Morrow,
Secretary, who certified
that the foregoing is a
true and correct copy of
the Entry in the above
matters of the Oil & Gas
Board of Review effective
June 14, 1977

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

NORMAN J. SCHADE,

Appellant

vs.

APPEAL NO. 22

The State of Ohio, Acting by
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Appellee

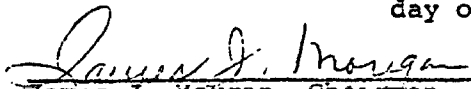
ORDER

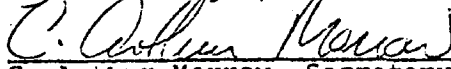
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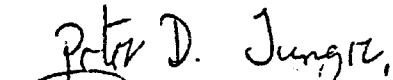
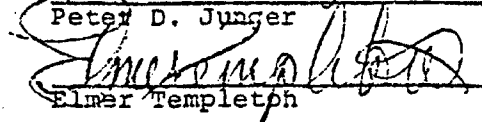
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day of June, 1977.


James J. Morgan, Chairman


C. Arthur Morrow, Secretary

Charles Graham


Peter D. Junger

Elmer Templeton