



or less of royalty of gas and oil rights.

5. The only statutory objections to permit applications available to surface owners are set out at § 45.1-361.35. (B) Objections to permits; hearing.

1. The operations plan for soil erosion and sediment control is not adequate or not effective;
2. Measures in addition to the requirement for a well's water-protection string are necessary to protect fresh water-bearing strata;
4. Location of the coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of the surface, provided that a reasonable alternative site is available within the unit, and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest; and

6. Relief: The Petitioner's requested relief in this cause is hereby denied:

- a. The Board found that the Petitioners had failed to present any evidence to prove their case.
- b. The Board found that the Petitioner had been appropriately provided notice and the opportunity to appear and appeal to the permit application for this permit application 18852.
- c. The Board found that the Respondent had previously presented a title opinion to the Division Director establishing that the Petitioner was a surface owner only and did not own royalty in the gas to be produced. Petitioner did not present any evidence to refute the title opinion. Further, the record did not support any of the statutory objections available to a surface owner.
- d. The Board found that the record showed this unit to be a 100% leased voluntary unit not subject to compulsory pooling.

7. Conclusion: The decision of the Director of the Division of Gas and Oil dated August 24, 2012 in IFFC 219, and attached hereto is hereby affirmed, and the appeal of Sidney T. Deel, Randa Erdely and Phyllis Keene is denied. The Director of the Division of Gas and Oil is directed to issue the well permits for Application #18852 Coalbed Methane Gas Well with Pipeline and IT IS SO ORDERED.

8. Appeals: Appeals of this Order may be filed by an adversely affected parties within thirty days after service of the Order, pursuant to the provisions of Va. Code Ann. § 45.1-361.9 that provides that any order or decision of the Board may be appealed to the appropriate circuit court where interlocutory relief may also be sought. Any appeal shall be filed in compliance with the provisions of the Administrative Process Act (Va. Code Ann. §§ 2.2-4000 et seq.) and

---

the Rules of the Supreme Court of Virginia.

9. Effective Date: This Order shall be effective as of the date of the Board's decision on December 18, 2012.

DONE AND EXECUTED this 11 day of February, 2013 by a majority of the Virginia Gas and Oil Board.



Chairman, Bradley C. Lambert

DONE AND PERFORMED this 11 day of February, 2013 by Order of the Virginia Gas and Oil Board.



Rick Cooper  
Principal Executive to the  
staff, Virginia Gas and Oil Board

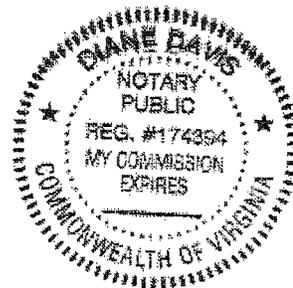
COMMONWEALTH OF VIRGINIA  
COUNTY OF RUSSEL)

Acknowledged on this 11<sup>th</sup> day of Feb, \_\_\_\_\_, personally before me a notary public in and for the Commonwealth of Virginia, appeared Bradley C. Lambert, being duly sworn did depose and say that he is the Chairman of the Virginia Gas and Oil Board and appeared Rick Cooper, being duly sworn did depose and say that he is Principal Executive to the staff of the Virginia Gas and Oil Board, that they executed the same and was authorized to do so.



Diane J. Davis, Notary Public  
174394

My Commission expires: September 30, 2013



Virginia Division of Gas and Oil  
P. O. Box 159  
135 Highland Drive  
Lebanon, VA 24266  
Telephone: (276) 415-9700  
Fax: (276) 415-9671



Rick Cooper, Director,  
Division of Gas and Oil

By Decision of the Director in

**Informal Fact Finding Conference 219 (Herein "IFFH 219")**

**Sidney T. Deel, Phyllis Keene & Renda Ederly**  
(Herein "Surface Owner")

Vs.

**CNX Gas Company, LLC**  
(Herein "Permit Applicant")

**Permit Application for Gas and Oil operations:  
Coalbed Methane Operations V(-3) W/Pipeline, Application 18852**  
(Herein "Application")

**Background**

**Coalbed Methane operations V(-3) W/Pipeline, Application 18852** CNX Gas Company, LLC was received at the Virginia Division of Gas and Oil (DGO) on March 31, 2011.

The evidence regarding the application and objections filed support the fact that the objections were timely and appropriate under Virginia Statute.

The objections filed by **Sidney T. Deel, Phyllis Keene & Renda Ederly** against the permit application #18852 were in accordance with objections provided by law under § 45.1-361.35.

**§ 45.1-361.35. (B) Objections to permits; hearing.**

B. The only objections to permits or permit modifications that may be raised by **surface owners** are:

1. The operations plan for soil erosion and sediment control is not adequate or not effective;
2. Measures in addition to the requirement for a well's water-protection string are necessary to protect fresh water-bearing strata;

The Surface Owners' objections were deemed acceptable under § 45.1-361.35

---

### Hearing Date and Place

IFFH 219 was convened on Monday May 31, 2012 in the Russell County Government Center, Highland Drive, Lebanon Virginia. All parties with standing to object to Permit Application #18852 were notified of the time and place by United States Postal Service, certified mail, return receipt requested.

### Appearances:

**For the Objecting Party: Sidney T. Deel, Phyllis Keene & Renda Ederly, Surface owners.**

**For CNX Gas Company LLC: Mr. Mark Swartz, Counsel, Derek Fitzwater, Philip Lowe, representing the applicant.**

### Findings of Fact:

1. In accordance with § 45.1-361.35.H, notice of IFFH 219 was given to the Permit Applicant and to every person with standing to object as prescribed by §45.1-361.30.
2. **Sidney T. Deel, Phyllis Keene & Renda Ederly** were notified as a **surface owner** of properties to be affected by the proposed operations **Application # 18852, Coalbed Methane V(-3) with pipeline**, as such, have standing to object to the proposed operations.
3. IFFH 219 was convened at the time and place indicated in the notice.

### Controlling Law and Regulation

1. Section 45.1-361.30.A (1) of the Virginia Gas and Oil Act requires that permit applicants notify all surface owners, coal owners, and mineral owners on tracts to be drilled.
2. Section 45.1-361.30.A (3) of the Virginia Gas and Oil Act requires that permit applicants notify all surface owners on tracts where the surface will be disturbed.
3. Section 45.1-361.30(D) of the Virginia Gas and Oil Act gives standing to object to permit applications to all parties receiving required notice.
4. Section 45.1-365.35(B) of the Virginia Gas and Oil Act details objections that may be filed by surface owners.
5. Section 45.1-361.35(H) of the Virginia Gas and Oil Act 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.
6. Section 45.1-361.35(I) of the Virginia Gas and Oil Act requires the Director to issue a decision regarding the objection if the parties to the hearing fail to reach an agreement.

Informal Fact Finding hearings are proceedings conducted under guidelines of the Administrative Process Act, the hearing can recess at any time if the involved parties mutually agree that they would like to negotiate off the record. This opportunity was offered by the Director and agreed by both parties.

**It was unanimous that a settlement could not be reached at this time.**

## **I. TESTIMONY BY THE APPLICANT**

Mr. Mark Swartz presented in testimony and provided deeds from 1907 and 1911 regarding mineral, gas and coal ownership of the area in dispute. The deeds presented give CNX Gas Company, LLC the right to extract coal, oil, gas and other minerals and the perpetual right to enter upon the land to build the necessary structures. CNX Gas Company, LLC has the leasing rights of the mineral owner(s).

Mr. Swartz presented in testimony and provided exhibits out of the application that showed the certified well location. Furthermore, Mr. Swartz provided testimony and presented application exhibits that showed the soil and erosion standards to be utilized. Mr. Swartz stated the Division of Gas and Oil was required to inspect the area and require additional measures if necessary to control soil and erosion. Mr. Swartz presented testimony that due to the steep topography that CNX Gas Company, LLC was not constructing on flat or very usable real estate.

Mr. Swartz provided testimony that the casing design in the application would ensure the objecting parties' water should not be affected by the drilling of the Coaled Methane Well (CBM). Mr. Swartz provided testimony that the casing design cemented to the surface should alleviate any water well damage to the objecting parties. Mr. Swartz provided testimony that cementing the casing from 2750 feet to the surface would ensure no water tables would be affected.

## **II. TESTIMONY BY THE SURFACE OWNER**

Mr. Sidney T. Deel wanted to know if the well would be placed on the best land. Mr. Deel also wanted to know what would be done about the timber to be removed and destroyed for the construction of the well, road and pipeline.

Mrs. Phyllis Keene's main concern was the potential loss of water and what would CNX do to assure this did not occur.

Mr. Clyde Keene wanted to know who had the gas rights to the property.

Renda Ederly's main concern was the sediment and erosion plan. What sediment and erosion controls will be utilized.

Decision of the Director

After thorough research and consideration:

The Director is satisfied the proposed development plan by CNX Gas Company, LLC is undertaken with the intent of minimal damage to the property and environment.

The Director is satisfied the erosion and sediment control plan meets best practice standards for the construction activities proposed for this site under current law.

The permit application detail includes a ground water protection string which is planned to protect both ground water sources and below drainage coal seams that may be encountered during the drilling and resource extraction process.

The Director is further satisfied that the location of the well site does not unreasonably infringe on the surface owners' use of the property.

Permit Applicant testified that they have rights to use surface owner's property. The applicant furnished a copy of the deeds that expressed their right to extract coal, oil, gas and other minerals and to the perpetual right enter upon the land to build the necessary structures.

Permit Applicant apparently has rights to use surface owners property to access their mineral estate. The loss of timber is not an issue that the Director controls. If these concerns are in dispute, it must be contested in a court of proper jurisdiction.

After careful consideration and review of testimony provided, it is the decision of the Director, to rule in favor of the Applicant and to proceed with the review and issuance of the permit for Application # 18852, Coalbed Methane Gas Well with Pipeline.

---

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 (10) 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 24th day of August, 2012



Rick Cooper, Director  
Virginia Division of Gas and Oil