

BEFORE THE OIL & GAS COMMISSION

DONALD E. WOOD,	:	Appeal No. 907
	:	
Appellant,	:	
	:	Review of Chief's Order 2015-345
-vs-	:	(Financial Assurance)
	:	
DIVISION OF OIL & GAS RESOURCES	:	
MANAGEMENT,	:	<u>FINDINGS, CONCLUSIONS &</u>
	:	<u>ORDER OF THE COMMISSION</u>
Appellee.	:	

Appearances: Donald E. Wood, Appellant *pro se*; Gene Park, Jacquelyn Fisher, Daniel Martin, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

Date Issued: October 29, 2018

BACKGROUND

This matter comes before the Commission upon appeal by Mr. Donald E. Wood ["Mr. Wood"] from Chief's Order 2015-345. Chief's Order 2015-345 cites Mr. Wood for failure to maintain financial assurance in support of sixteen oil & gas wells, for which Mr. Wood is the registered owner.

This matter came on for hearing before the Oil & Gas Commission on August 13, 2018. Both parties presented evidence and arguments in support of their respective positions.

ISSUE

The issue in this appeal is: **Whether the Division Chief has acted lawfully and reasonably in requiring Mr. Wood to post a form of security, other than a sworn financial statement, in support of his sixteen oil & gas wells.**

FINDINGS OF FACT

1. Donald Wood has been a registered well owner with the Division of Oil & Gas Resources Management [the "Division"] since 1986. Mr. Wood is the registered owner of sixteen oil & gas wells.
2. In order to satisfy the requirement of O.R.C. §1509.07 that requires a well owner to provide financial assurance, Mr. Wood submitted sworn financial statements, or updated financial statements, to the Division in 1986, 1987, 1989, 1991, 1994, 1997, 2005, 2008 and 2013. These financial statements were submitted in lieu of a surety bond. The last sworn financial statement filed by Mr. Wood, and accepted by the Division, was submitted on November 21, 2013.
3. While Mr. Wood did not file, or update, his financial statements every year, at no time during the period from 1986 until 2013 was a Chief's Order issued to Mr. Wood for failure to timely file or update his financial statement.
4. In January of 2015, the Division mailed to Mr. Wood a letter reminding him of his annual obligation to file or update his financial statement. This letter gave Mr. Wood 60 days to file an updated financial statement or to request an extension of this deadline. Mr. Wood did not file an updated financial statement within 60 days of this notice. Mr. Wood also did not contact the Division to request an extension of this filing deadline.

5. Mr. Wood did not file an updated financial statement during the approximately six-month period after he was notified in January 2015 of his obligation to submit an updated financial statement.

6. On July 6, 2015, the Division issued Chief's Order 2015-345, citing Mr. Wood for a failure to maintain and/or file financial assurance. Chief's Order 2015-345 found that Mr. Wood did not file or update his annual financial statement within the deadline established by the Division. The Chief's Order further found Mr. Wood to be in material and substantial violation of Ohio Revised Code Chapter 1509. Chief's Order 2015-345 ordered the following:

- 1) Donald E. Wood shall immediately suspend all oil and gas operations in the State of Ohio.
- 2) Within thirty (30) days of receipt of this Order, Donald E. Wood shall do one of the following:
 - a. Execute and file a surety bond, certificate of deposit, irrevocable letter of credit, cash or cashier's check with the Division, as required by R.C. 1509.07(B);
 - b. Properly plug and abandon all wells owned by Donald E. Wood, in accordance with R.C. 1509.15 and Ohio Administrative Code 1501:9-11; or
 - c. Transfer all wells owned by Donald E. Wood to an owner who has obtained insurance that is required under R.C. 1509.07, who is not under a notice of material and substantial violation or under a suspension order, and who is properly bonded in accordance with R.C. Chapter 1509.

7. As of the date of hearing, Mr. Wood: (a) had not executed or filed a surety bond, certificate of deposit, irrevocable letter of credit, cash or cashier's check with the Division in support of his sixteen wells, (b) had not properly plugged and abandoned his sixteen wells, and/or (c) had not transferred his wells to a new owner.

8. On July 17, 2015, Mr. Wood submitted an updated financial statement to the Division. The Division did not accept Mr. Wood's July 17, 2015 financial statement, asserting that the statement was not timely, and further asserting that the filing of a financial statement was not a compliance option under outstanding Chief's Order 2015-345.

9. In 2015, the Division issued 43 chief's orders for the failure of existing well owners to file updated financial statements. No other recipient of such an order filed an appeal with the Oil & Gas Commission.

10. Mr. Wood operated his oil & gas wells during 2016 and 2017, and reported production of gas during this period.

DISCUSSION

In Ohio, oil & gas operations are conducted under the authority of Ohio Revised Code Chapter 1509. The Division of Oil & Gas Resources Management possesses permitting, regulatory and enforcement authority over all aspects of oil & gas operations.

O.R.C. §1509.07 requires the owner of an oil & gas well to maintain financial assurance in support of registered wells. This financial assurance may be in the form of a surety bond, cash, a certificate of deposit, a letter of credit or a sworn financial statement. The purpose of this security is to ensure that the well owner complies with the requirements of Chapter 1509. The required security is specifically conditioned upon the owner's compliance with the restoration and plugging requirements of Chapter 1509.

An owner who files a sworn financial statement in lieu of a surety bond must be able to demonstrate a net financial worth equal to twice the amount of the bond for which the financial statement substitutes. See O.R.C. §1509.07(B)(3).

The ability to file a financial statement in lieu of a surety bond has been allowed under the law for many years, and has been particularly popular with small operators. Beginning in 1993, O.A.C. §1501:9-1-03 allowed well owners who had historically filed financial statements to continue to file such statements, as long as the owner was not in material and substantial violation of Chapter 1509. However, after 1993, new owners would not be permitted to file financial statements, unless the statement was accompanied by an irrevocable letter of credit. Mr. Wood qualified as a "pre-1993 historical filer."

The rule on financial assurances - O.A.C. §1501:9-1-03 - identifies the filing requirement for financial statements as an annual obligation. And, since at least 1993, well owners have been obligated to update their financial statements annually under a schedule established by the Division. However, the evidence does establish that this annual obligation was not consistently enforced by the Division.

Mr. Wood became a registered well owner in 1986. Beginning in 1986, Mr. Wood filed financial statements in lieu of surety bond. While the obligation to file or update financial statements is annual, Mr. Wood did not file or update his financial statements on a yearly basis. Rather, it appears that Mr. Wood usually updated his statements only when prompted by the Division. It also appears that Mr. Wood did not always respond to the Division's first request for an updated statement, and often would not make his submission unless requested to do so on more than one occasion. Mr. Wood would also sometimes ask for extensions of the filing deadline, in order to coordinate the filing of his updated financial statement with the filing of his taxes.

Mr. Wood filed an updated financial statement in November 2013. In January 2015, the Division sent a letter to Mr. Wood, asking him to update his 2013 statement. The Division's January 2015 letter gave Mr. Wood 60 days to either: (1) file an updated statement, or (2) request an extension of the filing deadline.

Mr. Wood did not make any filing within 60 days. In fact, Mr. Wood did not make any filing until about 6 months after receiving the Division's January 2015 letter.

Because Mr. Wood did not file or update his financial statement within the 60-day deadline established by the Division, or for approximately 4 months after that deadline, the Division issued a Chief's Order to Mr. Wood in accordance with O.A.C. §1501:9-1-03(F)(2)(f)(i). The Chief's Order required Mr. Wood to file financial assurance via some means **other than a** financial statement. In the alternative, Mr. Wood could plug or transfer his wells.

The Division asserts that, as Mr. Wood failed to file a timely financial statement in early 2015, he is no longer eligible to file a financial statement in lieu of other forms of financial assurance. The Division now expects Mr. Wood to file a surety bond, cash, a letter of credit or a certificate of deposit in support of his wells. However, the Division concedes that Mr. Wood could file a new financial statement if the statement were accompanied by an irrevocable letter of credit.

Mr. Wood maintains that he should be able to continue to file just a financial statement as his form of financial assurance. Moreover, Mr. Wood argues that the Division should have accepted his July 2015 financial statement, even though this statement was clearly untimely.

Mr. Wood appears to believe that his history of noncompliance - or irregular compliance - with the annual filing requirement should excuse his failure to make a timely filing in early 2015, and that he should be able to rely upon the Division's prior inconsistent enforcement. In other words, as Mr. Wood has "gotten away with" missing deadlines in the past, he believes that he should not be required to meet those deadlines now. He also seems to believe that he is entitled to receive the repeated filing reminders from the Division that he has become accustomed to.

The fact that the Division did not consistently use its enforcement powers in the past to cite a violation where Mr. Wood failed to meet his annual filing requirement, does not constitute an absolute waiver by the Division of the Division's ability to apply the "letter of the law" now or in the future. Nor does the Division's past inconsistent application of its enforcement discretion act to estop the Chief from now lawfully enforcing the provisions of O.R.C. §1509.07 or O.A.C. §1501:9-1-03. See Campbell vs. Campbell, 87 Ohio App.3d 48, 50 (1993) (holding that the defenses of laches, estoppel, and implied waiver will not apply against the State, its agencies or agents when exercising governmental functions).

Mr. Wood was reminded of his annual filing obligation in January 2015 and was given almost six months to make this filing before Chief's Order 2015-345 was issued. There is no statutory requirement that the Division provide multiple reminders to owners regarding their statutory filing requirements.

The Chief's acceptance of a financial statement in lieu of a surety bond is discretionary. O.R.C. §1509.07(C) clearly states that the Chief may accept a financial statement in lieu of other forms of financial assurance. The General Assembly did not mandate that financial statements be accepted, but rather placed the Chief's ability to accept such forms of assurance squarely within the Chief's own discretion.

Moreover, Mr. Wood's reliance upon prior decisions of the Oil & Gas Commission (then the Oil & Gas Board of Review) from the early 1990's is misplaced. The decisions cited by Mr. Wood are distinguishable, as there is no evidence that the financial statements at issue in the *Pepper Oil Co vs. Division* appeal (#427) or the *Valley View Golf Club vs. Division* appeal (#437) involved the dilatory filing of a financial statement. The financial statements at issue in those appeals appear to have been timely-filed, and yet were rejected by the Division for no just cause and despite the fact that the owners clearly established net financial worth far in excess of the statutory requirements.

Mr. Wood may be able to establish a net financial worth in excess of the statutory requirements. However, his submission of such financial information was not timely. It is within the Chief's sound discretion to reject an untimely submission, and to require other forms of financial assurance under O.R.C. §1509.07 and O.A.C. 1501:9-1-03.

CONCLUSIONS OF LAW

1. O.R.C. §1509.36 provides that any person adversely affected by a Chief's order may appeal to the Oil & Gas Commission. O.R.C. §1509.36 addresses the standard of review applied in Commission appeals, and requires the Commission to determine if an order of the Chief was lawful and reasonable.

2. O.R.C. §1509.07 provides in pertinent part:

(B)(1) Except as otherwise provided in this section, an owner of any well, before being issued a permit under section 1509.06 of the Revised Code or before operating or producing from a well, shall execute and file with the division of oil and gas resources management a surety bond conditioned on compliance with the restoration requirements of section 1509.072, the plugging requirements of section 1509.12, the permit provisions of section 1509.13 of the Revised Code, and all rules and orders of the chief relating thereto, in an amount set by rule of the chief.

(2) The owner may deposit with the chief, instead of a surety bond, cash in an amount equal to the surety bond as prescribed pursuant to this section of negotiable certificates of deposit or irrevocable letters of credit, * * *, having a cash value equal to or greater than the amount of the surety bond as prescribed pursuant to this section.

* * *

(3) Instead of a surety bond, the chief may accept proof of financial responsibility consisting of a sworn financial statement showing a net financial worth within this state equal to twice the amount of the bond for which it substitutes and, as may be required by the chief, a list of producing properties of the owner within this state of other evidence showing ability and intent to comply with the law and rules concerning restoration and plugging that may be required by rule of the chief.

* * *

(Emphasis added.)

3. O.A.C. §1501:9-1-03 is the regulatory provision that amplifies O.R.C. §1509.07. As regards sworn financial statements filed in lieu of a surety bond, O.A.C. §1501:9-1-03(F) provides:

(F) Financial Statements:

Sworn financial statements may be accepted in lieu of a surety bond, certificate of deposit, or cash bond only for owners classified as exempt domestic well owners or for non-domestic well owners for whom the chief has accepted a sworn financial statement prior to January 1, 1993 and

who are not in material and substantial violation of Chapter 1509. of the Revised Code. Additionally, the chief may accept new financial statements for exempt domestic well owners and non-domestic well owners if an irrevocable letter of credit on a form provided by the division for the bond amount is provided from an approved financial institution along with the financial statement required in (F)(1)(d) or (F)(2)(c) or by providing a copy of a financial statement submitted to the financial institution issuing the letter of credit. The chief will not accept new financial statements to release surety bonds, certificates of deposit or cash bonds previously filed with the division.

* * *

(2) Non-domestic well owners:

(a) Each owner with a previously approved financial statement shall demonstrate financial responsibility annually under a schedule established by the division.

(b) To demonstrate financial responsibility, and receive approval of the financial statement, each owner shall show the following:

- (i) The owner must have a sufficient capital structure to show a net financial worth in Ohio of twice the required bonding amount;
- (ii) The owner must not be found to be in material or substantial violation of section 1509.01, et seq., of the Ohio Revised Code or section 1501:9-1-01, et seq., of the Ohio Administrative Code during the preceding year;
- (iii) The owner must be in compliance with sections 1509.10 and 1509.11 of the Revised Code.

(c) In order to verify the accuracy of the financial statement each owner shall submit the following information when requested by the chief of the Division of Mineral Resources Management:

* * *

(f) Penalties:

(i) Failure of an owner to demonstrate financial responsibility as required under (F)(1)(b) through (d), (F)(2)(a) and (F)(2)(b) and/or failure to supply all the information listed under (F)(2)(c) of this rule will result in an order by the chief requiring a surety bond,

certificate of deposit, or cash bond in the amount of bond required. If the order is not complied with, the owner will receive an order by the chief requiring the plugging of all wells of the owner.

(Emphasis added.)

4. O.R.C. §1509.01(E) defines "material and substantial violation" to include:

(3) Failure to obtain, maintain, update, or submit proof of a surety bond that is required under this chapter;

5. The Chief's application of the provisions of O.A.C. §1501:9-1-03(F)(2)(f)(i) where a well owner fails to comply with the annual filing obligation of O.A.C. §1501:9-1-03(F)(2)(a) is not unlawful, and indeed is mandated under the language of O.A.C. §1501:9-1-03(F)(2)(f)(i).

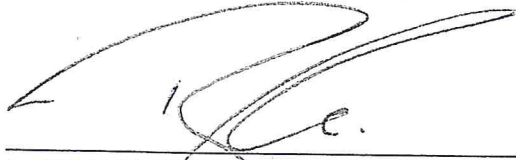
6. The Chief's application of the provisions of O.A.C. §1501:9-1-03(F)(2)(f)(i) where a well owner fails to comply with the annual filing obligation of O.A.C. §1501:9-1-03(F)(2)(a) is not unreasonable, particularly where the well owner has been informed of his annual filing obligation and has been provided with more than adequate time to come into compliance with this obligation.

7. The Chief's decision to reject an untimely-filed financial statement, following the issuance of a Chief's Order that clearly required the owner to file another form of financial assurance is not unlawful or unreasonable.


ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission hereby **AFFIRMS** Chief's Order 2015-345.

Date Issued: Oct. 29, 2018



J. BRANDON DAVIS, *Chairman*


BLAKE T. ARTHUR, *Vice Chairman*
ANDREW T. THOMAS, *Secretary*
PHILLIP L. PARKER
JEFFREY E. FORT

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

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Chief Richard Simmers, Via Certified Mail #: 91 7199 9991 7037 2054 3535

Gene Park, Jacquelyn Fisher, Via Inter-Office Certified Mail # 6888 & E-Mail [gene.park@ohioattorneygeneral.gov;
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BEFORE THE OIL & GAS COMMISSION

DONALD E. WOOD,	:	Appeal No. 907
	:	
Appellant,	:	Review of Chief's Order 2015-345
	:	(Financial Assurance)
-VS-	:	
	:	
DIVISION OF OIL & GAS RESOURCES	:	
MANAGEMENT,	:	<u>INDEX OF EVIDENCE</u>
	:	<u>PRESENTED AT HEARING</u>
Appellee.	:	

Before: J. Brandon Davis.

In Attendance: Blake T. Arthur, Jeffrey E. Fort, Phillip L. Parker, Andrew R. Thomas

Appearances: Donald E. Wood, Appellant *pro se*; Gene Park, Jacquelyn Fisher, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

WITNESS INDEX

Appellant's Witnesses:

Greg Miller	Direct Examination; Cross Examination
Richard Simmers	Direct Examination; Cross Examination
Donald L. Mason	Direct Examination; Cross Examination

Appellee's Witnesses:

Jon Austin	Direct Examination; Cross Examination
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EXHIBIT INDEX

Appellant's Exhibits:

Appellant's Exhibit A	Chief's Order 2015-345; signed July 7, 2015 (2 pages)
Appellant's Exhibit B	Ohio Revised Code §1509.07; effective June 14, 2000 (2 pages)
Appellant's Exhibit C	Ohio Administrative Code §1501:9-1-03; effective July 16, 1993, as signed by the Chief on July 6, 1993 (5 pages)
Appellant's Exhibit E	Non-Domestic Well Owner Financial Statement (Form 3); submitted July 17, 2015 (5 pages)
Appellant's Exhibit F-1	Division Policy, Processing Bond Hold for Financial Statements; drafted July 2013 (1 page)
Appellant's Exhibit F-2	Division Policy, Processing Bond Hold for Financial Statements and Financial Statement Updates; drafted July 2013 (2 pages)

Appellee's Exhibits:

Appellee's Exhibit 1	Ohio Revised Code §1509.07; effective June 14, 2000 (3 pages)
Appellee's Exhibit 2	Ohio Administrative Code §1501:9-1-03; effective April 15, 2004 (5 pages)
Appellee's Exhibit 3	Ohio Revised Code §1509.04; effective June 14, 2000 (3 pages)
Appellee's Exhibit 4	Non-Domestic Well Owner Financial Statement (Form 3); submitted by Donald E. Wood on November 21, 2013 (9 pages)
Appellee's Exhibit 5	Letter to Donald E. Wood re: filing of Form 3; undated (2 pages)

Appellee's Exhibit 6	Division's Chief's Order Route Slip for Order 2015-345; various dates in June and July 2015 (1 page)
Appellee's Exhibit 7	Chief's Order 2015-345; signed July 7, 2015 (4 pages)
Appellee's Exhibit 8	United States Postal Service's tracking information for Certified Mailing of Chief's Order 2015-345 (2 pages)
Appellee's Exhibit 9	Non-Domestic Well Owner Financial Statement (Form 3); submitted by Donald E. Wood on July 17, 2015 (7 pages)
Appellee's Exhibit 10	Production Report by Year for Owner Donald E. Wood, #2669; for years 2016 & 2017 (1 page)