

V I R G I N I A:

BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER: Linda Patton and Bill Patton)
(SURFACE OWNER'S and ROYALTY OWNER'S))
)
) 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-16-
October 20, 2016, FOLLOWING) 1115-4104
INFORMAL FACT FINDING CONFERENCE)
245)

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 November 15, 2016 at the Russell County Conference Center, Lebanon, Virginia.

2. Appearances: Linda Patton and Bill Patton, (surface and royalty 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, Linda Patton and Bill Patton (surface and royalty owner's), appealed the Director's decision in IFFH 245 requesting:

1. Linda Patton and Bill Patton 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 Linda Patton and Bill Patton.

- II. Linda Patton and Bill Patton objected to CNX Gas Company, LLC, as a royalty owner.

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;
3. The permitted work will constitute a hazard to the safety of any person;
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

The only objections to permits that may be raised by royalty owners are whether the proposed well work:

1. Directly impinges upon the royalty owner's gas and oil interest; or
2. Threatens to violate the objecting royalty owner's property or statutory rights aside from his contractual rights; and
3. Would not adequately prevent the escape of the Commonwealth's gas and oil resources or provide for the accurate measurement of gas and oil production and delivery to the first point to sale.

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 29104.
 - c. The Board found that the Petitioner was a surface owner and royalty owner. Petitioner did not present any evidence to refute the opinion.
 - d. The Board found that Linda Patton and Bill Patton have leased their property to CNX Gas Company, LLC, to allow the construction, drilling, completion and producing of wells on their property(s).
 - e. The Board found that the Petitioner had been appropriately provided notice and the opportunity to appear and appeal to the pooling of the unit for application 29104 pooling at their regular monthly hearings on September 20, 2016 (VGOB 16-0920-4097).

7. Conclusion: The decision of the Director of the Division of Gas and Oil dated October 20, 2016 in IFFH 245, and attached hereto is hereby affirmed, and the appeal of Linda Patton and Bill Patton is denied. The Director of the Division of Gas and Oil is directed to issue the well permit for Application #29104 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 November 15, 2016.

DONE AND EXECUTED this 13 day of December, 2016 by a majority of the Virginia Gas and Oil Board.

Bradley C. Lambert

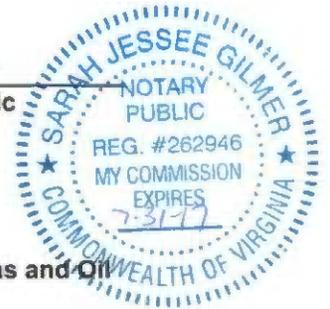
Chairman, Bradley C. Lambert

COMMONWEALTH OF VIRGINIA
COUNTY OF RUSSELL

Acknowledged on this 13th day of December, 2016, 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, that he executed the same and was authorized to do so.

Sarah Jessee Gilmer

Sarah Jessee Gilmer, Notary Public
262946



My Commission expires: July 31, 2017

DONE AND PERFORMED this 14 day of December, 2016 by Order of the Virginia Gas and Oil Board.

Rick Cooper

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

COMMONWEALTH OF VIRGINIA
COUNTY OF RUSSELL

Acknowledged on this 14th day of December, 2016, personally before me a notary public in and for the Commonwealth of Virginia, appeared Rick Cooper, being duly sworn did depose and say that he is the Principal Executive to the staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

Sarah Jessee Gilmer

Sarah Jessee Gilmer, Notary Public
262946



My Commission expires: July 31, 2017

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

By Decision of the Director in

Informal Fact Finding Conference 245 (Herein "IFFH 245")

**Bill Patton, Linda Patton, Millard Farmer Jr., Clarence E. Farmer, Sandra Ratcliffe Blankenship, Michael E. Griffith and Barbara Farmer Altizer
(Herein "Surface and Royalty Owners ")**

vs.

**CNX Gas Company, Inc.
(Herein "Permit Applicant or CNX**

**Permit Application for Gas and Oil operations:
Coalbed Methane Gas Operation T54 W/Pipeline, Application 29104
(Herein "Application")**

Background

Coalbed Methane Gas Operation T54 W/Pipeline, Application 29104, CNX Gas Company, Inc., was received at the Virginia Division of Gas and Oil (DGO) on May 31, 2016. The evidence regarding the application and objections filed support the fact that the objections were timely and appropriate under Virginia statute.

The objections filed on behalf of the **Bill Patton, Linda Patton, Millard Farmer Jr., Clarence E. Farmer, Sandra Ratcliffe Blankenship, Michael E. Griffith and Barbara Farmer Altizer** against the permit application #**29104** were in accordance with objections provided by law under § **45.1-361.35**.

§ 45.1-361.35. Objections to permits

B. The only objections to permits that 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 requirement 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;

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.

C. The only objections to permits that may be raised by royalty owners are whether the proposed well work:

1. Directly impinges upon the royalty owner's gas and oil interest; or
2. Threatens to violate the objecting royalty owner's property or statutory rights aside from his contractual rights; and
3. Would not adequately prevent the escape of the Commonwealth's gas and oil resources or provide for the accurate measurement of gas and oil production and delivery to the first point to sale.

Hearing Date and Place

IFFH 245 was convened on Tuesday September 20, 2016, at 2:00 PM in the Russell County Government Center, Highland Drive, Lebanon Virginia. All parties with standing to object to Permit Application # 29104 were notified of the time and place by United States Postal Service, certified mail, return receipt requested.

Appearances:

For the Objecting Party: Linda Patton and Bill Patton (Surface and Royalty and Owner).

The following individuals that filed an objection were not in attendance: *Millard Farmer Jr., Clarence E. Farmer, Sandra Ratcliffe Blankenship, Michael E. Griffith and Barbara Farmer Altizer.*

For CNX Gas Company, Inc.: Mark Swartz, Counsel, Jerry Boothe, Beverly Webb, Darren Whitt and Bob Staton, representing the applicant.

Findings of Fact:

1. In accordance with § 45.1-361.35.H, notice of **IFFH 245** was given to the Permit Applicant and to every person with standing to object as prescribed by §45.1-361.30.
2. **Bill Patton, Linda Patton, Millard Farmer Jr., Clarence E. Farmer, Sandra Ratcliffe Blankenship, Michael E. Griffith and Barbara Farmer Altizer** were notified as **surface and royalty owners** of properties in proposed operations **Application # 29104, Coalbed Methane Gas Operation T54 W/Pipeline**, as such, have standing to object to the proposed operations.
3. **IFFH 245** 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.

1. TESTIMONY BY THE SURFACE AND ROYALTY OWNER

- * Bill Patton and Linda Patton voiced opposition to the permit due to potential runoff from the well on their property.
- * Bill Patton and Linda Patton mentioned sediment and erosion problems on a previous well that was drilled in the area.
- * Bill Patton and Linda Patton stated that unnecessary trees would be cut on their property.
- * Bill Patton and Linda Patton stated that they objected to potential noise that would come from the well to be installed by CNX.
- * Bill Patton and Linda Patton stated they were concerned their spring and well would be disturbed.
- * Bill Patton and Linda Patton stated that the permitting process was an infringement on their property rights.
- * Bill Patton and Linda Patton thought allowing the well to be permitted was an infringement on their royalty rights.

II. TESTIMONY BY THE APPLICANTS

- * Mr. Swartz stated that CNX had a lease for the property and provided the lease.
 - * Mr. Swartz stated a pre-existing road from well S55A was present so very little land disturbance would occur from the road or pipeline since the pipeline was in the road right of way.
 - * Mr. Swartz stated that CNX did not see any hazards that would affect worker or public safety.
 - * Mr. Swartz stated that when the well was drilled water protection casing would be set a minimum 50 feet below any creek or water well within 500 feet of the well and a minimum of 300 feet of water protection casing will be installed. Also, 75 feet of 13 3/8" casing and 2,400 feet of 4 1/2" casing would be instated in the well and all casings would be cemented back to the surface.
 - * Mr. Swartz stated that the well was pooled today by the Virginia Gas and Oil Board.
 - * Mr. Swartz stated that the proposed well location would require minimal construction.
 - * Mr. Swartz stated that the well location on the plat was certified by certified land surveyor.
 - * Mr. Swartz stated that the measurement of the gas was at the wellhead. The readings were measured electronically by the meter that would be placed on the well when producing.
 - * Photos and exhibits of the area were provided by CNX.
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Decision of the Director

In the matter before IFFH 245.

The Director is satisfied the erosion and sediment control plan meets best practice standards for the construction activities proposed for this site under current laws and regulations.

The Division of Gas and Oil (DGO) has no documented cases where hydraulic fracturing has damaged water sources. The Director *does not* see any deficiency in the permit application that would materially affect the ground water due to hydraulic fracturing.

The permit detail includes ground water protection strings, planned to protect both ground water sources within 750 feet of the site and below drainage coal seams that may be encountered during the drilling and resource extraction process. The Director *does not* see any deficiency in the permit application that would materially affect the ground water.

The Virginia Gas and Oil Regulations 4 VAC 25-150-340, requires the operator to conduct an analysis of groundwater within 500 feet of the drilling location prior to drilling. When the water analysis is submitted to the DGO the results are reviewed to assure the quality of water is adequate prior to allowing the drilling of the well. The Director *does not* see any just cause to deny the application on these grounds.

The Director does not see any items or conditions that would create an unsafe condition to any workers or public safety. No testimony to contradictory evidence was presented. The removal of trees on a property is handled through lease agreements. The DGO has no authority over leases.

The location of the well is certified by a land surveyor to be within 10 feet of the proposed location. The operator is required by 4 VAC 25-150-360 to re-survey the well location once drilled and submit the final location plat of the well to the DGO. The Director *does not* see any just cause to deny the application on these grounds.

The Virginia Gas and Oil Regulations 4 VAC 25-150-420 requires the permit applicant to adhere to standards prior to ground dispersing any drilling fluids. The Virginia Gas and Oil Regulations require the applicant to identify the final location of the disposal of any produced fluids. The applicant has provided these locations in the application. The Director *does not* see any just cause to deny the application on these grounds.

The operator is required to measure and report monthly gas production to the DGO on a monthly basis. The Director *does not* see any just cause to deny the application on the measurement of gas from the proposed well.

The Director is satisfied that the unit has been pooled by the Virginia Gas and Oil Board (VGOB). The pooling was allowed under Virginia Statute: § 45.1-361.21. Pooling of interests in drilling units. The Virginia Gas and Oil Board approved the petition and pooling at their regular monthly hearings on September 20, 2016 (VGOB 16-0920-4097).

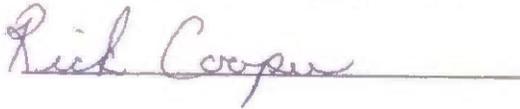
While it can be argued that any adverse use of property is an infringement, § 45.1-361.35 only allows consideration of *unreasonable infringement*. Surface Owners' testimony did not make a sound case for unreasonable infringement.

Based on testimony and the permit application, it is, therefore, the decision of the Director to deny the surface owner's and royalty owner's objections to permit application 29104 for Coalbed Methane Gas Operation T54 W/Pipeline. The permit application for operation T54 W/Pipeline will be assessed and issued under standard Division of Gas and Oil permit procedures.

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 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 20th of October 20, 2016

A handwritten signature in cursive script, reading "Rick Cooper", is written over a horizontal line.

Rick Cooper, Director
Virginia Division of Gas and Oil