

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE: VGOB DOCKET NO. 96-0716-0549

RECOMMENDATION BY THE VIRGINIA GAS AND OIL INSPECTOR (herein "Inspector") THAT THE VIRGINIA GAS AND OIL BOARD (herein "Board") IMPOSE A CIVIL CHARGE AGAINST ISLAND CREEK COAL COMPANY (herein "Operator") PURSUANT TO BOARD ORDER ENTERED IN VGOB DOCKET NO. 92-0529-0226 (herein "Civil Charge Procedural Rules")

1. Hearing Date and Place: This matter came on before the Board for final hearing at 9:00 a.m. on August 20, 1996, Dickenson Conference Room, Southwest Virginia 4-H Center, Abingdon, Virginia, pursuant to Va. Code § 45.1-361.8.C. and the Civil Charge Procedural Rules, upon the Inspector's recommendation that the Board impose a civil charge on the Operator for its failure to (1) erect permanent markers on plugged wells CBG Q-7A, CBG M-8A, and CBG Q-6A (herein sometimes collectively referred to as "Wells") as required under the Gas and Oil Regulations VR 480-05-22.1; and (2) obtain plugging permits, submit affidavits of plugging or notify the Inspector of the plugging of the Wells as required by Va. Code § 45.1-361.29.

2. Appearances: Mark A. Swartz of Kay, Casto, Chaney, Love and Wise, appeared for the Operator; Sandra B. Riggs, Assistant Attorney General, was present to advise the Board.

3. Jurisdiction: Pursuant to Va. Code § 45.1-361.1 et seq., the Board finds that it has jurisdiction over the subject matter.

4. Findings of Fact:

a. By letter dated June 14, 1996 (herein "Notice") the Inspector notified the Operator that he intended to recommend to the Board that it impose a civil charge pursuant to the Civil Charge Procedural Rules with reference to the Operator's failure to (1) erect permanent markers at the site of the plugged wells as required under the Gas and Oil Regulation VR 480-05-22.1, § 1.46.A; and (2) obtain plugging permits, submit affidavits of plugging or notify the Division of Gas and Oil of plugging of the Wells as required by Va. Code § 45.1-361.29.

b. In support of the recommendation to the Board that a \$350.00 civil charge be imposed on Operator for its failures to erect permanent markers at the site of the plugged Wells, the following Notices of Violations issued by the Inspector to the Operator were cited:

VR 480-05-22.1, §1.46.A	CBG Q-7A, Permit #2428, File BU-0727 (Well Q-7A)	Issued 4/5/96
VR 480-05-22.1, §1.46.A	CBG M-8A, Permit #2429, File #BU-0728 (Well M-8A)	Issued 5/22/96

c. In support of the recommendation to the Board that a \$350.00 civil charge be imposed on Operator for its failure to obtain plugging permits, submit affidavits of plugging or notify the Division of plugging of the Wells, the following Notices of Violations issued by the Inspector to the Operator were cited:

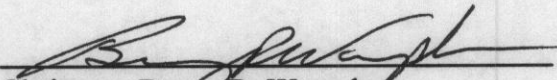
Va. Code § 45.1-361.29	CBG Q-7A, Permit #2428, ✓ File #BU-0663 (Well Q-7A) ^{BU-727}	Issued 4/5/96
Va. Code § 45.1-361.29	CBG M-8A, Permit #2429, File #BU-0728 (Well M-8A)	Issued 5/22/96
Va. Code § 45.1-361.29	CBG Q-6A, Permit #2604, File #BU-0763 (Well Q-6A) ✓	Issued 4/5/96

d. The bore holes for the Wells were initially permitted and drilled as vertical ventilation holes for mine ventilation purposes under the jurisdiction of the Department of Mines, Minerals and Energy's (herein "Department") Division of Mines. The bore holes were also permitted as coalbed methane gas wells through the Department's Division of Gas and Oil to preserve their eligibility to receive tax credit in the event they were ultimately converted and used as gas wells; however, this did not occur and the Wells were never produced. When Operator embarked upon its program to plug its vertical ventilation holes, it treated the Wells as vertical ventilation holes and plugged them under the Division of Mine's regulations which did not require that they be permanently marked. Due to Operator's failure to realize at the time of plugging that the Wells had also been permitted through the Department's Division of Gas and Oil as gas wells, the Operator inadvertently failed to comply with the Division of Gas and Oil regulations governing the plugging and marking of the Wells.

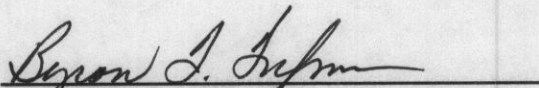
e. Pursuant to Section VIII of the Civil Charge Procedural Rules, the Board and the Operator may agree to affirm, reduce or increase a civil charge based upon the evidence submitted or discussed at the hearing, and the Board and Operator may agree to waive a civil charge derived from this procedure if exceptional factors were present which would make the civil charge demonstrably unjust. may assess, reduce or increase the recommended fine.

5. Conclusions and Findings: The Board finds that while the Operator complied with the Department's Division of Mines regulations for the plugging of vertical ventilation holes, the Operator inadvertently failed to comply with the Department's Division of Gas and Oil regulations governing the plugging and marking of gas wells. The Board finds that this mistake was based upon the fact that the bore holes were used and treated by the Operator as vertical ventilation holes and were never used or treated by the Operator as gas wells. The Board finds that these facts constitute exceptional factors which would make the civil charge demonstrably unjust; therefore, the Board waives the civil charge recommended by the Inspector in this matter.

DONE AND EXECUTED this 23rd day of October, 1996, by a majority of the Virginia Gas and Oil Board.

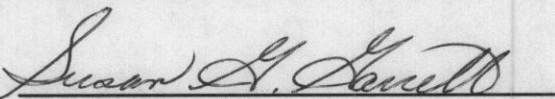

Chairman, Benny R. Wampler

DONE AND PERFORMED this 23rd day of October, 1996, by Order of this Board.


Byron Thomas Fulmer
Principal Executive to the Staff
Virginia Gas and Oil Board

STATE OF VIRGINIA)
COUNTY OF WISE)

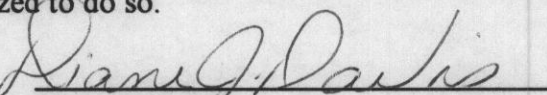
Acknowledged on this 23rd day of October, 1996, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My commission expires: 07/31/98

STATE OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 23rd day of October, 1996, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron Thomas Fulmer, 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: 07/31/97