

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

DOCKET NO.  
VGOB 05-0719-1477

IN RE:

Appeal under § 45.1-361.23 of the Virginia Division of Gas and Oil Director's Decision (hereinafter "Decision") denying a petition from CNX Gas Company, LLC (hereinafter "Applicant") requesting the lifting of a Stay issued against Permit Number 6108, Operations name CBM C29. The Stay was placed against the permit subsequent to revelations that Clyde Lyndell Horn et al (hereinafter "Respondents") were not notified of the application as required by § 45.1-361.30. The Decision was issued by letter to Applicant dated May 31, 2005.

FINDINGS AND ORDER

This cause came on for hearing before the Virginia Gas and Oil Board ("Board") on the 19<sup>th</sup> day of July, 2005, upon Applicant's Petition for Appeal of the Director's Decision dated May 31, 2005 which found and held that Respondents election to participate in the well subsequent to pooling by the Board did not satisfy the requirements, under § 45.1-361.29.F(2), for coal-owner consent to stimulate the coals.

Mark A. Swartz, Esq. appeared at the hearing as Counsel for CNX Gas Company; LLC. Clyde Lyndell Horn appeared pro se; Sharon M. B. Pigeon, Assistant Attorney General, was present to advise the Board.

History of Proceedings

1. On March 19, 2004, Permit Number 6108 for operations named CBM C29 was issued to Applicant after the application had satisfied all the requirements of the Virginia Gas and Oil Act and the Virginia Gas and Oil Regulation.
2. Well CBM C29 was drilled between June 16 and June 23, 2004 and was completed, including stimulation by hydraulic fracturing, on July 20, 2004
3. In August of 2004, The Division of Gas and Oil (DGO) was contacted by Clyde Lyndall Horne who stated that he and members of his family were owners of coal and other property within the C29 drilling unit, and that neither he nor his family had been identified as owners or notified of the permit application as required by law.
4. By letter dated August 31, 2004, the Director of DGO notified Applicant of the Horne allegations and instructed Applicant to either verify that the original application was correct and complete as submitted or, if mistakes were found, notify DGO of the corrections and what action was necessary to correct the mistakes.

5. On September 16, 2004, DGO received a letter from Applicant stating that mistakes had been made during title work, and that a permit modification would be submitted to correct notification requirements.

6. On September 17, 2004, the DGO Director placed a Stay on Permit Number 6108 pending issuance of the permit modification. The Stay specified that, except for maintenance of the site and equipment, no further activity was to take place on the permit until the permit modification was issued.

7. On September 28, 2004, Applicant submitted to DGO a permit modification for the CBM C29 operation naming and notifying Respondents as coal and mineral owners within 750 feet of the well.

8. On October 19, 2004 The Virginia Gas and Oil Board authorized pooling of Respondents interests in Drilling Unit C29 under Docket number 04-1019-1343. Respondent Clyde Horne attended the hearing. The order was executed on February 15, 2005 and was recorded with the Clerk of Buchanan County Court on February 18, 2005 in Deed Book 612 at Page 204.

9. By letter dated March 14, 2005 accompanied by checks for proportionate well costs also dated March 14, 2005, Respondents stated their election to participate in the well. The letter further stated that Respondents "...do not give, make or make any concessions as to the Consent to Stimulate..."

10. On April 19, 2005, the Board executed Applicant's Supplemental Order regarding Elections for Unit C29 that was subsequently recorded with the Clerk of Buchanan County Court on April 27, 2005 in Deed Book 616, Page 760. The Supplemental Order documented Respondents' election to participate in operation CBM C29 as full partners.

11. On May 24, 2005 DGO received a letter from Mark A. Swartz, Council for Applicant, stating that Respondents' election to participate was an unequivocal consent that the well be artificially stimulated and requesting that the Stay be lifted and the permit modification issued.

12. By letter dated May 31, 2005, the Director denied the request to lift the Stay on grounds that the afore-mentioned election did not, in the opinion of the Director, fulfill the requirements for consent to stimulate the well under § 45.1-361.29.F(2). The letter advised Applicant of appeal rights under § 45.1-361.23.

13. On June 10, 2005, Applicant filed its Petition for Appeal of the Director's Decision citing errors in the Director's decision and the Director's failure to properly consider provisions of § 45.1-361.29.F.2.b(i), Oakwood Field Rules and Respondents' elections subsequent to pooling, 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. A determination that written election to participate in a frac well is consent to stimulate that well.
- b. A determination that said consent satisfies the condition specified by the Director's Stay.
- c. An order lifting the Director's Stay on Permit Number 6108.

#### Findings of Fact

1. The Stay placed against Permit 6108 was intended to stop all activity, including production, on the operations until such time as the permit modification that recognized Respondents as mineral owners was issued. Because Respondents are coal owners within 750 feet of the CBM C29 well, the Stay was maintained and the permit modification not issued pending a Consent to Stimulate the coals as required by § 45.1-361.29.F(2).

2. Subsequent to a pooling order entered by the Board, Respondents elected to participate in the well according to their full interests. Respondents' election included payment of their proportionate share of actual and estimated costs of operations as determined from Authorization for Expenditure information included in the Board's order.

#### Conclusions of Law

In considering the requirements and provisions of § 45.1-361.29.F(2), Code of Virginia, 1950 as amended, The Board finds:

a. The definition of "Gas or Oil Operations" under § 45.1-361.1 clearly states that such operations include "stimulating" of the well. Participation in well operations includes participation in the stimulation of that well.

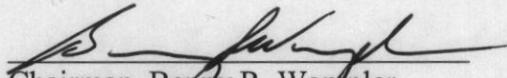
b. When Respondents, in response to the Board's pooling order, elected the participation option mandated by § 45.1-361.21.C(4), they implicitly agreed to the stimulation of the well.

c. The election to participate in a well requiring fracture stimulation satisfies the provision of § 45.1-361.29.F.2(b) which states that "The consent ...may be (i) contained in a lease or other such agreement..."

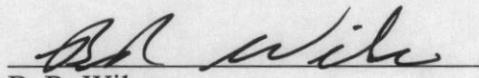
d. After making election to participate in a well that is to be stimulated, Respondents are estopped from further declarations of non-consent.

Accordingly, this Board reverses the Director's decision and orders that the Stay be lifted and the Modification of Permit 6108 be issued according to standard DGO procedures.

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

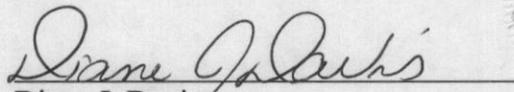
  
Chairman, Benny R. Wampler

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 )

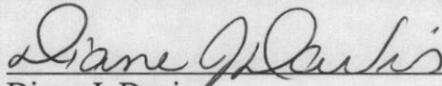
Acknowledged on this 12<sup>th</sup> day of September, 2005, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized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