

Informal Fact Finding Conference 24014 (Herein "IFFH 24014")

DECISION OF THE DIRECTOR

Finding of Fact

Contrary to the statements at the IFFC by Mr. Sexton and Mr. Hart, CNX Gas Company LLC brought an application before the Virginia Gas and Oil Board to establish a provisional 320-acre horizontal unit and to pool all the interests and estates of various unleased parties including the Big Vein Companies - Yukon Pocahontas Coal Company, Buchanan Coal Company, and Sayers-Pocahontas Coal Company on May 17, 2011. The creation of the provisional unit and the pooling of all unleased parties including the Big Vein Companies were approved by the Board at their hearing on May 17, 2011.

Although the required notice of May 17, 2011 Board hearing was provided by certified mail to Yukon Pocahontas Coal Company, Buchanan Coal Company, and Sayers-Pocahontas Coal Company individually, they did not appear at the Board hearing and object to the creation and pooling of this unit. Copies of the certified mail receipts in the Division files verify that the notice was sent and received by these parties, contrary to the statements at the IFFC by Mr. Sexton and Mr. Hart. These parties have now objected to a permit application filed by CNX Gas Company LLC with the Division for this unit D20SH.

Mr. Sexton and Mr. Hart, on behalf of the objecting parties Yukon Pocahontas Coal Company, Buchanan Coal Company, and Sayers-Pocahontas Coal Company acknowledged none of these companies has a mine plan, mine projections for an active mine permit or a mine license from the Virginia Department of Mines, Minerals and Energy to develop mine works, mine or produce coal within 750 feet of the proposed D20SH well.

Because the Board has established this unit pursuant to the Virginia Gas and Oil Act, Yukon Pocahontas Coal Company, Buchanan Coal Company, and Sayers-Pocahontas Coal Company have standing to object to the permit application as gas or royalty owners under §§ 45-1-361.30A (4) and 45.1-361.30D.

Conclusion of Law

Yukon Pocahontas Coal Company, Buchanan Coal Company, and Sayers-Pocahontas Coal Company do not have any coal properties that may be affected by the D20SH well. Yukon Pocahontas Coal Company, Buchanan Coal Company, and Sayers-Pocahontas Coal Company do not have a mine plan, mine works or mine projections within 500 feet of the proposed D20SH well that could be materially affected by the proposed D20SH well application submitted by CNX Gas Company LLC.

The Big Vein Companies did not offer any evidence supporting their allegation that the proposed unit directly impinged upon their gas interests and their threatened property or statutory rights.

Additionally, they did not develop any record that the proposed well work was an unreasonable and arbitrary exercise of power by the permit applicant. Being unsupported by a preponderance of credible evidence, those objections must fail.

Had this permit application been filed before the pooling application was approved by the Board as originally argued on behalf of Big Vein companies, the IFFC record indicates that these objecting parties would not have been entitled to notice of the permit application. Their right to notice of this permit application arises under §45-1-361.30A (4) as gas or royalty owners and in light of the distance criteria therein, based specifically on the Board's prior action in creation and pooling of this provisional unit. The Act does not require that either the application for the well permit or for the unit pooling order be filed first. Any objection based on the order if the two applications is factually and legally unsupportable here.

If this unit had not been created and pooled by the earlier Board action, these objecting parties would not have been entitled to notice as their interests lie outside the statutory distance limitations. They did not meet the additional requirements of the statutory provisions applicable to coal owners and coal operators necessary to require notice. Further, they did not fulfill the additional tract disturbances or distance criteria for notice as either surface, gas, or royalty owners.

This statutory distinction would seem to support the applicant's position that the coal owner objections under §45-1-361.12 are not available unless the coal is impacted by the well. However, it is not necessary to reach that issue in this decision. It is the Division Director's decision to deny the objections to the permit without further discussion of §45-1-361.12 as the objectors did not appear and raise objections on the basis at the time of the Board hearing on the application for creation and pooling of this unit.

Much like an affirmative defense, an objecting party must raise any objections they have at the first opportunity or such objections will have to be waived. These parties that are belatedly objecting to this permit had the opportunity to object at the Board's May 2011 hearing, but failed to appear and do that even though the record documents that they did receive notice of that earlier proceeding.

To allow interested parties who had received notice of the proceedings, to tacitly allow the Board to proceed with a full-blown hearing creating this provisional unit, designating an operator, and pooling all the unleased parties to then object for the first time at the filing of the well permit application with the Division, would be grossly unfair to the tribunal, to the applicant and to the other parties receiving notice of the Board's hearing on the original application to create and pool this unit.

That conclusion is further supported by the fact that but for the Board's acting in creating and pooling this provisional unit, these objectors would have had no right to notice of this permit application under §45-1-361.30 A (4). Without that right to notice, these objecting parties would have had no standing under §45-1-361.30 D.

**Therefore, it is the decision of the Director to overrule the objections proffered by Yukon
Pocahontas Coal Company, Buchanan Coal Company, and Sayers-Pocahontas Coal
Company and to allow the issuance of the Permit Application # 18912.**