BEFORE THE OIL AND GAS BOARD OF REVIEW
DEPARTMENT OF NATURAL RESOURCES
STATE OF OHIO

Baldwin Producing Corporation

Appellant — APPEAL NO. 13

vs.

The State of Ohio, Acting by and through the Chief of the Division of Oil and Gas, Department of Natural Resources

Appellee — ENTRY

APPEARANCES: For the Appellant - Clayton J. Oberholtzer
Oberholtzer & Oberholtzer
P. O. Box J
Medina, Ohio 44256

For the Appellee - William J. Brown,
Attorney General of the State of Ohio
BY: Fred R. Kass
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This matter came on for hearing before the Oil and Gas Board of Review consisting now of only a quorum of three (3) members upon notices of appeal filed herein under dates of December 23, 1970, April 27, 1971 and May 28, 1974, by the appellants, appealing from Adjudication Order No. 130, Amendment No. 1 to Adjudication Order No. 130, and Amendment No. 2 to Adjudication Order No. 130 as issued by the Chief of the Division of Oil and Gas, ordering that the permits authorizing the Baldwin Producing Corporation to operate the oil and/or gas wells located in Chatham Township, Medina County, Ohio on leases set forth in the Adjudication Order be cancelled and no longer valid as of the date of the order and amendments thereto, and further ordering that Baldwin Producing Corporation, or its agent, shall cause the wells so listed in Adjudication Order No. 130 and the Amendments thereto, all of which wells are in Chatham Township, Medina County, Ohio, to be properly plugged and abandoned, and that all necessary actions in plugging and abandoning operations be commenced not later than thirty (30)

days after receipt of said Adjudication Order and Amendments thereto and to be continued with due diligence until all of the wells are properly plugged and abandoned.

Adjudication Order No. 130 was issued on November 25, 1970, Amendment No. 1 to Adjudication Order No. 130 was issued on April 1, 1971, both orders being issued by Wayne T. Connor, Chief, Division of Oil and Gas. Amendment No. 2 to Adjudication Order No. 130 was issued on April 24, 1974, by G. Lyman Dawe, Chief, Division of Oil and Gas.

The matters were submitted to the Oil and Gas Board of Review upon the aforementioned notices of appeal, hearing dates having been set and later postponed upon request of one or both parties stating negotiations between the parties were occurring. A final hearing date was set for July 19, 1974 at 9:30 A.M., E.D.T., in the Conference Room in Building C, Department of Natural Resources, Fountain Square, Columbus, Ohio, at which time evidence was presented to the Oil and Gas Board of Review. Witnesses testifying and exhibits filed in this appeal are listed in the indices to the transcript of the aforementioned hearing.

The facts in this matter which appear undisputed are:

1. The subjects of Adjudication Order No. 130 are the wells in Chatham Township, Medina County, Ohio which were designated in Adjudication Order No. 130 on November 25, 1970, and which were set out in said Order as follows:

(a) Being the existing wells, approximately 41, drilled on the lease formerly known as T. W. Brinker, now Charles Jenkins, and located in Tract 14, Lots 6 and 7, Chatham Township, Medina County;

(b) and being the existing wells, approximately 36, drilled on the lease formerly known as L. L. Eaken, or Eakin, now Tom Brown, and located in Tract 16, Lot 22, Chatham Township, Medina County;

(c) and being the existing wells, approximately 92, drilled on the lease known as H. Essig, and located in Tract 13, Lots 2 and 3, Chatham Township, Medina County;

(d) and being the existing wells, approximately 89 drilled on the lease known as Hostettler, and located in Tract 15, Lot 5, Chatham Township, Medina County;

(e) and being the existing wells, approximately 21, drilled on the lease known as Wayne Mantz, and located in Tract 10, Lot 1, Chatham Township, Medina County;

(f) and being the existing wells, approximately 26, drilled on the lease known as T. McVickers, and located in Tract 2, Lot 1, Chatham Township, Medina County;

(g) and being the existing wells, approximately 1, drilled on the lease known as Etta Root, and located in Tract 16, Lot 22, Chatham Township, Medina County;

(h) and being the existing wells, approximately 1, drilled on the lease formerly known as John Garver, now Gordon Ross, and located in Tract 13, Lot 5, Chatham Township, Medina County;

(i) and being the existing wells, approximately 5, drilled on the lease known as Stentz, and located in Tract 13, Lot 2, Chatham Township, Medina County."

Further, that in said Order it was ordered that "Baldwin Producing Corporation, or its agent, shall cause the aforementioned wells, approximately 312, located in Medina County, to be properly plugged and abandoned." reciting that the action was based on:

"1. Records on file with the Division of Oil and Gas show that Baldwin Producing Corporation is the owner/operator of the aforementioned wells.

"2. Section 1509.12, Ohio Revised Code, states in part: '---Unless written permission is granted by the chief, any well which is --- incapable of producing oil or gas in commercial quantities shall be plugged---.'

"3. The Baldwin Producing Corporation was notified on or about January 27, 1970 that subject wells were in violation of Section 1509.12, R.C., and many of the several wells are now in violation of Section 1509.22, R.C., and there has been no effort made to produce these wells in a diligent and workmanlike manner for over one (1) year."

2. Amendment No. 1 to Adjudication Order No. 130, dated April 1, 1971, deleted the wells and leases described above in 1(b), (c), (e), (f), (g) and (i) from Adjudication Order No. 130, and said Amendment No. 1 also provided:

"1. Add the following:

'and being the existing wells, approximately 100, drilled on the lease known as Rumbaugh, and located in Tract 14, Lot 1, Chatham Township, Medina County.'

"2. Change the following paragraph:

'Further, that Baldwin Producing Corporation, or its agent, shall cause the aforementioned wells, approximately 312, located in Medina County, to be properly plugged and abandoned.' to read '. . . ., approximately 231, . . . .'

"3. Change the following paragraph:

'All necessary actions and plugging and abandoning operations must be commenced not later than thirty (30) days after receipt of this order . . . .', to read '. . . . receipt of this amended order . . . .'"

3. Amendment No. 2 to Adjudication Order No. 130 dated April 24, 1974 ORDERED:

"That the following additional wells be plugged and abandoned as required in this order:

(a) Being the existing wells, approximately 36, drilled on the lease formerly known as L. L. Eaken or Eakin, now Tom Brown, and located in Tract 16, Lot 22, Chatham Township, Medina County;

(b) and being the existing wells, approximately 92

drilled on the lease known as H. Essig, and located in Tract 13, Lots 2 and 3, Chatham Township, Medina County;

(c) and being the existing wells, approximately 21, drilled on the lease known as Wayne Mantz, and located in Tract 10, Lot 1, Chatham Township, Medina County;

(d) and being the existing wells, approximately 26, drilled on the lease known as T. McVickers, and located in Tract 2, Lot 1, Chatham Township, Medina County;

(e) and being the existing wells, approximately 1, drilled on the lease known as Etta Root, and located in Tract 16, Lot 22, Chatham Township, Medina County;

(f) and being the existing wells, approximately 5, drilled on the lease known as Stentz, and located in Tract 13, Lot 2, Chatham Township, Medina County;

(g) and being the existing wells, approximately 40, drilled on the lease known as the Buchanan lease on land as described in lease volume 59, page 278 of the Medina County Recorder's Office, Medina, Ohio, being Tract 2, part of Lots 1 and 2, Chatham Township, Medina County;

(h) and being the existing wells, approximately 50, drilled on the leases known as the North Watson and South Watson lease on land described in lease volume 20, page 582 and lease volume 26, page 167 respectively, of the Medina County Recorder's Office, Medina, Ohio, being Tract 10, Lot 3, and Tract 9, Lot 2, respectively, in Chatham Township, Medina County."

"Plugging and abandoning operations on said wells contained in this amendment shall be commenced no later than 15 days after receipt of this amendment."

"Said wells should be plugged within such time as is reasonably required, to properly complete said operations, wherein said operations shall be continued in a diligent and workmanlike manner, until all wells are plugged."

Said Amendment No. 2 to Adjudication Order No. 130 contained the following "FINDINGS OF FACT" and "CONCLUSIONS OF LAW":

"(1) FINDINGS OF FACT:

The wells described in this amendment, as shown by investigation and records have been idle since at least one year prior to January 27, 1970.

Public records and investigation show that Baldwin Producing Corporation is the owner/operator of the aforementioned wells.

No attempts have been made to prudently operate said wells since prior to January 27, 1970.

(2) CONCLUSIONS OF LAW:

This Order is authorized by Section 1509.12, Revised Code, which states in pertinent part:

> 'Unless written permission is granted by the chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged, but no well shall be required to be plugged under this section which is being used to produce oil or gas for domestic purposes, or which is being lawfully used for a purpose other than production of oil or gas. When the chief finds that a well should be plugged, he shall notify the owner to that effect by order in writing. . .'"

4. The wells which are the subject matter of Adjudication Order No. 130, Amendment No. 1 to Adjudication Order No. 130, and Amendment No. 2 to Adjudication Order No. 130 have not been produced or operated since at least February of 1968.

5. All of the wells that are the subject matter of Adjudication Order No. 130 and Amendments thereto were drilled many years prior to 1968.

6. All of the leases which are the subject matter of Adjudication Order No. 130 and Amendments thereto, with the exception of the Mantz lease and Buchanan lease were executed during the period of 1910 to 1918. The Mantz lease was executed in 1939 and the Buchanan lease was executed in 1944.

7. Adjudication Order No. 130 together with Amendments No. 1 and 2 to said Order were served upon and received by Mr. Clayton J. Oberholtzer as Statutory Agent of Baldwin Producing Corporation, and as legal counsel for Baldwin Producing Corporation.

8. Inspectors of the Division of Oil and Gas visited and observed the wells on the leases referred to above on numerous occasions from 1968 through 1974. At no time during such visits and observations were any of the wells on the leases referred to above being produced or were efforts being made to produce oil or gas.

9. Appellant presented no reasonable requests to the Chief of the Division of Oil and Gas for the wells on the leases referred to above to stand idle nor did it present any firm plans to produce oil and gas in commercial quantities.

It appears to this Board that the following questions are presented for its consideration:

I. Is the Order of the Chief directing that Baldwin Producing Corporation, or its agents, shall cause the wells listed in Adjudication Order No. 130, Amendment No. 1 to Adjudication Order No. 130, and Amendment No. 2 to Adjudication Order No. 130, all of Chatham Township, Medina County, Ohio, to be properly plugged and abandoned and that necessary actions be commenced not later than thirty (30) days after receipt of the order lawful and reasonable?

II. In the event that Adjudication Order No. 130, Amendment No. 1 to Adjudication Order No. 130, and Amendment No. 2 to Adjudication Order No. 130 is/are unlawful and/or unreasonable and therefore should be vacated, is/are there any order or orders that this Board will make?

Testimony and other evidence offered concerning the questions presented to the Board are as follows:

APPELLANT'S TESTIMONY

Appellant offered testimony that all of the wells that are the subject matter of the Adjudication Order No. 130 and Amendments thereto were drilled many years prior to 1968 with some of the wells being drilled during the period of 1910 to 1920, that many of the wells located on the leases described in Adjudication Order No. 130 and Amendments thereto are buried beneath the surface, that most of the wells that are buried beneath the surface are very difficult to locate, that it is possible that some of the wells that are buried are already plugged, that the number of wells that might exist on the leases referred to above are more in the neighborhood of 400 wells than the 502 wells stated on the Adjudication Order No. 130 and Amendments thereto and that it would be impossible to locate all of the wells on the above referred to leases without a great deal of time and effort being expended.

The major part of the Appellants testimony dealt with trying to prove that there were fewer wells on the leases above referred to than the number listed in the Adjudication Order No. 130 and Amendments thereto.

Appellant further offered testimony that if Baldwin Producing Corporation was not hindered by the Adjudication Order No. 130 and Amendments thereto, and if the necessary equipment were available and if the necessary funds were available then some of the wells might be put back into production. Testimony was further offered that if some of the wells were put back into production, the production money could then be used to pay for plugging of other wells.

Appellant offered testimony that it had entered into some arrangement some time ago to sell the subject leases for cash in the amount of approximately $250 to a Frank Madison and that Mr. Madison wished to produce the wells and particularly the wells on the Essig lease because the price of oil had increased, but that Appellant and Mr. Madison had been prevented from such production of the wells by Adjudication Order No. 130 and the Amendments thereto.

Appellant's witness testified that there had been no production on any of the wells on the leases referred to in Adjudication Order No. 130 and Amendments thereto since February 1968, that the electricity had been turned off in 1968 and that no maintenance on any of the wells had been done since February 1968 for purposes of commercial production.

Appellant's witness testified that Appellant was unable to produce any production records on any of the wells for the periods prior to 1968 and that since there was no production subsequent to February 1968 there were no production records for the period subsequent to February 1968.

Appellant further offered testimony that neither funds nor materials were available to maintain the wells that are the subject matter of Adjudication Order No. 130 and Amendments thereto for commercial production.

APPELLEE'S TESTIMONY

The Attorney General on behalf of the Appellee presented considerable evidence concerning well site inspection by inspectors from 1967 through July 1974, correspondence with Appellant, non-production of the subject wells and further presented considerable evidence concerning pollution caused by seepage from oil wells that are the subject matter of this appeal.

Appellee offered testimony through inspectors and maps on file with the Division of Oil and Gas that there were the number of wells on each lease as hereinafter set forth:

North and South Watson Lease - 50 wells
Essig Lease - 92 wells
Stentz Lease - 5 wells
McVickers Lease - 25 wells
Mantz Lease - 21 wells
Brinker Lease - 36 wells
Buchanan Lease - 11 wells
Eakin Lease - 34 wells
Root Lease - 1 well
Rumbaugh Lease - 33 wells
Hostettler Lease - 89 wells
Garver Lease - 1 well

Inspectors of the Division of Oil and Gas who testified on behalf of Appellee stated that it was difficult to locate some

of the wells in the field but that a significant number of the wells had been located, were not producing and that the equipment on such wells was in such disrepair that none of the wells could produce. Much of their testimony was based upon maps in the possession of the Division of Oil and Gas on which were indicated the location of wells on the several leases. These maps were introduced as exhibits on behalf of the Appellee. Testimony was to the effect that these maps were either drawn by an agent of Baldwin Producing Corporation or their predecessor in title to the leases that are the subject matter of this appeal. Witnesses for the Appellee testified further as to the facts stated in the Adjudication Order and Amendments 1 and 2 to such Order.

Appellee offered testimony through the introduction of Amendment No. 1 to Adjudication Order No. 130, dated April 1, 1971, which removed the Eakin lease, Essig lease, Mantz lease, McVickers lease, Root lease and Stentz lease from the original Adjudication Order No. 130 and allowing the Appellant to operate these leases from that date to the date of Amendment No. 2 to Adjudication Order No. 130, dated April 24, 1974. Testimony was also offered to the effect that the landowners who owned the property on which the above-described wells were located had received notice of the subject hearing, several landowners appeared, and testimony was given that the landowners wished to have the wells plugged.

FINDINGS OF FACT

This Board makes the following findings of fact and application thereof concerning question I set forth on page 7 hereof:

1. This Board finds that the facts are as set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 on pages 2 through 7 hereof.

2. This Board finds that the Chief of the Division of Oil and Gas had and has reasonable grounds to believe that the subject wells were and are incapable of producing oil or gas in commercial quantities.

3. This Board finds that there are no shut-in

commercial gas wells involved in this appeal and that there are no wells being used to produce oil or gas for domestic purposes; and further finds that none of the wells were sufficiently equipped to produce oil and/or gas and to market either.

4. The Board finds that although the Appellant was requested in writing by this Board to present at the hearing on July 19, 1974 maps, diagrams and descriptions dealing with the wells which are the subject of the appeal and correspondence and memoranda from, to and among Baldwin Producing, Paul Baldwin and Frank Madison concerning the operation and sales of such leases, that Appellant did not present any of such requested data.

5. This Board finds that neither the Appellant nor Frank Madison offered any information as to estimated costs to put any wells, and particularly the wells on the Essig lease, into production nor did Mr. Madison or Appellant offer any firm plan for putting any of the subject wells, and particularly the wells on the Essig lease, into production; and further that for a period from April 1, 1971 until April 24, 1974, a period of three years, there was no Order prohibiting Appellant or Mr. Madison from producing the Essig lease and that Appellant was therefore not prevented by any Adjudication Order from producing said Essig lease, and therefore, this Board finds that Appellant's proffered testimony that it wished to produce the wells on the Essig lease is without substance.

This Board has reviewed similar questions in several earlier appeals, and reference is hereby made to Appeals Number 7, 8, 16, 17 and 18. It appears to this Board that the Appellant was either unaware of these previous appeals or chose to ignore them.

This Board's Entry in Appeals No. 7 and 8, which were affirmed in Appeals No. 16, 17 and 18, set forth the Board's opinion concerning the interpretation of Section 1509.12, Revised Code of Ohio, the meaning of the word "incapable", and has set forth certain criteria for the determination of whether or not the Chief of the Division of Oil and Gas had reasonable grounds to believe that wells are incapable of producing oil or gas in commercial quantities. At pages 5 through 9 of the Appeal

No. 8, (which decision of the Board was affirmed by the Court of Common Pleas of Franklin County, Ohio) it was noted that:

> "Amended Section 1509.12, Revised Code, imposes an absolute statutory duty upon the owner of prudent operation, and authorizes the Chief to order any well to be plugged when he has reasonable grounds to believe that it is incapable of producing oil or gas in commercial quantities.
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> "Section 1509.12, Revised Code, as originally enacted in 1965, provided in part that:
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> > 'Unless written permission is granted by the chief of the division of oil and gas, no owner of any oil well shall permit said well to stand more than six months without diligently pumping or flowing same.'
>
> "This particular provision seems to indicate that the General Assembly of Ohio intended to impose an absolute statutory duty of operation upon the owner, as a substitute for the owner's common law duty of prudent operation. Petroleum Conservation in Ohio, 26 O.S.L.J. 591, p. 596.
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> "The implied covenant to develop leased land with reasonable diligence exists after production and during the primary term as well as after such term (Gregory v. Sohio Pet. Co., 261 S.W.(2d) 623). And, upon discovery of oil or gas in paying quantities, a further implication follows that exploration, development and production will be prosecuted with such diligence as may reasonably be required to accomplish the object of the lease. (Knight v. Chicago Corp., 188 S.W. (2d) 564).
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> "In 1967, Section 1509.12, Revised Code, was amended to provide that:
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> > "Unless written permission is granted by the Chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged. . .'
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> "The purpose of this amendment was not to abrogate the statutory duty of operation imposed in the original enactment. This view is supported by the following statement, taken from the Report of the Oil and Gas Law Committee, as published in the October 24, 1966 issue of the Ohio State Bar Association Report, at page 1227:
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> > 'This amendment constitutes legislation designed to promote reform in the law. The existing statute suggests that an owner may permit a well to stand almost six months and if written permission is granted by the chief of the Division of Oil and Gas, may go longer than six months without diligently pumping or flowing same. Oil and gas cases dealing with the implied covenant to diligently operate a lease impose a prudent operator standard upon all operators. In some instances a prudent operator would not permit a well to stand for thirty days without diligently pumping same. An arbitrary six months figure creates confusion and could encourage litigation over the question whether the statutory language intended to permit a six months delay in operations.'

"The Oil and Gas Law Committee recommended that the six months requirement be deleted because of the possibility that it would be improperly interpreted as authorizing a six months delay in operations. It is suggested that the Committee was, in fact, trying to eliminate a possible defense that could be used by the owner when charged with a failure to perform his common law duty of prudent operation.

"It is the State's position that the 1967 Amendment, which requires the plugging of wells incapable of producing in commercial quantities, should not be interpreted as a substantive change in the statute or in the common law duty to diligently operate. As the committee stated in its report, at page 1225,

> '...The thrust of our work has been towards amendments which we believe are necessary to avoid litigation over ambiguous sections and not to achieve substantive changes involving private rights...'

"A literal interpretation of the 1967 Amendment to Section 1509.12, Revised Code, would not only result in an unintended substantive change but would also, in effect, impose upon the State a duty to establish scientific proof that an idle well was not capable of producing oil or gas in commercial quantities. Surely, the legislature did not intend to impose such an unreasonable burden upon the division of oil and gas.

"The only reasonable construction of Amended Section 1509.12, Revised Code, is one which is consistent with the public policy previously established by the original enactment, that is, that an owner has an absolute statutory duty of prudent operation. An analysis of Section 1509.12, Revised Code, on this basis would allow the Chief to issue an order requiring the plugging of a well when the Chief has reasonable grounds to believe that such well is incapable of producing oil or gas in commercial quantities. The implicit assumption in this interpretation is that a reasonably prudent operator would diligently develop all wells which are capable of producting oil or gas in commercial quantities. This assumption is valid since it is not in the public interest nor in the national interest that property be kept out of commerce and undeveloped (Romero v. Humble Oil & Refining Co., et al., 93 F.Supp. 117). Chapter 1509 gives the Division of Oil and Gas, through the Chief, the duty to protect the public interest in petroleum conservation by direct regulation.

"It appears clear that under Section 1509.12, as originally enacted, there was an absolute requirement that 'unless written permission' was granted by the Chief of the Division of Oil and Gas, no oil or gas well would be permitted to stand for more than six months. This Board is of the opinion that Professors Williams and Meyers were correct that the legislature had established 'an absolute statutory duty of operation as a substitute . . . for the common law duty of prudent operation.' Petroleum Conservation in Ohio, 26 O.S.L.J. 591, p. 596.

"The basic legal questions in this appeal are then: (1) whether by revision of 1509.12, and the omission of the 'six months' term and utilization of the word 'incapable', the legislature intended to eliminate any statutory duty of operation and revert to a common law duty of prudent operation (which had been upheld in Ohio in the case of Harris v. Ohio Oil Company, 57 Ohio State, 118, 48 N.E. 502 (1897) or (2) whether the legislature was attempting to correct language which might be improperly interpreted as authorizing a six months delay in operations, and to give the Chief more latitude in which to act, and (3) in the event question 1 is answered affirmatively, does the term 'incapable' mean (a) a 'technical or proprietary hope' that the well will produce in commercial quantities or (b) that in the opinion of a reasonably prudent operator the well will produce in commercial quantities, or (c) does the Chief have reasonable grounds to believe that the well is 'incapable of producing oil or gas in commercial quantities'.

"This Board is of the opinion that the legislature did not intend to eliminate the six months period and the statutory duty of operation and revert to the common law duty of prudent operation. There are several valid reasons for this opinion. The first is that the proposed amendment to Section 1509.12 was drafted originally by the Special Committee on Oil and Gas Law of the Ohio State Bar Association, and the Report of that Committee is quoted above which indicates the reason for the amendment. It is further recognized by the Board that when Amended Substitute House Bill 224 of 1965 (Chapter 1509, Ohio Revised Code) was first enacted there were fears among oil and gas producers in the State of Ohio that the Chief of the Division of Oil and Gas would be an administrator who did not recognize that the development of oil and gas resources within the state was a part of conservation, but after several years of operations by the Division of Oil and Gas created by such statute, effective October 15, 1965, oil and gas producers within the state have found that this Division was sympathetic to the problems of the oil and gas industry, as well as being cognizant of the interests of the public and landowners. The Board also recognizes that the Division of Oil and Gas and the landowners and others within the State of Ohio were faced with several difficult problems following the Morrow County oil boom. One of the significant problems was that a large number of out-of-state operators had come into the state, begun drilling wells, had not completed the wells and/or produced the wells with diligence, and then fled the state prior to the expiration of the six months period provided in the original statute. It is also recognized that there are many instances when wells should not be allowed to stand idle for more than a few days and certainly not a six months period; in cases of such oil and/or gas wells, there may be fire hazards, the possibility of leakage or seeping and even other hazards from open but uncompleted wells.

"This Board is further of the opinion that the legislature did not intend the word 'incapable' to mean that there is no 'technical or proprietary hope' that the well will produce in commercial quantities. This Board is of the opinion that the test is whether the Chief of the Division of Oil and Gas has reasonable grounds to believe that such well is not or will not produce oil or gas in commercial quantities. It should be noted that the Ohio Revised Code Section 1509.12 does not apply in the opinion of the Board to a 'shut-in commercial gas well' nor will such statute apply where a well is being used to produce oil or gas for domestic purposes. ... In fact, in this appeal, all of the wells had stood idle for a period in excess of six months and the Chief had taken the further step, not required by statute, of corresponding with the appellant to allow him the further opportunity to obtain the required written permission of the Chief for wells to stand idle.

"Where a determination must be made whether the Chief had reasonable grounds to believe that a well is incapable of producing oil or gas in commercial quantities, this Board suggests the criteria for such determination might be as follows:

"1. Has the owner of the well requested permission from the Chief for the well to stand idle and presented firm, reasonable plans which he is capable of carrying out to produce oil or gas in commercial quantities?

"2. How recently the well has, in fact, produced oil or gas in commercial quantities and how much oil or gas has been sold?

"3. Is the well equipped sufficiently with both surface and inhole equipment to allow for commercial production?

"4. How recently have actual good faith on site attempts been made to produce the well in commercial quantities?

"5. Has the state caused investigation to be made on the well site?

"This Board is of the opinion that the basic intent of the revised Section 1509.12 was to allow the Chief more latitude in carrying out the initial legislative mandate of not allowing wells to stand idle, and that the Chief, under the presently effective 1509.12, would have power to grant written permission to an operator to allow a well to stand idle beyond the six months period."

In applying the above criteria to the evidence submitted by the Appellant we find that:

1. Baldwin Producing Corporation has not requested permission from the Chief of the Division of Oil and Gas for the wells which are the subject matter of this appeal to stand idle and has not presented firm, reasonable plans which it is capable of carrying out to produce oil or gas in commercial quantities. It was admitted by all of the parties that there had been no production nor any attempt at production since February of 1968. There was no evidence introduced to the effect that the Appellant

had submitted reasonable plans to the Chief in regard to production of oil or gas in commercial quantities from any of the wells.

2. No evidence was introduced as to how recently any well produced oil or gas in commercial quantities and how much oil or gas had been sold. It was agreed by both parties that there had been no production of oil or gas since February of 1968. No production records were produced as to how much oil or gas had been sold from the subject wells prior to February 1968.

3. The greater weight of the evidence produced showed that the subject wells were not sufficiently equipped with both surface and in-hole equipment to allow for commercial production. The Appellee produced evidence that all equipment that could be seen from the surface was very rusty, that some of the parts of the wells had been removed and that no commercial production could be had from the subject wells without considerable renovation.

4. All of the testimony produced established that there had not been any actual good faith on site attempts made to produce the subject wells in commercial quantities since February 1968.

5. This Board further finds that the state has caused investigation to be made on the well site and that proper notice has been given to Appellant; that these wells have not been and are not shut-in commercial gas wells and that the wells are not being used to produce oil or gas for domestic purposes.

Based upon the above application of the criteria to the evidence presented in this appeal, this Board is of the opinion that the Chief of the Division of Oil and Gas had reasonable grounds to believe that the subject wells were and are incapable of producing oil or gas in commercial quantities.

This Board makes the following findings of fact and application thereof concerning question number II set forth on page 7 hereof:

1. This Board finds that the facts are as set forth in paragraph 1, 2, 3, 4, 5, 6, 7, 8 and 9 on pages 2 through 7 hereof.

2. This Board further finds that the actual number of

wells that were established by evidence appear on page 9 hereof under Appellee's testimony.

3. This Board further finds that testimony indicates a discrepancy in the number of wells stated in Adjudication Order No. 130, Amendment No. 1 to Adjudication Order No. 130, and Amendment No. 2 to Adjudication Order No. 130, and that in this minor respect said Order and Amendments thereto are unreasonable and this Board orders that Adjudication Order No. 130, Amendment No. 1 to Adjudication Order No. 130, and Amendment No. 2 to Adjudication Order No. 130 be and the same are hereby amended so that the number of wells set forth on page 9 herein are substituted for the number of wells that actually appear on the Adjudication Order No. 130 and the Amendments thereto. The Board recognizes the difficulty which the Appellee had in attempting to determine the number of wells on these leases. It is of the opinion that Appelle has done an excellent job in attempting to determine the number of wells and to carry out its duty to see that wells which are incapable of producing in commercial quantities are plugged, therefore, in order to assist in accomplishing the purposes of Ohio Revised Code Section 1509.12, this Board further orders that the following language be added to Adjudication Order No. 130, Amendment No. 1 to Adjudication Order No. 130 and Amendment No. 2 to Adjudication Order No. 130:

> "In addition to the above mentioned wells on the above mentioned leases, all additional wells that may be found to exist on the above leases shall be subject to this Adjudication Order No. 130, and the Amendments thereto, and that Baldwin Producing Corporation or its agent, shall cause all additional said wells located on said leases in Chatham Township, Medina County, Ohio, to be properly plugged and abandoned.
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> "All necessary actions in plugging and abandoning operations must be commenced not later than thirty (30) days after the discovery of such well or wells and shall continue with due diligence until such wells are properly plugged and abandoned."

The Appellant spent a great deal of time arguing that there were fewer wells on the leases that are the subject matter of this appeal than the State listed in its Order because the wells are

not visible and therefore the Division cannot order them plugged. However, this Board is of the opinion that merely because the wells are buried beneath the surface does not alleviate the Appellant's obligation to plug these wells that Adjudication Order No. 130 as amended has determined to be no longer capable of producing oil or gas in commercial quantities. The evidence submitted by the Appellee that consisted of maps on file with the Division of Oil and Gas show that these maps were made by Baldwin Producing Corporation, or its agents, or by its predecessor in title to the leases. Mr. Paul Baldwin testified for the Appellant that he attempted to locate these wells on these maps to the best of his ability. These maps were submitted to the Division of Oil and Gas by the Appellant previous to this appeal and used by it and other persons in the industry and relied upon by the Appellant, Appellee, and other persons in the industry. The Appellant cannot now be heard to complain that the maps are inaccurate and that it is impossible to locate the wells that have been spotted on the maps.

Further the Appellant offered testimony to the effect that many of the wells located on the leases were drilled and abandoned but not plugged prior to the time that the Appellant acquired the leases. However, this Board is of the opinion that by acquiring the leases with the existing wells on them the Appellant acquired all of the liabilities which arise in connection with the leases in addition to the assets. Mr. Paul Baldwin testified that occasionally an abandoned well would pop up out of nowhere which might prove to be an asset to the Appellant or it might prove to be a liability. This Board is of the opinion that the Appellant acquired all of the wells that were located on the leases and has responsibility for plugging such wells.

During the hearing both the Appellant and Appellee made numerous objections to offers of testimony and at that time the Board indicated it would rule later on the admissibility of such testimony. Upon review of the several objections this Board rules that such testimony is admissible although such testimony was not determinative in the decision of the Board.

CONCLUSION

Based upon the applicable law and the facts submitted and giving due consideration to the conservation, safety, and correlative rights applicable in this appeal, the Board hereby makes the following orders which correspond with the two questions set forth on page 7 of this Entry:

I. The Board affirms the Adjudication Order No. 130, Amendment No. 1 to Adjudication Order No. 130 and Amendment No. 2 to Adjudication Order No. 130 of the Chief of the Division of Oil and Gas directing Baldwin Producing Corporation, or its agent, to cause the wells listed as herein amended, located in Chatham Township, Medina County, Ohio, to be properly plugged and abandoned and that all said necessary actions in plugging and abandoning operations shall be commenced no later than fifteen (15) days after date of this Entry of the Oil and Gas Board of Review and completed with due diligence thereafter, except that the number of wells to be plugged shall be as set forth in II below rather than as set forth in the Adjudication Order No. 130 as amended.

II. This Board further finds that the number of wells to be plugged are as set forth below and said Adjudication Order No. 130 and Amendments No. 1 and No. 2 thereto are hereby amended by this Entry:

(a) Being the existing wells, approximately 36, drilled on the lease formerly known as T. W. Brinker, now Charles Jenkins, and located in Tract 14, Lots 6 and 7, Chatham Township, Medina County;

(b) and being the existing wells, approximately 34 drilled on the lease formerly known as L. L. Eaken, or Eakin, now Tom Brown, and located in Tract 16, Lot 22, Chatham Township, Medina County;

(c) and being the existing wells, approximately 92, drilled on the lease known as H. Essig, and located in

Tract 13, Lots 2 and 3, Chatham Township, Medina County;

(d) and being the existing wells, approximately 89, drilled on the lease known as Hostettler, and located in Tract 15, Lot 5, Chatham Township, Medina County;

(e) and being the existing wells, approximately 21, drilled on the lease known as Wayne Mantz, and located in Tract 10, Lot 1, Chatham Township, Medina County;

(f) and being the existing wells, approximately 25, drilled on the lease known as T. McVickers, and located in Tract 2, Lot 1, Chatham Township, Medina County;

(g) and being the existing wells, approximately 1, drilled on the lease known as Etta Root, and located in Tract 16, Lot 22, Chatham Township, Medina County;

(h) and being the existing wells, approximately 1, drilled on the lease formerly known as John Garver, now Gordon Ross, and located in Tract 13, Lot 5, Chatham Township, Medina County;

(i) and being the existing wells, approximately 5, drilled on the lease known as Stentz, and located in Tract 13, Lot 2, Chatham Township, Medina County.

(j) and being the existing wells, approximately 33, drilled on the lease known as the Rumbaugh, and located in Tract 14, Lot 1, Chatham Township, Medina County;

(k) and being the existing wells, approximately 11, drilled on the lease known as the Buchanan lease on land as described in lease volume 59, page 278, of the Medina County Recorder's Office, Medina, Ohio, being Tract 2.

(l) and being the existing wells, approximately 50, drilled on the leases known as the North Watson and South Watson lease on land described in lease volume 20, page 582 and lease volume 26, page 167, respectively, of the Medina County Recorder's Office, Medina, Ohio, being Tract 10,

Lot 3, and Tract 9, Lot 2, respectively, in Chatham Township,

Medina County.

"In addition to the above mentioned wells on the above mentioned leases, all additional wells that may be found to exist on the above leases shall be subject to this Adjudication Order No. 130, and the Amendments 1 and 2 thereto, and that Baldwin Producing Corporation or its agent, shall cause all additional said wells, located on such leases in Chatham Township, Medina County, Ohio to be properly plugged and abandoned.

All necessary actions in plugging and abandoning operations must be commenced not later than thirty (30) days after the discovery of such well or wells and shall continue with due diligence until such well or wells are properly plugged and abandoned."

These orders effective this
15th day of October, 1974

OIL AND GAS BOARD OF REVIEW

BY:_____
J. Richard Emens, Secretary,
who certified that the foregoing
is a true and correct copy of the
Entry in the above matters of the
Oil and Gas Board of Review
effective October 15, 1974.