

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE:

Appeal of the Virginia Division of Gas and Oil (herein "Division") Director's Decision dated February 5, 1999 (hereinafter the "Decision") in the matter of Ms. Nina McFall, Surface Owner (herein "McFall") vs. Equitable Production Company f/k/a Equitable Resources Energy Company, Permit Applicant (herein "EPC"), Re: McFall's Objections (herein "Objections") to Permit Application #3702 (herein "Application"), Permit #4118 (herein "Permit"), Proposed Coalbed Methane Gas Well Operations VC-3970 in the Ervinton District of Dickenson County, VA (herein "Proposed Operations"), VGOB Docket No. 99-0316-0717

1 Date and Time of Hearings, Appearances and History of Proceedings Before the Virginia Gas and Oil Board (herein "Board"):

- a. This appeal of the Decision initially came on for hearing before the Board (herein "Board") at 9:00 AM on March 16, 1999 at the Higher Education Center, Virginia Highlands Community College, Abingdon, VA. James Kaiser of the firm Wilhoit and Kaiser appeared for EPC; McFall appeared pro se; and Sandra B. Riggs, Assistant Attorney General was present to advise the Board. At the close of evidence, but before the Board rendered its decision with respect to this appeal, EPC and McFall were afforded an opportunity to negotiate to determine whether or not they could agree to a reasonable alternative location for the Proposed Operations to the one reflected in the Application and the Permit. The parties reported to the Board that they thought they might be able to agree upon a such a location if they had more time; therefore, while the taking of evidence was closed, the Board delayed the rendering of its decision on McFall's appeal until April 20, 1999.
- b. Due to a lack of quorum, the Board was unable to reconvene this matter on April 20, 1999; therefore, the Board's deliberations of McFall's appeal of the Decision was further continued to the Board's next regularly scheduled hearing date, May 18, 1999.
- c. This appeal came on for the Board's deliberation at 9:00 AM on May 18, 1999 at the 4-H Education Center, Abingdon, VA. James Kaiser, attorney for EPC, was present; McFall was not present; and Sandra B. Riggs, Assistant Attorney General, was present to advise the Board. EPC represented to the Board that: (1) EPC thought it had reached an agreement with McFall regarding a reasonable alternative location for the Proposed Operations, (2) such relocation required that EPC modify its Application and that EPC seek from the Division a well location variance, (2) EPC's agreement with McFall had not been reduced to writing, and (3) EPC had filed with the Division a modification to the Application (herein "Modified Application") to relocate the Proposed Operations to the alternative site. By letter dated May 4, 1999 EPC sought from the Division a well location variance necessary to place the Proposed Operations in the location indicated in the Modified Application. Since McFall was not present at the May 18th hearing, the Board continued the rendering of its decision on the appeal of the Decision to its next regularly scheduled meeting date, June 15, 1999 to allow time for the Modified Application to be processed, the giving of notice of same as required by law, and to afford those with standing, including McFall, an opportunity to file any objections they might have to the Modified Application.
- d. This matter came on for final hearing at 9:00 AM on June 15, 1999 at the Higher Education Center, Virginia Highlands Community College, Abingdon, VA. Neither McFall or EPC were present; Sandra B. Riggs, Assistant Attorney General, was present to advise the Board and the Director of the Division was present. The Director reported to the Board that EPC had filed the Modified Application relocating the Proposed Operations, that the statutorily required notice of the Modified Application had been given, that no objections to the Modified Application had been

received by the Division, that the requested well location variance had been granted by the Director of the Division, and that a modified permit had been issued to EPC.

2. History of Prior Proceedings before the Division:

- a. On January 8, 1999 the Division of Gas and Oil (herein "Division") received from EPC the Application the Proposed Operations.
- b. According to the Application, the Proposed Operations were to be located in the Ervinton District of Dickenson County on surface property owned by McFall.
- c. EPC filed with the Director the written certifications required by Va. Code 45.1-361.29E. that: (1) all notice requirements of Va. Code § 45.1-361.30 had been complied with and provided to the Division proof of same, and (2) that EPC had the right to conduct the operations as set forth in the Application and its operations plan.
- d. McFall was notified of the Application by certified mail, return receipt requested, at 2976 East Hoquiam Road, Hoquiam WA 98550. According to the copy of the return receipt attached to the Decision, Gerald McFall received and signed for the Application on January 11, 1999 on behalf of Nina McFall.
- e. According to Va. Code § 45.1-361.35.A and 45.1-361.35.B, McFall had until January 26, 1999 to file with the Division her surface owner objections to the Application, if any.
- f. The Division received no objections to the Application within the time required by Va. Code 45.1-361.35.A
- g. On February 1, 1999, the Division received a 5-page letter from McFall dated January 15, 1999, return address: 2976 East Hoquiam Road, Hoquiam WA 98550, wherein McFall objected to the Application for the Proposed Operations wherein she:
 1. confirmed that she had received notice of the Application on January 11, 1999 and she objected to the Application; and
 2. objected to the location of the Proposed Operations because she believed its proximity to her home water supply would jeopardize same; she did not want topsoil, vegetation or trees removed; she feared the presence of the well and its access road would encourage trespassers to enter upon her land subjecting her to liability; the Proposed Operations would disturb her forest work environment necessary for her profession as a writer, i.e., the tranquility, natural elements, beauty and creative work environment, peace, privacy and/or mountain roots she is able to enjoy when visiting the property; and the pipeline would run through her orchard.
- h. On February 5, 1999 the Director issued the Decision denying McFall's objections on the grounds that that said objection were untimely and did not meet the filing requirements of § 45.1-361.35.A of the Code of Virginia.
- i. On February 22, 1999, the Permit was issued to EPC.
- j. Pursuant to Va. Code § 45.1-361.36, by letter dated February 11, 1999 and sent via mail and telefax to the Division on February 12, 1999, McFall appealed the Decision to the Board wherein she challenged the Director's finding that her objections were not filed timely; relied on the objections raised in her letter dated January 15, 1999; and raised as an additional grounds for objection that the side of the land where the Proposed Operations were to be located had scattered babies placed there by her entire family making the site sacred to her family as a private ash cemetery and that the associated Pipeline proposed by the Application would run through an orchard where her private drain field line is located.

- k. Based upon its negotiations with McFall for a reasonable alternative site within the unit, on May 3, 1999 EPC filed the Modified Application with the Division, and by letter dated May 4, 1999 EPC sought from the Division a well location variance for the alternative site identified in the Modified Application.
- l. EPC filed with the Director the written certifications required by Va. Code 45.1-361.29E. with respect to the Modified Application, including its certification that McFall had been given notice of the Modified Application by certified mail, return receipt requested, and proof that she personally received said notice on May 6, 1999.
- m. According to Va. Code § 45.1-35.A. and 45.1-361.35.B., McFall had until May 21, 1999 to file with the Division her surface owner objections to the Modified Application.
- n. The Division received no objections to the Modified Application within the time required by Va. Code 45.1-361.35.A. nor had the Division received objections to the Modified Application as of June 15, 1999, the date of the Board's final hearing on this matter.
- o. The Division issued Modified Permit #4118-01 on May 21, 1999.

3. Law

The regulation of gas and oil development and production is governed by Article 3 of the Virginia Gas and Oil Act, Va. Code 45.1-361.27 et seq. The provisions pertaining to the permitting of wells, gathering pipelines, geophysical exploration or associated activity, facilities or structures is contained in Va. Code 45.1-361.29, the notice requirements in Va. Code 45.1-361.30, the bonding and financial security requirements in Va. Code 45.1-361.31, and the process for objecting to new or modified permit applications in Va. Code 45.1-361.35.

Va. Code 45.1-361.35.A provides that objections to new or modification permits may be filed with the Director by those having standing, provided such objections are filed "within fifteen days of the objecting party's receipt of the notice required by Va. Code § 45.1-361.30", and provides that persons objecting to a permit must state the reasons for their objections.

The only objections, which the Director is statutorily granted the jurisdiction to consider and adjudicate, are those set forth in Va. Code 45.1-361.35. More particularly, the only objections to permits or permit modification which may be raised before the Director by surface owners, such as McFall, are those specified in Va. Code 45.1-361.35.B which provides:

- B. The only objections to permits or permit modifications which 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 requirements for a well's water-protection string are necessary to protect fresh water-bearing strata;*
 - 3. The permitted work will constitute a hazard to the safety of any person; and*
 - 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, however, 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 surfaced owner and the operator or their predecessors or successors in interest."*

Va. Code § 45.1-361.36.B limits the grounds upon which McFall may appeal the Decision to the Board to those issues she raised in her Objection to the Application or those issues raised by the Director in the Decision.

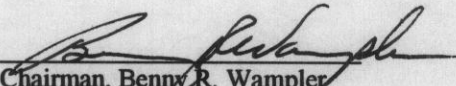
4. Conclusions

The Director's jurisdiction to hear McFall's Objections is limited by the provisions of Va. Code 45.1-361.35.A, 45.1-361.35.B and 45.1-361.36.

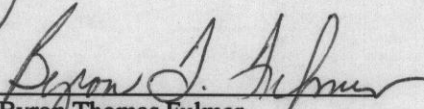
The Board upholds the Decision and dismisses McFall's appeal for the following reasons:

1. The Objections were not filed with the Division within fifteen days of McFall's receipt of the notice required by § 45.1-361.30.
2. The Objections to the Application were made moot when EPC filed the Modified Application relocating the Proposed Operations, and McFall did not object to same in the manner provided in Va. Code §§ 45.1-361.35.A and 45.1-361.35.B.

DONE AND EXECUTED this 23rd day of June, 1999, by Order of this Board.

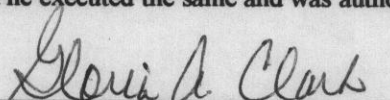

Chairman, Benny R. Wampler

DONE AND PERFORMED this 29th day of June, 1999 by a majority of the Virginia Gas and Oil Board.


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

STATE OF VIRGINIA)
COUNTY OF WISE)

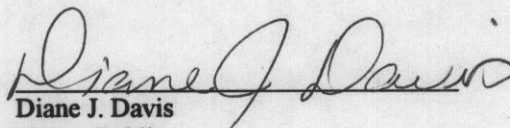
Acknowledge on this 23rd day of June, 1999, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Gloria A. Clark
Notary Public

My Commission expires: 12/31/2003

STATE OF VIRGINIA)
COUNTY OF WISE)

Acknowledged on this 29th day of June, 1999, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron T. 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: 9/30/2001