

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

DOCKET NO.  
VGOB 05-0621-1466

IN RE:

Appeal of the Virginia Division of Gas and Oil Director's Decision IFFC 16905 dated May 3, 2005 (hereinafter the "Decision") in the matter of Island Creek Coal Company, coal owner (Hereinafter "Island Creek"), vs. EOG Resources, Inc. (hereinafter "EOG"), Proposed Wells Plum Creek #4-05, Big Vein #9-05 and Big Vein #8-05 (hereinafter "Proposed Wells").

FINDINGS AND ORDER

This cause came on for hearing before the Virginia Gas and Oil Board ("Board") on the 21<sup>st</sup> day of June, 2005, upon EOG's Petition for Appeal of the Director's Decision IFFC 16905 dated May 3, 2005 which found and held that the location for each of the proposed wells is within 2500 feet of at least one existing well and, because no alternate locations were agreeable to Island Creek, the Code of Virginia, § 45.1-361.12.A, requires that the permits be refused.

Timothy E. Scott, Esq. appeared at the hearing as Counsel for EOG; Mark Swartz, Esq. Appeared for Island Creek; Sharon M. B. Pigeon, Assistant Attorney General, was present to advise the Board.

History of Proceedings

1. On March 4, 2005, EOG filed with the Virginia Department of Mines, Minerals and Energy, Division of Gas and Oil ("DGO"), its application for proposed operations named Plum Creek #4-05 and Big Vein #9-05. On March 9, 2005, EOG filed with DGO its application for proposed operations named Big Vein 8-05.
2. On March 15, 2005 DGO received Coal Owner objections pursuant to § 45.1-361.12.A from Island Creek, identified in the permit applications as coal owner of tracts to be affected by the proposed operations.
3. As required by § 45.1-361.35.H, the Director of the Division of Gas and Oil ("Director") scheduled an Informal Fact Finding Conference (IFFC) for April 20, 2005. Notice was given to EOG, Island Creek and to every person with standing to object as prescribed by § 45.1-361.30.
4. IFFC 16905 was convened at the time and place indicated in notice.

5. Because no agreement between EOG and Island Creek was obtained at the Conference, the Director issued his decision on May 3, 2005 under requirements of §45.1-361.35.I.

6. By letter dated May 11, 2005, EOG, by Council, gave Notice of Appeal of the Director's decision pursuant to §§ 45.1-361.23 and 45.1-361.36 of the Virginia Gas and Oil Act. On May 12, 2005, EOG filed its Petition for Appeal of the Director's Decision citing errors in the Director's decision and the Director's failure to consider provisions of § 45.1-361.11, and seeking the following relief from the Board pursuant to Virginia Code Ann. §§ 45.1-361.1 et seq. and any regulations promulgated pursuant to law:

- a. Reversal of the Decision of the Director.
- b. Instruction of the Director to grant the permits for the referenced wells.

#### Findings of Fact

1. Island Creek Coal Company is a lessee and, under definitions in § 45.1-361.1 of the Virginia Gas and Oil Act, a Coal Owner of coals in the Pilgrims Knob Field drilling units to be served by the Proposed Wells.

2. Each of the Proposed Wells is within 2500 feet of an existing gas well.

3. There are no alternate gas well locations within any of the three drilling units that are acceptable to Island Creek Coal Company.

4. Island Creek Coal Company testified that coals in the area of the proposed wells are mineable.

5. EOG Resources, Inc. has obtained voluntary leases of gas rights totaling 89.6% of the 180-acre unit to be served by well #4-05, 72.0% of the unit to be served by well #9-05, and 90.1% of the unit to be served by well #8-05. The Board pooled remaining interests at its March, 2005 hearing.

#### Conclusions of Law

In considering the provisions of § 45.1-361.12, Code of Virginia, 1950 as amended, The Board finds:

a. Invocation of the "coal owner veto" established by § 45.1-361.12.A does not require first consideration of the multiple mine safety concerns contained in § 45.1-361.11.B or the alternate well location and drilling schedule aspects of § 45.1-361.11.C. Consideration of these aspects are appropriate when alternate locations and drilling plans are available and under discussion. Because the Coal Owner specifically stated that no

alternate locations would be acceptable, consideration of the provisions of § 45.1-361.11 would be superfluous.

b. The exemptions to § 45.1-361.12.A contained in § 45.1-361.12.B are not applicable because none of the Proposed Wells are to be "...drilled through an existing or planned pillar of coal required for protection of a preexisting well..."

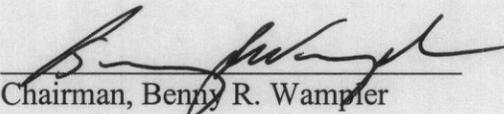
c. The plain language of § 45.1-361.12.A states as follows:

***If the well operator and the objecting coal owners present or represented at the hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.***

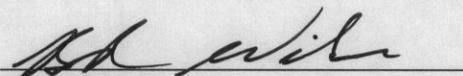
The Proposed Wells are within 2500 feet of existing wells and are unacceptable to Island Creek. There are no alternate locations within the units that are acceptable to Island Creek. Under provisions of § 45.1-361.12.A the permits must be refused.

**Accordingly, this Board affirms the Director's decision IFFC number 16905, a copy of which is attached hereto and incorporated as part of this Order as though fully set out herein.**

DONE AND EXECUTED this 12<sup>th</sup> day of September, 2005, by a majority of the Virginia Gas and Oil Board.

  
Chairman, Benny R. Wampler

DONE AND PERFORMED this 12<sup>th</sup> day of September, 2005, by an Order of this Board.

  
B. R. Wilson  
Principal Executive to the Staff  
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA     )  
COUNTY OF WASHINGTON         )

Acknowledged on this 12<sup>th</sup> day of September, 2005, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

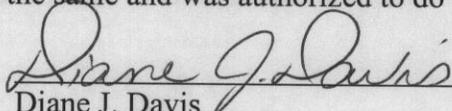
  
Diane J. Davis

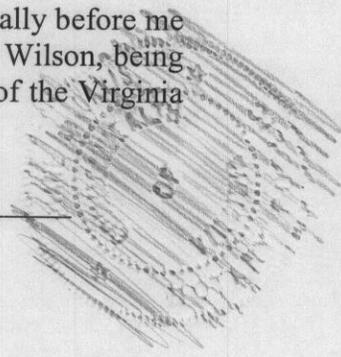
Notary Public

My Commission expires: 9/30/05

COMMONWEALTH OF VIRGINIA )  
COUNTY OF WASHINGTON )

Acknowledged on this 12<sup>th</sup> day of September, 2005, personally before me a notary public in and for the Commonwealth of Virginia, appeared B. R. Wilson, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

  
Diane J. Davis  
Notary Public



My commission expires: 9/30/05

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Division of Gas and Oil  
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B. R. Wilson, Director, Division of Gas and Oil

By Decision of the  
Director, Division of Gas and Oil

Informal Fact Finding Conference 16905 (Herein "IFFC 16905")

Island Creek Coal Company  
(Herein "Coal Owners")

vs.

EOG Resources, Inc.  
(Herein "Permit Applicant")

Permit Applications for Gas and Oil operations:

Application 7780, Operations Name Plum Creek #4-05, Application 7781, Operations Name Big Vein #9-05 and Application 7791, Operations Name Big Vein #8-05  
(Herein "Applications")

Background

On March 4, 2005, the Division of Gas and Oil (DGO) received applications for permit from EOG Resources, Inc. (EOG) for gas operations named Plum Creek #4-05 and Big Vein #9-05, and on March 9, 2005, application for permit for gas operations named Big Vein #8-05. On March 15, 2005 the division received Coal Owner objections from Island Creek Coal Company, identified in the permit application as Coal Owners of tracts to be affected by the operations. All objections were considered to be timely and appropriate.

Objections filed by Island Creek Coal Company against the permit applications for EOG Resources, Inc. gas operations Plum Creek #4-05, Big Vein #9-05 and Big Vein #8-05 in accordance with § 45.1-361.12.A are as follows:

*If the well operator and the objecting coal owners present or represented at the hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.*

The Coal Owners' objections were deemed acceptable under § 45.1-361.35.A.

### Hearing Date and Place

IFFC 16905 was convened on Wednesday April 20, 2005 in the conference room of the Division of Gas and Oil, 230 Charwood Drive, Abingdon, Virginia. All parties with standing to object to Permit Applications 7780, 7781 and 7791 were notified of the time and place by United States certified mail, return receipt requested.

### Appearances:

Peter Bacon, John Johnston, Gary L. Smith and Tim Scott, Esquire, appeared on behalf of Permit Applicant. Les Arrington and Tom Fulmer, representing the Coal Owner and CNX Gas Company, appeared without counsel.

### Findings of Fact:

1. In accordance with § 45.1-361.35.H, notice of IFFC 16905 was given to the Permit Applicant and to every person with standing to object as prescribed by §45.1-361.30.
2. IFFC 16905 was convened at the time and place indicated in notice.
3. Island Creek Coal Company was notified as coal owner of properties to be affected by the proposed operations and, as such, has standing to object to the proposed operations.
4. There are existing wells within 2500' of each of the proposed EOG wells.
5. According to Virginia Gas and Oil Board documents, EOG Resources, Inc. has obtained voluntary leases of gas rights totaling 89.6% of the 180-acre unit to be served by well #4-05, 72.0% of the unit to be served by well #9-05, and 90.1% of the unit to be served by well #8-05. The Board pooled remaining interests at its March, 2005 hearing.

### Controlling Law and Regulation

1. Sections 45.1-361.30.A(1 & 6) of the Virginia Gas and Oil Act require that permit applicants notify all coal owners on the tract to be drilled and all coal owners within 500' of the proposed gas well location.
2. Section 45.1-361.30.D gives standing to object to permit applications to all parties receiving required notice.
3. Section 45.1-365.11 details safety aspects that must be considered when hearing coal owner objections to gas well permit applications.
4. Section 45.1-361.12.A specifies distance between wells within which, if no alternative location is agreeable, the permit must be denied.
4. Section 45.1-361.35(H) requires the Director to schedule an informal fact finding hearing concerning objections, and provide notice of the hearing to all parties with standing to object to the permit.
5. Section 45.1-361.35(I) requires the Director to issue a decision regarding the objection if the parties to the hearing fail to reach an agreement.

**Decision of the Director**

In the course of IFFC 16905, the Coal Owner representative raised no issues other than the fact that each of the proposed EOG wells would be within 2500' of existing or previously permitted gas wells. Plats submitted with the applications verify that fact. The conference was recessed so that the parties could attempt to reach an agreement off record, but that process was without success. In testimony given after resumption of the hearing, the Coal Owner representative stated that there are no acceptable alternate locations in any of the three 180-acre units.

Section 45.1-361.12.A is very straightforward and unequivocal. It does not require the objecting coal owner to provide explanation or justification, and does not allow for any discretion on the part of the Director. Simply put, the statute requires that, in the absence of an agreement between the Coal Owner and the Applicant regarding a well location within 2500' of any existing well, the permit shall be denied.

**It is, therefore, the decision of the Director to deny permits for wells Plum Creek #4-05 (application # 7780), Big Vein #9-05 (application # 7781) and Big Vein #8-05 (application # 7791).**

**Right of Appeal**

Any party aggrieved by this decision of the Director may appeal the decision to the Virginia Gas and Oil Board by filing a petition with the Board within ten days following the decision (§45.1-361.36). No petition or appeal may raise any matter other than matters raised by the Director or which the petitioner put in issue either by application or by objections, proposals or claims made and specified in writing at the informal fact finding conference.

Signed this 3rd day of May, 2005

 (signature)  
Director, Virginia Division of Gas and Oil