

**BEFORE THE
OIL & GAS COMMISSION**

MORMACK INDUSTRIES, INC.,
S & S ENERGY CORPORATION,

Appellants,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee.

and

MR. & MRS. CALVIN McMULLIN,
MR. & MRS. KEVIN YODER,

Intervenors.

Appeal Nos. 700 & 702

Review of Chief's Order 2001-14


**ORDER OF THE
COMMISSION GRANTING
JOINT MOTION FOR
CONSENT DECISION**

The Oil & Gas Commission has received and reviewed the Consent Agreement, filed by Appellants and Appellee, without objection from the Intervenors, and finds it well taken. Accordingly, the Commission hereby **ADOPTS** the Consent Agreement. There being no outstanding issues of law or fact, the Commission hereby **DISMISSES** appeal nos. 700 & 702, with prejudice.

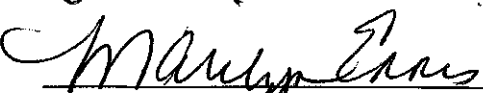
Date Issued: April 2, 2002


WILLIAM J. TAYLOR, Chairman


JOHN A. GRAY


JAMES H. CAMERON

RECUSED
BENITA KAHN, Secretary


MARILYN ENNIS

**MorMack Corporation, S&S Energy Corporation
Appeals #700 & #702**

DISTRIBUTION:

David S. Hoffman
David W. Hardymon / Joseph Blasko
Raymond Studer
Steven D. Bell

**BEFORE THE OIL AND GAS COMMISSION
DEPARTMENT OF NATURAL RESOURCES
STATE OF OHIO**

**MORMACK INDUSTRIES, INC.,
S & S ENERGY,**

Appellants

v.

**DIVISION OF MINERAL
RESOURCES MANAGEMENT
f.k.a. Division of Oil and Gas
Ohio Department of Natural Resources,**

Appellee.

Appeal Nos. 700 and 702

Chief's Order 2001-14

**RECEIVED
JAN 18 2002
OIL AND GAS
COMMISSION**

CONSENT AGREEMENT

In order to settle and dismiss Order No. 2001-14 issued on February 22, 2001, by the Chief of the Division of Mineral Resources Management, Ohio Department of Natural Resources (hereinafter, "Division"), against Mormack Industries, Inc. (hereinafter "Mormack") and S&S Energy Corporation (hereinafter, "S&S")(collectively, "Parties") and Mormack's and S&S's appeals thereto, without admission of liability or of any fact or conclusion contained herein or in Order No. 2001-14, by or between the Parties, the Parties agree as follows:

A. By November 30, 2001, Mormack and S&S, jointly and severally, shall cause or pay for replacement water wells to be drilled on the properties of the following landowners or their successors in interest:

1. Mr. & Mrs. James Conrad, 8953 Wadsworth Road, Marshallville, Ohio 44645 (hereinafter, "Conrad property"),
2. Mr. & Mrs. Rooks, 9312 Wadsworth Road, Marshallville, Ohio 44645 (hereinafter, "Rooks property"),
3. Mr. & Mrs. Calvin McMullin, 9248 Wadsworth Road, Marshallville, Ohio 44645 (hereinafter, "McMullin property") and
4. Mr. & Mrs. Kevin Yoder, 9280 Wadsworth Road, Marshallville, Ohio 44645 (hereinafter, "Yoder property").

B. Although some additional work may be required to insure compliance with the requirements set forth below, replacement water wells have been drilled on the properties of the following landowners or their successors in interest:

1. Mr. & Mrs. J.W. Bricker, 9485 Wadsworth Road, Marshallville, Ohio 44645 (hereinafter, "Bricker property"); and
2. Mr. & Mrs. Fred Rehm, 9403 Wadsworth Road, Marshallville, Ohio 44645 (hereinafter, "Rehm property").

C. Each replacement water well shall be permitted, drilled, constructed and developed in accordance with Chapter 3701-28 of the Ohio Administrative Code with a pitless adapter, new submersible pump (with the exception of the current pump on the Conrad property unless it is damaged in the replacement of the well) and vented well cap at a location approved by the landowner. PVC casing shall be installed to a minimum elevation of 970 feet above mean sea level and sealed in accordance with Chapter 3701-28 of the Ohio Administrative Code. Each well shall be sanitized and disinfected in accordance with Chapter 3701-28 of the Ohio Administrative Code and methods approved by the Wayne County Health District. Each well shall be plumbed and wired to its respective existing system. Neither Mormack nor S&S shall require the Intervenor,

McMullins and Yoders to directly contract with the driller of the replacement residential water wells on the McMullin property and the Yoder property, respectively.

D. By November 30, 2001, Mormack and S&S, jointly and severally, shall remove or pay for the removal of the vaults for all six (6) water wells listed in Paragraphs A and B in accordance with the following procedures:

- 1. Remove and dispose of the concrete slab (if existing) covering the well pit.**
- 2. Where applicable, close the openings of the well pit wall entry to house basement with similar foundation materials. Seal the new foundation outer wall with a water impervious coating.**
- 3. Restoration of each abandoned vault will be in a manner that will not damage the foundation, allow subsidence or allow accumulation of water adjacent to the exterior basement wall. This may be accomplished by: (a) removal of the top slab, floor and side walls; or (b) removal of the floor and top slab. Either option includes backfilling with impermeable or low-permeability material as set forth in ¶4 below. Alternative methods may be accepted on a house by house basis if they meet the goals set forth above. Any concrete or construction debris resulting from the vault removal shall be removed and disposed.**
- 4. Fill the well pit with compacted soil, fire clay, or other low-permeability material.**

5. Cover the well pit with ten inches of top soil and grade in a manner consistent with the existing slope. Seed, mulch or finish consistent with the existing land use.

E. By November 30, 2001, Mormack and S&S, jointly and severally, shall plug or pay for the plugging of the original water wells located on all six properties listed in Paragraphs A and B in accordance with the requirements of Chapter 3701-28 of the Ohio Administrative Code.

F. By November 30, 2001, Mormack and S&S, jointly and severally, shall purchase and install, or pay for the installation, in the basement of each dwelling for the properties listed in Paragraphs A and B, a new single-channel gas detection system to continuously monitor for natural gas (methane) (hereinafter, "Gas Detection System"). Each Gas Detection System shall be wired to the electrical panel and shall be equipped with a built-in battery back-up power system. After installation, all maintenance, including, but not limited to, replacement of batteries for the back-up power system and calibration of the Gas Detection System shall be the sole responsibility of the Owners. Each Gas Detection System shall provide continuous, 24-hour a day, digital readout, adjustable alarm setpoints, an LED alarm light indicator and an audible alarm. The audible alarm shall be set at 15% of the Lower Explosive Limit (LEL – defined as 5% by volume of gas). If, during the first eighteen (18) months after the installation of the Gas Detection Systems, it is reported to the Division that the audible monitoring system at any of the dwellings for the properties listed in Paragraphs A and B has sounded, the Division shall investigate the cause(s) of that alarm and independently verify methane gas concentrations. If the Division determines that: (a) the alarm was triggered by methane

gas that entered via the groundwater system in concentrations that present a health and safety hazard; and (b) the source of the methane gas detected is from wells owned or operated by Mormack and/or S&S, then Mormack and S&S, jointly and severally shall cause or pay for the installation of a gas aeration system to remove natural gas from water produced by the new well unless waived by the landowner in writing. After installation of a gas aeration system, Mormack and S&S shall have no further obligation with respect to each system, including any required maintenance or service. The Division's investigation and determination shall be on a well by well basis. If Mormack and/or S&S disagree with the Division's findings and conclusions in such subsequent investigation(s), Mormack and/or S&S shall immediately submit the dispute to the Oil and Gas Commission which shall retain jurisdiction over such dispute(s) for the purpose of determining whether the Division's findings and conclusions are correct and whether Mormack and S&S are obligated for the cost of and installation of a gas aeration system or systems, pursuant to the terms of this paragraph.

G. Upon development of each well, Mormack and S&S, jointly and severally, shall test or pay for the testing of each new well for water quality and quantity according to the following specifications:

1. After completion of water well development, groundwater samples shall be collected in a manner approved by the Division for delivery to an Ohio EPA certified laboratory and testing for the following parameters: alkalinity, chloride, sulfate, barium, calcium, magnesium, sodium, iron, pH and residue.

2. Collection of groundwater samples for nitrate and bacteriological analyses shall be coordinated with the Wayne County Health Department.
3. Inorganic water quality of the replacement supply must be similar to the quality of the affected supply, as defined by analyses for area groundwater samples taken by the Division on or about March 29 and 30, 2000 and by Earth Sciences on or about August 1, 6 and 13, 2001.
4. Each new well shall meet bacteriological standards established by the Wayne County Health District.
5. After each new well is completed, the water well driller shall conduct a pump test to verify that the new well has sufficient yield to meet domestic need.

H. Mormack and S&S may retain such consultant(s) or contractor(s) to perform the work described hereinabove. Mormack and/or S&S shall provide the Division and the landowners at the above-described addresses, notice of the commencement of work at least two (2) weeks prior to the commencement of work, except that in the case of the McMullin property and the Yoder property, such notice shall be provided to Steven Bell or David Yeagley at Ulmer & Berne, Cleveland, Ohio. The Division shall insure that a Division representative will be present at the McMullin and Yoder properties during the sample collection and well yield tests as described in Section G hereinabove. The Division shall attempt, but cannot guarantee, that a Division representative will be present on the McMullin and Yoder properties for the remainder of

the work contemplated by this Agreement. In addition, all documentation generated during the performance of the work described hereinabove at the McMullin property and the Yoder property shall be provided upon completion of the work to Steven Bell or David Yeagley at Ulmer & Berne, Cleveland, Ohio.

I. Mormack shall insure that the surface-production casing of the annulus of each of the following wells is continuously vented to surface until such time that the respective well is plugged and abandoned: (1) Elmer Hilty No. 1, Permit No. 442; and (2) Noah Hilty No. 2, Permit 2272.

J. Mormack and S&S or their authorized agents shall jointly and severally pay all costs associated with collection, delivery and analyses of groundwater samples for inorganic and bacteriological analyses. Mormack and S&S or their authorized agents shall jointly and severally pay all applicable permit fees for well construction, well inspections, construction, electrical and plumbing work.

K. Variance from the provisions in this Consent Agreement shall be allowed only upon written approval by the Division and the appropriate landowner.

L. Nothing in this Consent Agreement or in Order No. 2001-14 shall be viewed as a determination of any findings of fact or issues by or between the Parties to this Consent Agreement.

M. All work pursuant to this Consent Agreement shall be performed in a prudent and workmanlike manner and in compliance with the requirements of R.C. Chapter 1509 and O.A.C. Chapter 1501.

N. Nothing in this Consent Agreement shall be construed so as to prejudice the right of the Division Natural Resources Management to issue other decisions and

orders to enforce the provisions of R.C. Chapter 1509 and O.A.C. Chapter 1501 including the seeking of civil penalties for the failure to comply with this Consent Agreement.

O. In the event of any default of the terms set forth herein, the Division may elect any and all remedies it deems appropriate. Further, in the event of default, Mormack and S&S, their heirs, assigns, and successors-in-interest agree that, in any litigation brought by the Division to enforce this Consent Agreement: a) venue shall be proper in the Franklin County Ohio Court of Common Pleas and b) service of process and summons thereof are hereby waived.

P. Subject to Section F, if all conditions in this Consent Agreement are complied with, the obligations of Mormack and S&S under this Consent Agreement shall expire eighteen (18) months after the effective date of this Agreement and Mormack and S&S shall have no further obligations with respect to this Agreement.

Q. Appeals 700 and 702 are dismissed with prejudice.

Agreed and approved:


Mormack

By: 

Its: PRESIDENT

Date: 10/23, 2001.

Division of Mineral Resources Management

By: 

Its: Chief


Date: 10/29, 2001.


S&S Energy

By: _____

Its: _____

Date: _____, 2001.

 10-22, 2001
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 10/25, 2001
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Attorney for the Division of Mineral Resources Management

_____, 2001
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(614) 464-6400
Attorney for S & S Energy Corporation

Agreed and approved:

Mormack

By: _____

Its: _____

Date: _____, 2001.

**Division of Mineral Resources
Management**

By: _____

Its: _____

Date: _____, 2001.

S&S Energy

By: James W. Short

Its: Secretary

Date: October 22, 2001.

_____, 2001
DAVID S. HOFFMANN (0022746)
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John C. Blasko Oct. 25,
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