

V I R G I N I A:

BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER: PAMELA D. HESS )  
(SURFACE OWNER) )  
 )  
 ) VIRGINIA GAS  
 v. ) AND OIL BOARD  
 )  
 )  
RESPONDENT: CNX GAS COMPANY, LLC )  
(Permit Applicant) )  
 )  
 )  
RELIEF SOUGHT: APPEAL OF DECISION BY THE DIRECTOR ) DOCKET NO.  
OF THE DIVISION OF GAS AND OIL ) VGOB-14-  
DATED FEBRUARY 21, 2014, FOLLOWING ) 0916-4056  
INFORMAL FACT FINDING CONFERENCE )  
229 )

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 October 21, 2014 at the Russell County Conference Center, Lebanon, Virginia.

2. Appearances: Gerald Gray (Counsel for Petitioner) Pamela D. Hess and Leonard Hess, (surface owners); Mark Swartz, Esq. appeared for the Respondent, CNX Gas Company, LLC; and Paul Kugelman, 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 Directors 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, Pamela Hess (surface owner), appealed the Director's decision in IFFH 229 requesting:

- I. Pamela Hess objected to CNX Gas Company, LLC and any contractors working for CNX Gas Company, LLC to come on the property because the location of the well would be an unreasonable infringement on the surface owner's use of the property as real property owned by Pamela D. Hess.

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 sufficient 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 19060.
- c. The Board found that the Respondent was a surface owner only. Petitioner did not present any evidence to refute the opinion.

7. Conclusion: The decision of the Director of the Division of Gas and Oil dated February 21, 2014 in IFFH 229, and attached hereto is hereby affirmed, and the appeal of Pamela Hess is denied. The Director of the Division of Gas and Oil is directed to issue the well permit for Application #20256 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 October 21, 2014.

Decision of the Director

**In the matter before IFFH 229 under § 45.1-361.35 B (2) Measures in addition to the requirement for a well's water-protection string are necessary to protect fresh water bearing strata.**

The applicant provided testimony that a minimum of five hundred and five feet of seven inch casing cemented to the surface along with two thousand one hundred ninety feet of four and one-half inch casing cemented to surface would be installed in the well to prevent water damage.

The objecting parties testified that their spring water was in good condition and they were concerned that the well and facilities would damage the quality and quantity of water.

**In the matter before IFFH 229 under § 45.1-361.35 B (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.**

The applicant testified that the well AA-37D was more than 500 feet (Exhibit 2) from the objecting parties. The applicant testified that only a portion of the road and pipeline crossed the objecting party's property. The CBM well and well pad are located on Commonwealth Coal Corporation property. According to the Permit Application 20256 (Exhibit 3), the road crosses a portion of the western section of the Hess property off of a developed gas road.

The objecting party (Pamela Hess provided testimony and exhibits whereas; Pocahontas Gas Partnership (PGP) had an agreement not to place certain wells on her property.

**Based on the applicant's testimony and the history of drilling coalbed methane wells in Virginia the water protection string is adequate to protect water zones.**

**Based on the applicant's testimony the agreement Ms. Hess presented was for another well and was not applicable to the AA-37D permit application. Council did not dispute this issue.**

**Based on testimony and presented in the applicant's application. The applicant is limiting surface disturbance by utilizing the western most portion of the objecting party's property and accessing the AA-37D off of a preexisting road.**

Permit Applicant apparently has rights to use Surface Owners' 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*.

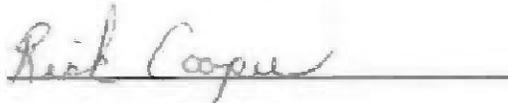
Based on testimony, it is, therefore, the decision of the Director to deny Surface Owners' objections to permit Application 20256 for operations CBM AA-37D with pipeline. The Permit Application 20256 for operations AA-37D with pipeline will be assessed and issued under standard Division of Gas and Oil permit procedures.

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### Right of Appeal

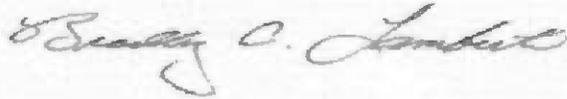
Any party aggrieved by this decision of the Director may appeal the decision to the Virginia Gas and Oil Board by filing a petition with the Board within ten (10) days following the decision (§45.1-361.36). No petition or appeal may raise any matter other than matters raised by the Director or which 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 4<sup>th</sup> of August, 2014



Rick Cooper, Director  
Virginia Division of Gas and Oil

DONE AND EXECUTED this 5 day of November, 2014 by a majority of the Virginia Gas and Oil Board.



Chairman, Bradley C. Lambert

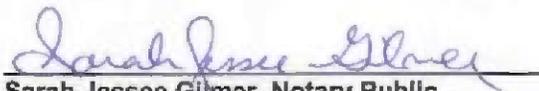
DONE AND PERFORMED this 5 day of November, 2014 by Order of the Virginia Gas and Oil Board.



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

COMMONWEALTH OF VIRGINIA  
COUNTY OF RUSSELL

Acknowledged on this 5<sup>th</sup> day of November, 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

