

BEFORE THE OIL & GAS COMMISSION

MARIO V. D'AMICO,	:	
	:	Appeal No. 943
Appellant,	:	
	:	
-vs-	:	Review of Chief's Order 2017-94
	:	
DIVISION OF OIL & GAS RESOURCES	:	
MANAGEMENT,	:	<u>FINDINGS, CONCLUSIONS &</u>
	:	<u>ORDER OF THE COMMISSION</u>
Appellee.	:	

Appearances: Mario V. D'Amico, Appellant *pro se*; Gene Park, Scott Myers, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

Date Issued: August 30, 2017

BACKGROUND

This matter comes before the Oil & Gas Commission upon appeal by Mario V. D'Amico from Chief's Order 2017-94. Chief's Order 2017-94 alleged that Mr. D'Amico had failed to maintain liability insurance in support of the Robert Steingass #2 Well [the "Steingass Well"]. More specifically, Chief's Order 2017-94 required Mr. D'Amico to obtain liability insurance in the "enhanced" amount of \$3,000,000 for this well. This "enhanced" amount of insurance was required as the Division had determined that the Steingass Well was located in an "urbanized area."

This matter came on for hearing before the Oil & Gas Commission on June 7, 2017. Both parties presented evidence and arguments in support of their respective positions. Following the hearing, and at the request of the Division, the parties submitted written post-hearing briefs.

ISSUE

The primary issue in this appeal is: **Whether the Division Chief acted lawfully and reasonably in requiring "enhanced" liability insurance coverage in the amount of \$3,000,000 for the Steingass Well.**

In order to decide this primary issue, the Commission must consider **whether the Division correctly determined that the Steingass Well was located in an "urbanized area," as that term is defined at O.R.C. §1509.01(Y).**

FINDINGS OF FACT

1. The Steingass Well is located in Liverpool Township, Medina County, Ohio. Liverpool Township encompasses approximately 25.9 square miles. The 2010 federal decennial census for Liverpool Township showed a population of 5,127.

2. The Steingass Well was drilled on November 3, 1935, and produces from the Clinton Formation. The well was originally owned and operated by the Obermiller Brothers. The well has been in operation since 1935.

3. Drilling permits for oil & gas wells were not required in Ohio until after the enactment of Ohio Revised Code Chapter 1509 in 1965. As the Steingass Well was drilled prior to 1965, a drilling permit for this well was never issued.

4. The Steingass Well is located on property currently owned by Mario V. D'Amico. Mr. D'Amico took possession of the Steingass Well on June 24, 2011. Mr. D'Amico & his neighbor Robert Dring are the current registered owners of the well. The well is utilized for domestic purposes by Messrs. D'Amico & Dring, but is not registered as an exempt-domestic well.

5. Since obtaining the Steingass Well, Mr. D'Amico has maintained liability insurance in support of the well. From 2011 until 2016, Mr. D'Amico carried \$1,000,000 in liability insurance, which coverage was accepted by the Division.

6. On December 29, 2016, Messrs. D'Amico & Dring received a courtesy letter from the Division, reminding them that the liability insurance for the Steingass Well was set to expire on February 5, 2017, and that they would need to file proof of continuing coverage.

7. Mr. D'Amico testified that he contacted his insurer on January 24, 2017, and that the insurer submitted proof of insurance to the Division, establishing coverage through February 5, 2018. The Division denied receiving this proof of insurance.

8. On March 15, 2017, the Division Chief issued Chief's Order 2017-94 to Mario V. D'Amico & Robert Dring alleging that these owners had failed to maintain liability insurance in support of the Steingass Well. The Order required the registered owners either (1) to obtain liability insurance in the amount of \$3,000,000 and submit proof of such insurance to the Division, or (2) to transfer the well.

9. On March 20, 2017, the Division received proof of liability insurance coverage for the Steingass Well in the amount of \$1,000,000.

10. On March 22, 2017, the Division sent a notice to Mr. D'Amico, informing him that the Division was unable to process the certificate of liability insurance for the Steingass Well because the amount of coverage was insufficient. This notice indicated that the Steingass Well was located in an "urbanized area," and required "enhanced" coverage of \$3,000,000.

11. On April 3, 2017, Mr. D'Amico filed a *Notice of Appeal* with the Commission, contesting the method by which the Division determined that the Steingass Well was located in an "urbanized area."

12. Since April 25, 2017, Mr. D'Amico has had in effect liability insurance in the total amount of \$3,000,000 for the Steingass Well.

DISCUSSION

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

Under Ohio law, the owner of a well must obtain liability insurance coverage of not less than \$1,000,000 for bodily injury and property damage. (*See O.R.C. §1509.07(A)(1).*) Upon request, the well owner must provide the Division Chief with proof of such coverage. (*See O.R.C. §1509.07(A)(3).*)

While typically insurance coverage is required in the amount of \$1,000,000, certain wells require "enhanced" coverage in the amount of \$3,000,000. (*See O.R.C. §1509.07(A)(1).*) Wells subject to such "enhanced" coverage are those that qualify as located in an "urbanized area," as that term is defined at O.R.C. §1509.01(Y):

"Urbanized area" means an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than five thousand in the **most recent federal decennial census prior to the issuance of the permit** for the well or production facilities.

(Emphasis added.)

In accordance with the language of O.R.C. §1509.01(Y), the "triggering event" for applying census figures in order to determine whether a well is located in an "urbanized area," is the issuance of a permit.¹

¹ Under O.R.C. §1509.06 permits are issued for such activities as " ... drill[ing] a new well, drill[ing] an existing well deeper, reopen[ing] a well, convert[ing] a well to any use other than its original purpose, or plug[ging] back a well to a different source of supply"

The Division argues that the language of O.R.C. §1509.01(Y) is ambiguous, and that it is necessary to examine legislative intent in order to determine the meaning of the term "urbanized area" in relationship to the insurance requirements of O.R.C. §1509.07(A). The Commission disagrees.

If the meaning of a statute is clear on its face, then the statute must be applied as written. *Provident Bank v. Wood* (1973), 36 Ohio St.2d 101. There is no need to construe a statute whose meaning is unequivocal and definite. *Kneisley v. Lattimer-Stevens Co.* (1988), 40 Ohio St.3d 354. Indeed:

'[U]nambiguous statute[s] [are] to be applied, not interpreted.' [citations omitted.] * * * Courts . . . have **no authority** under any rule of statutory construction **to add to**, enlarge, supply, expend, **extend or improve** the provisions of the statute to meet a situation not provided for.

Ohio Podiatric Med. Assn. v. Taylor, 2012-Ohio-2732 ¶¶ 18, 22 (10th Dist.) (emphasis added).

The statutory definition of "urbanized area" found at O.R.C. §1509.01(Y) clearly states that a well will be classified as located in an "urbanized area" based upon populations recorded in the "most recent federal decennial census prior to the issuance of the permit." Thus, the legislature has articulated how wells are to be evaluated in determining their status as "urban" versus "non-urban." And, the legislature has set forth the "triggering event" for making such evaluations. That "triggering event" is the issuance of a permit.²

The Steingass Well was drilled before Ohio law required permitting. As the Division itself stated: "There will never be a federal decennial census that applies to a well drilled prior to permitting requirements." (*See Brief of Appellee, page 12.*) A permit has never been issued for the Steingass Well. Thus, the essential triggering event for applying the definition of "urbanized area" has never occurred, and "enhanced" insurance coverage cannot be required.

² The legal maxim of *expression unius est exclusio alterius* - meaning that to express one thing is to exclude another - has some application here. The fact that the legislature specifically tied the evaluation of whether a well is located in an "urbanized area" to the issuance of a permit, suggests that other events (such as the drilling of a well, or the assignment of a API [American Petroleum Institute] identifying number to a well, or the transfer of a well) would not prompt an evaluation of whether a well is located in an "urbanized area."

The Commission **FINDS** that the provisions of O.R.C. §1509.01(Y) are only triggered upon the issuance of a permit.

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 provides *inter alia*:

If upon completion of the hearing the commission finds that the order appealed from was lawful and reasonable, it shall make a written order affirming the order appealed from; if the commission finds that the order was unreasonable or unlawful, it shall make a written order vacating the order appealed from and making the order that it finds the chief should have made.

2. O.R.C. §1509.07 requires that a well owner obtain liability insurance:

(A) (1) An owner of any well, except an exempt Mississippian well or an exempt domestic well, **shall obtain liability insurance coverage** from a company authorized to do business in this state **in an amount of not less than one million dollars** bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of all the owner's wells in this state. **However, if any well is located within an urbanized area, the owner shall obtain liability insurance coverage in an amount of not less than three million dollars** for bodily injury coverage and property damage coverage to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of all of the owner's wells in this state.

(Emphasis added.)

3. O.R.C. §1509.07 requires a well owner to provide the Division Chief with proof of insurance, when requested:

(A) (3) An owner shall maintain the coverage required under division (A)(1) ... of this section until all the owner's wells are plugged and abandoned or are transferred to an owner who has obtained insurance as required under this section and who is not under a notice of material and substantial violation or under a suspension order. The owner shall provide proof of liability insurance coverage to the chief of the division of oil and gas resources management upon request. Upon failure of the owner to provide that proof when requested, the chief may order the suspension of any outstanding permits and operations of the owner until the owner provides proof of the required insurance coverage.

4. O.R.C. §1509.01(Y) defines "urbanized area" as:

"Urbanized area" means an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than five thousand in the **most recent federal decennial census prior to the issuance of the permit** for the well or production facilities.

(Emphasis added.)

5. The Robert Steingass #2 Well does not qualify as a well located in an "urbanized area," as that term is defined at O.R.C. §1509.01(Y).

6. Because the Robert Steingass #2 Well does not qualify as a well located in an "urbanized area," this well does not require "enhanced" liability insurance coverage under O.R.C. §1509.07(A)(1).

7. Chief's Order 2017-94, requiring owners Mario V. D'Amico & Robert Dring to obtain liability insurance in the amount of \$3,000,000, and to file proof of insurance in the amount of \$3,000,000 with the Division Chief, was unlawful and unreasonable.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission hereby **VACATES** Chief's Order 2017-94.

Issued: Aug. 30, 2017

Robert C. Smith
ROBERT C. SMITH, Chairman *WJ*

J. BRANDON DAVIS, Vice Chairman

Donald L. Mason
DONALD L. MASON *WJ*

Andrew R. Thomas
ANDREW R. THOMAS, Secretary *WJ*

Blake T. Arthur
BLAKE T. ARTHUR *WJ*

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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scott.myers@ohioattorneygeneral.gov]

BEFORE THE OIL & GAS COMMISSION

MARIO V. D'AMICO, :
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 Appellant, : Appeal No. 943
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 -vs- : Review of Chief's Order 2017-94
 :
 DIVISION OF OIL & GAS RESOURCES :
 MANAGEMENT, : **INDEX OF EVIDENCE**
 : **PRESENTED AT HEARING**
 Appellee. :

Before: Robert C. Smith

In Attendance: Blake T. Arthur, J. Brandon Davis, Donald L. Mason, Andrew R. Thomas

Appearances: Mario V. D'Amico, Appellant *pro se*; Gene Park, Scott Myers, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

WITNESS INDEX

Appellant's Witnesses:

Mario V. D'Amico Statement on Record; Cross Examination

Appellee's Witnesses:

William Grubaugh Direct Examination; Cross Examination
Michael McCormac Direct Examination; Cross Examination

EXHIBIT INDEX

Appellee's Exhibits:

- | | |
|--------------------|---|
| Division Exhibit 1 | Notice of Appeal to Oil & Gas Commission, filed by Mario V. D'Amico; dated March 29, 2017 (2 pages) |
| Division Exhibit 2 | File for the Robert Steingass #2 Well, including Division of Mines Oil & Gas Well Log and including executed Form 7 Request for Change of Owner, transferring well from Paul J. Obermiller to Mario V. D'Amico & Robert Dring (6 pages) |
| Division Exhibit 3 | Urban Drilling Requirements from Division's website, including partial list of township populations and Ohio Map of Urban Areas (3 pages) |
| Division Exhibit 4 | Proof of Liability Insurance Coverage for Mario V. D'Amico; effective 02/05/16 to 02/05/17 (1 page) |
| Division Exhibit 5 | Letter from Division to Mario V. D'Amico & Robert Dring, regarding liability insurance requirements; dated December 29, 2016 (1 page) |
| Division Exhibit 6 | United States Postal Service Tracking Document, showing receipt of December 29, 2016 letter by Mario V. D'Amico (2 pages) |
| Division Exhibit 7 | Chief's Order Route Slip, Failure to Maintain Liability Insurance, regarding owners Mario V. D'Amico & Robert Dring (1 page) |
| Division Exhibit 8 | Chief's Order 2017-94; issued March 15, 2017 (4 pages) |
| Division Exhibit 9 | Proof of Liability Insurance Coverage for Mario V. D'Amico; effective 02/05/17 to 02/05/18 (1 page) |

- Division Exhibit 10 Letter from Division to Mario V. D'Amico, regarding insufficient liability insurance coverage; dated March 22, 2017 (1 page)
- Division Exhibit 11 House Bill 278 (2004) (5 pages)
- Division Exhibit 12 House Bill 299 (2004) (5 pages)
- Division Exhibit 13 Synopsis of Committee Amendments for House Bill 299; Legislative Service Commission (2004) (2 pages)
- Division Exhibit 14 Senate Bill 165 (2010) (22 pages)
- Division Exhibit 15 Copy of O.R.C. §1509.01; effective June 14, 2000 (4 pages)