V I R G I N I A:

BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER:	LINK MONROE SMITH, SURFACE OWNER,	
	v.	VIRGINIA GAS AND OIL BOARD
RESPONDENT:	CNX GAS COMPANY, LLC (PERMIT APPLICANT)	
RELIEF SOUGHT:	APPEAL OF DECISION BY THE DIRECTOR OF THE DIVISION OF GAS AND OIL DATED JANUARY 22, 2014, FOLLOWING INFORMAL FACT FINDING CONFERENCE 228	DOCKET NO. VGOB-14-0617-4037

REPORT OF THE BOARD

FINDINGS AND ORDER

1. Hearing Date and Place: This matter came on for final hearing before the Virginia Gas and Oil Board (hereafter "Board") at 9:00 a.m. on June 17, 2014 at the Russell County Conference Center, Lebanon, Virginia.

2. Appearances: Shea Cook (Council for Petitioner Link Monroe Smith (surface owner); Mark Swartz, Esq. appeared for the Respondent, CNX Gas Company, LLC; and Matt Gooch, Esq., Assistant Attorney General, was present to advise the Board.

3. Jurisdiction and Notice: Pursuant to Va. Code §§ 45.1-361.1 et seq., the Board finds that it has jurisdiction over the subject matter. The Board also finds that the notices given herein satisfy all statutory requirements, Board rule requirements and the minimum standards of due process. After hearing arguments and considering the Director's decision and evidence presented, upon motion and vote, the Board denied Petitioner's application on appeal, relying on Va. Code §§ 45.1-361.1, 45.1-361.29, 45.1-361.35 and 45.1-361.36.

4. Relief Requested: Petitioner, Link Monroe Smith (surface owner), appealed the Director's decision in IFFH 228, requesting:

a. Link Monroe Smith objected to CNX Gas Company, LLC application whereas; "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;".

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 Denied: The Petitioner's requested relief in this cause is hereby denied:

a. The Board found that the Petitioner had failed to provide evidence that the coalbed well or pipeline were an unreasonable infringement.

b. The Board found that the Respondent had previously presented a title opinion to the Division Director establishing that Petitioner was a surface owner only and did not own royalty in the gas to be produced. Petitioner did not refute the title opinion.

7. Conclusion: The decision of the Director of the Division of Gas and Oil dated January 22, 2014 in IFFH 228, and attached hereto is hereby affirmed, and the appeal of Link Monroe Smith is denied. The Director of the Division of Gas and Oil is directed to issue the well permit for Application #19332, Coalbed Methane Operations TA144 with Pipeline IT IS SO ORDERED.

8. Appeals: Appeals of this Order may be filed by an adversely affected party 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 June 17, 2014.

Decision of the Director

In the matter before IFFH 228.

The objecting party's testimony did not make a sound case for unreasonable infringement. The placement of proposed surface disturbances and the lack of demonstrated infringement on current or planned land use appear to negate invocation of unreasonable infringement.

The permit applicant apparently has rights to use surface owner's property to access their mineral estate. If this is in dispute, it must be contested in a court of proper jurisdiction. While it can be argued that any adverse use of property is an infringement, § 45.1-361.35 only allows consideration of *unreasonable infringement*. Surface Owner's testimony did not make a sound case for unreasonable infringement. The placement of proposed surface disturbances and the lack of demonstrated infringement on current or planned land use appear to negate invocation of unreasonable infringement.

It is recommended that the operator and surface owner work together to settle any disagreements over the development of previous gas wells and associated facilities.

Based on testimony and the permit application, it is, therefore, the decision of the Director to deny the Surface Owner's objections to permit Application 19332 for operations TA144 W/Pipeline. The Permit Application for operations TA144 W/Pipeline will be assessed and issued under standard Division of Gas and Oil permit procedures.

Right of Appeal

Any person with standing under § 45.1-361.30 who is 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 22nd day of January, 2014

Rick Cooper

Rick Cooper, Director
Virginia Division of Gas and Oil

DONE AND EXECUTED this 7 day of August, 2014 by a majority of the Virginia Gas and Oil Board.

Chairman, Bradley C. Lambert

DONE AND PERFORMED this 7 day of August, 2014 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 RUSSELL

Acknowledged on this 7th day of August, 2014, 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.

Sarah Jessee Gilmer, Notary Public
262946

My Commission expires: July 31, 2017

SARAH JESSEE GILMER
NOTARY PUBLIC
REG. #262946
MY COMMISSION EXPIRES 7-31-17
COMMONWEALTH OF VIRGINIA

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

Virginia Department of Mines Minerals and Energy

By Decision of the Director in

Informal Fact Finding Conference 228 (Herein "IFFH 228")

Link Smith
(Herein "Surface Owner")

Vs.

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

Permit Application for Gas and Oil operations:
Coalbed Methane Operations TA144 W/Pipeline, Application 19332
(Herein "Application")

Background

Coalbed Methane operations TA144 w/Pipeline, Application 19332, CNX Gas Company, LLC, was received at the Virginia Division of Gas and Oil (DGO) on September 21, 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 **Link Smith** against the permit application #19332 were in accordance with objections provided by law under **§ 45.1-361.35.**

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

> 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.

Hearing Date and Place

IFFH 228, was convened on Tuesday December 10, 2013, at 1:30 PM in the Russell County Government Center, Highland Drive, Lebanon Virginia. All parties with standing to object to Permit

Application #19332 were notified of the time and place by United States Postal Service, certified mail, return receipt requested.

Appearances:

For the Objecting Party: Shea Cook – Counsel, Link Smith, Surface Owner

For CNX Gas Company LLC: Mr. Mark Swartz, Counsel, Mary Beth McGlothlin and Beverly Webb, representing the applicant.

Findings of Fact:

1. In accordance with § 45.1-361.35.H, notice of **IFFH 228** was given to the Permit Applicant and to every person with standing to object as prescribed by §45.1-361.30.

2. **Link Smith** was notified as **a surface owner** of properties to be affected by the proposed operations **Application # 19332, Coalbed Methane TA144 with pipeline**, as such, has standing to object to the proposed operations.

3. IFFH 228 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 could have recessed at any time if the involved parties mutually agree that they would like to negotiate off the record. This opportunity was refused.

I. TESTIMONY BY THE SURFACE OWNER

Link Smith wanted to know who would be responsible for any damages, royalty rights and gas rights to the property on TA144.

Mr. Smith stated that he felt that CNX did not have the right to trespass.

Shea Cook (Counsel) – Stated that allowing the installation of the TA144 wellsite and pipeline sterilizes the use of the property.

Mr. Cook stated that the deed M. Swartz (Counsel for CNX) submitted was only for the conveyance of coal and mineral and the use of the timber and water.

Mr. Cook believes that the 1902 deed did not include gas.

Mr. Cook believes that the Division of Gas and Oil has the authority through expressed or implied right to address compensation rights and deed or title interpretation.

II. TESTIMONY BY THE APPLICANTS

The applicant's Counsel (Mark Swartz) presented a deed that CNX believes that they have a right to the coal and minerals on the TA144 property.

Mr. Swartz stated that CNX believes the deed gives CNX the right to install the TA144 well and pipeline.

Mr. Swartz stated that CNX the application submitted to the Division of Gas and Oil was certified by CNX and was a valid certification allowing CNX to install the well and pipeline.

Mr. Swartz stated that the DGO did not have the authority to address compensation issues.

Decision of the Director

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Signed this 22nd day of January, 2014

Rick Cooper

Rick Cooper, Director
Virginia Division of Gas and Oil

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