

BEFORE THE RECLAMATION COMMISSION

MURRAY ENERGY CORPORATION, *et al.*, :

Appellants, :

-vs- :

DIVISION OF MINERAL RESOURCES,
MANAGEMENT, :

Appellee, :

and :

OXFORD OIL COMPANY, :

Intervenor. :

Case No. RC-11-006

Review of Chief's Decisions re:
Russell Well #1 (Oxford Oil);
Permit D-360

FINDINGS, CONCLUSIONS & ORDER OF THE COMMISSION

Appearances: Mark Stemm, Michael A. Wehrkamp, Counsel for Appellants Murray Energy Corporation, *et al.*; Molly Corey, Dan Martin, Megan DeLisi, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management; John K. Keller, David W. Hardymon, Michael J. Settineri, Timothy B. McGranor, Counsel for Intervenor Oxford Oil Company.

Date Issued: October 6, 2011

BACKGROUND

On June 29, 2011, Murray Energy Corporation ["Murray Energy"], American Energy Corporation ["AEC"], The Ohio Valley Coal Company ["OVCC"] and Consolidated Land Company ["CLC"]¹ filed with the Reclamation Commission a notice of appeal from a decision rendered by the Chief of the Division of Mineral Resources Management [the "DMRM"]. This decision granted a permit to drill an oil & gas well, to be known as the Russell #1 Well.

¹ The Commission will refer to the Appellants collectively as the "Murray Companies" or the "Murray Appellants."

Applications to drill the Russell Well were submitted to the DMRM by Oxford Oil Company ["Oxford Oil" or "Oxford"]. On July 5, 2011, Oxford Oil filed a Motion to Intervene into this appeal. On July 20, 2011, the Commission granted Oxford's motion, and Oxford has participated in this matter with full-party status.

The Russell Well is proposed to be sited in an area where OVCC plans to conduct future longwall mining. The Murray Appellants oppose the DMRM Chief's approval of the applications to drill the Russell Well and the Chief's conditional issuance of a drilling permit for the Russell Well.

On August 16, 2011, the DMRM filed a Motion to Dismiss, asserting that Appellant AEC lacked standing to challenge the DMRM Chief's decision under appeal. On September 8, 2011, the Commission granted the DMRM's motion, and AEC was removed as an appellant.

On July 19, 2011, Intervenor Oxford Oil filed a Motion to Dismiss, asserting that the Murray Companies' appeal to the Commission was not timely filed, and/or that the issues to be considered by the Commission should be limited. On September 21, 2011, the Commission denied Oxford's motion, and clarified the issues to be considered in this appeal.

This cause came on for hearing before the Reclamation Commission on July 20 & 21, 2011, August 3 & 4, 2011 and August 17 & 18, 2011. At hearing, the parties presented evidence, and examined witnesses, appearing for and against them. Written closing arguments were submitted, with the final filing being made on September 7, 2011.

After a review of the Record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Pursuant to coal mining permit D-360, OVCC operates an underground coal mine, known as the Powhatan #6 Mine. Permit D-360 was issued to OVCC by the DMRM, and authorizes OVCC to mine the Pittsburgh #8 coal seam. In this area, the Pittsburgh #8 coal seam varies in thickness, but may be as thick as 68.4 inches. The Powhatan #6 Mine has been in existence for many years and has undermined several thousand acres in Belmont County, Ohio.

2. The Powhatan # 6 Mine is a longwall mining operation. The longwall mining method is a full-coal extraction technology, which completely removes large blocks, or "panels," of coal. The length and width of the mining panels are determined by the mine plan and the size of the longwall mining equipment. Panels in the area at issue are anticipated to be as long as two miles and as wide as 1500 feet. Placement of the mining panels is determined by many variables, including thickness and quality of the coal, infrastructure requirements, the location of development entries and previous longwall panels, geological concerns, and the existence of geological faults or other anomalies.

3. In order for a longwall mine to be profitable, large capital investment is required, including the ownership of extensive coal reserves. As large capital investment is necessary to develop a longwall mine, long-term planning is, likewise, required.

4. When designing a longwall mine, large areas, or "districts," are identified as areas where full-coal extraction will occur. Actual panel placement within these mining districts is not determined until the development entries (mined by the room & pillar method) approach the identified mining district. For planning purposes, mining districts are laid out years in advance of mining. However, the actual location, length and width of the longwall panels may, and frequently does, change as active mining progresses towards the planned future mining areas.

5. Due to the nature of the mining equipment, a longwall mine cannot easily or economically avoid, or "mine around," features located either on the surface or underground.

6. OVCC is a subsidiary of Murray Energy. CLC (also a subsidiary of Murray Energy) serves as OVCC's land holding company, maintaining title to the coal and mining rights until shortly before OVCC actually mines an area. All coal mined by OVCC is eventually transferred to AEC for ultimate sale to utilities.²

7. Oxford Oil is a registered oil & gas operator in the state of Ohio, and operates many oil & gas wells in this state. Oxford carries a \$15,000 "blanket bond," covering all of its wells in Ohio.

8. On February 10, 2011, Oxford Oil submitted to the DMRM two applications to drill an oil & gas well, to be known as the Russell #1 Well.³ [DMRM Ex. B & C.] The well was proposed to be drilled on the Dale Russell property, located in Goshen Township, Belmont County, Ohio. Goshen Township is a "coal bearing township," as defined by O.R.C. §1561.06.

9. CLC holds title to the coal and mining rights on the Dale Russell property. The oil & gas rights on the Dale Russell property remain reserved to the surface owner. Mr. Russell leased these oil & gas rights to Oxford Oil.⁴

10. OVCC is actively mining in an area approximately 4 miles east of the proposed Russell Well location. The longwall mining district in which the Russell Well is proposed to be located is not currently covered by a mining permit, or by an application for permit. It is uncertain when actual mining in this district will occur. Witnesses for Murray Energy testified that mining could commence as early as 2014. However, the current mine projection map indicates that mining in this area will commence in 2021 or 2022.

² AEC (also a subsidiary of Murray Energy) is the entity that holds contracts for the sale of OVCC's coal to the utilities. On September 8, 2011, AEC, an original appellant in this matter, was dismissed as a party to this appeal.

³ Two drilling applications were submitted for the Russell Well. One drilling application proposed to install the Russell Well as a vertical well. The second drilling application proposed to install this well as a horizontal well. Regardless of whether the Russell Well is drilled vertically or horizontally, the proposed well would penetrate the Pittsburgh #8 coal seam at the same location and in the same manner. [DMRM Ex. B & C.]

⁴ O.R.C. §1513.07(B)(1)(i) and §1513.07(E)(2)(e)(iii) forbid the DMRM Chief from adjudicating property rights disputes. Therefore, the jurisdiction of this Commission is, likewise, limited. The Commission accepts the positions of the parties as to mineral ownership, and makes no further factual determination in this regard.

11. Murray Energy has submitted a blanket request to the DMRM, asking to be informed of any drilling applications associated with proposed wells in Belmont and Monroe Counties, Ohio.

12. On February 14, 2011, the DMRM notified OVCC of Oxford Oil's applications to drill the Russell Well in Belmont County, Ohio. The DMRM's notification letter stated in part:

Pursuant to section 1509.08 of the Ohio Revised Code ("RC"), an owner or lessee of an affected mine may object to the proposed well location or any other possible site within fifty (50) feet of the original location and, if the Chief determines the objection is well founded, he will disapprove the drilling permit. This is a two-step process where you must establish yourself as the owner/lessee of an "affected mine" before your objections will be considered.

Any response to this letter should fully explain all reasons to support your claim that your mine will be affected if the subject well is drilled. In addition, you should also fully explain all reasons for the objection and include any supporting documentation you want to be considered for the division to make the determination under RC 1509.08. ...

The DMRM's notification letter included a plat, provided by Oxford Oil, showing the proposed location of the Russell Well, and invited OVCC to propose "any potential alternative drilling location(s)." [DMRM Ex. D & E.]

13. On February 21, 2011, OVCC and CLC filed objections to the applications to drill the Russell Well. OVCC and CLC's submission cited four reasons for objection:

[1.] ... [T]he first principal reason for objection is that [OVCC and CLC] fully intend to mine their coal property at and through these proposed well locations. ... Further, as shown in the ... longwall panel projection map ... both of the proposed wells are located directly within a projected longwall mining panel. As a result of the full-coal extraction longwall mining method planned, the wells are also located within the subsidence area.⁵ In sum, [OVCC] has determined this seam at this location at this thickness to be very recoverable and will mine it all.

⁵ After the removal of coal from a longwall panel, the rock that was situated above the coal collapses into the mine void. "Subsidence" results from the settling of the strata overlying an area where coal has been fully removed. Subsidence is an inherent and planned aspect of the longwall mining process.

[2.] The second principal reason for objection is that the proposed well, if permitted, will interfere with mining.... [i.e., OVCC cannot mine through an unplugged oil & gas well, and there is a considerable expense associated with mining "around" an unplugged well]

[3.] The third reason is that the Companies own the No. 8 coal along with a "free, uninterrupted right of way through, upon and under said land ...".

[4.] Finally, the Division must recognize that Ohio public policy favors coal development when conflicts arise with oil and gas...

In their February 21, 2011 objection, OVCC and CLC further stated that they could not identify any "alternative" drilling sites within their coal reserves. [DMRM Ex. F.]

14. On May 13, 2011, the DMRM Chief responded to OVCC and CLC's objections to the siting of the Russell Well. In his response, the DMRM Chief stated:

OVCC has a permit to longwall mine the #8 coal in Goshen Township and is actively mining in an area to the east of the proposed well location. The area beneath the proposed location of the #1 Dale Russell well is not currently permitted for coal mining and there is no pending application to mine coal from this property. OVCC indicated in its objection to the permit application that it intends to longwall mine the coal from the proposed well location and will be adversely affected by the presence of a well on the Russell property. OVCC's objection did not indicate when the coal will be mined beneath the proposed well location.

Having reviewed the objections of OVCC and having given due consideration to all available relevant information, I have determined the objections as submitted are not sufficiently well founded because conditions to the permit can reasonably be expected to prevent a substantial risk that the oil and gas operation will result in violations of RC Chapter 1509 that will present an imminent danger to public health or safety or damage to the environment.⁶

⁶ While the articulated basis for the permit conditions is to cure a violation of O.R.C. Chapter 1509, the conditions are directed to conflicts of property rights; a matter not specified in O.R.C. Chapter 1509.

[Emphasis added.] The DMRM Chief concluded that a permit to drill the Russell Well would be issued to Oxford Oil.⁷ However, the DMRM Chief placed the following conditions upon the drilling permit:

1. Upon receipt of written notice from the Ohio Valley Coal Company or its successor of its intent to mine under the Russell #1 well pursuant to Section 1501:13-12-03(O) of the Ohio Administrative Code, [Oxford Oil shall] provide a copy of said notice to the Chief of the Division of Mineral Resources Management.

2. At least six (6) months prior to the projected occurrence of longwall mining at the location of the Russell #1 well [Oxford Oil shall] either:

A) Submit to the Division of Mineral Resources Management a final judgment entry from a court of competent jurisdiction declaring [Oxford Oil's] right to produce the Russell #1 well despite [the Murray Companies'] existing coal rights; or

B) Plug and abandon the #1 Russell well in accordance with MSHA⁸ standards. The well may be plugged at any time less than six months prior to the removal of coal only if approved in writing by the Ohio Valley Coal Company or its successor and delivered to the Chief.

3. Oxford Oil Company, or its successor, shall be responsible for coordinating with the Ohio Valley Coal Company, or its successor, the timing of plugging the well and will take all appropriate action in a timely manner to avoid any disruption to the coal mining operation.

[DMRM Ex. G.] In short, the DMRM decided to issue a drilling permit for the Russell Well, upon the condition that Oxford (if it can not establish superior property rights) would be required to plug and abandon this well, in accordance with MSHA "standards" before OVCC's mining approaches the Russell Well.

⁷ As both Russell Well drilling applications propose to utilize the same surface site, and propose to penetrate the #8 coal seam in the same location and in the same manner, the DMRM Chief consolidated his review of these two applications. The Murray Companies' objections also addressed both applications. Therefore, hereinafter, the Commission will refer to the Russell Well permit in the singular.

⁸ "MSHA" is the federal Mine Safety and Health Administration, and (along with the DMRM) is responsible for assuring the safety of mining operations.

15. On May 31, 2011, the Murray Companies filed with the DMRM Chief, a request for informal review of the Chief's May 13, 2011 decision. This decision determined that OVCC and CLC's objections to the siting of the Russell Well were not well sufficiently founded, because conditions could be imposed upon the drilling permit.⁹

16. The Murray Companies' request for informal review sought greater detail and clarification of the conditions that the DMRM had placed upon the Russell Well drilling permit. Specifically, the Murray Companies asked for:

[1.] ... [C]larification that Permit Condition No. 2 is not confined to longwall panel mining. "Longwall mining" naturally includes room and pillar development work... The Murray Companies wish to obtain assurance that all mining is covered by the plugging condition.

[2.] [W]e are concerned with how Oxford Oil may interpret "MSHA standards" for purposes of plugging..., we believe it important to enhance the Condition to involve the Murray Companies to provide oversight and assurance that the plugging operation meets MSHA requirements. Alternatively, a plugging procedure should be spelled out now.

[3.] Third, the Murray Companies are concerned with the lack of consequences for Oxford Oil compared to the significant financial exposure Murray will face if Oxford defaults on its permit conditions and neglects to timely or properly plug the well...

[4.] Finally, the permit should be clarified to make clear that Oxford's option to seek and produce to the Chief a "final judgment entry" declaring its rights superior to Murray's expires six months before mining is projected to occur at the well location. By any legal standard, "final" means **non-appealable**...

[DMRM Ex. H; emphasis in original.]

⁹ The question of whether the Murray Companies could seek informal review under the provisions of O.R.C. §1513.13(A)(3) was raised by Oxford Oil in a Motion to Dismiss. On September 21, 2011, the Commission held that the informal review procedures of O.R.C. §1513.13(A)(3) were properly available to the Murray Companies.

17. On June 7, 2011, a meeting was conducted as part of the Murray Companies' request for informal review. Representatives of the DMRM, the Murray Companies, and Oxford Oil participated in this meeting.

18. On June 14, 2011, the DMRM Chief issued his response, after informal review, to the Murray Companies' objections to the Chief's decision issuing the Russell Well drilling permit with conditions. In his decision after informal review, the Chief found:

I've carefully considered all issues raised during the informal review process and thoroughly discussed these matters with all appropriate staff. It is my decision that the objections raised by [the Murray Companies] during this process are not sufficiently well founded. **Conditions to the permit can reasonably be expected to prevent a substantial risk that the oil and gas operation will result in violation of RC Chapter 1509 that will present an imminent danger to public health or safety or damage to the environment.**¹⁰

Permits to drill will be conditionally issued pursuant to RC 1509.06 ... and will require the well to be plugged and abandoned prior to coal removal unless Oxford Oil Company can provide the Division with a final non-appealable order from a court of competent jurisdiction declaring [Oxford Oil's] right to produce the Russell #1 well despite [the Murray Companies'] existing coal rights.

[Emphasis added.] However, the DMRM Chief revised certain permit conditions associated with the Russell Well drilling permit as follows (revised language is **bolded**):

1. Upon receipt of written notice from the Ohio Valley Coal Company or its successor of its intent to mine under the Russell #1 well pursuant to Section 1501:13-12-03(O) of the Ohio Administrative Code, provide a copy of said notice to the Chief of the Division of Mineral Resources Management.
2. At least six (6) months prior to the projected occurrence of longwall mining, **including all development entries**, at the location of the Russell #1 well [Oxford Oil shall] either:

¹⁰ Again, the articulated basis for the conditions are "to prevent a substantial risk that the oil and gas operation will result in violation of RC Chapter 1509 that will present an imminent danger to public health or safety or damage to the environment." Yet, the conditions themselves address a property rights dispute between oil & gas rights and coal rights; an area of concern that is not addressed in O.R.C. Chapter 1509.

A) Submit to the Division of Mineral Resources Management a final **non-appealable order** from a court of competent jurisdiction declaring [Oxford Oil's] right to produce the Russell #1 well despite [the Murray Companies'] existing coal rights; or

B) Plug and abandon the #1 Russell well in accordance with **OAC 1501:9-11-08(A)(6) and MSHA requirements**. The well may be plugged at any time less than six months prior to the removal of coal only if approved in writing by the Ohio Valley Coal Company or its successor and delivered to the Chief. **The Division of Mineral Resources Management must be notified 7 days prior to plugging.**

3. Oxford Oil Company, or its successor, shall be responsible for coordinating with the Ohio Valley Coal Company, or its successor, the timing of plugging the well; take all appropriate action in a timely manner to avoid any disruption to the coal mining operation and **provide sufficient notice to allow the Ohio Valley Coal Company or its successor to witness plugging operations.**

[DMRM Ex. I.]

19. On June 29, 2011, the Murray Companies filed an appeal to the Reclamation Commission from: (1) the DMRM Chief's May 13, 2011 decision issuing the Russell Well drilling permit with conditions, and (2) the DMRM Chief's June 14, 2011 decision, after informal review, modifying certain conditions associated with the drilling of the Russell Well.

DISCUSSION

Coal mining operations are permitted and regulated by the DMRM Chief under the authority of O.R.C. Chapter 1513. Oil & gas operations are, likewise, permitted and regulated by the DMRM Chief. However, the permitting and regulation of oil & gas operations are conducted under the authority of O.R.C. Chapter 1509.

In Ohio, mineral rights may be severed from a piece of property, and may be independently developed. In the instant case, the coal rights and the oil & gas rights associated with the Dale Russell property are separately owned. CLC owns the Pittsburgh # 8 coal beneath the Russell property and the mining rights associated with this coal. Mr. Russell has retained ownership of the oil & gas rights on his property and leased these rights to Oxford Oil. While each of the involved parties has an interest, and a right, to develop these minerals, conflicts may arise where attempts to develop these minerals occur simultaneously. Under certain circumstances, and pursuant to the regulatory authority of O.R.C. §1509.08, an oil & gas drilling permit may be denied, deferred, or the well may be required to be relocated.

THE STATUTORY FRAMEWORK

When an oil & gas operator is seeking to drill a well in a "coal bearing township," O.R.C. §1509.08 sets forth the procedure to be employed by the DMRM. Under O.R.C. §1509.08, the DMRM Chief is obligated to determine if the drilling of a well will interfere with an "affected mine," and whether there is good cause to deny a drilling permit, relocate a proposed well, or defer the drilling of a well until mining has concluded. *Redman v. Ohio Department of Industrial Relations, et al.* (10th Dist. 1994), unreported, case nos. 93APE12-1670, 93APE12-1671, 1994 WL 485750, at pgs. 9-10.

The Russell Well is proposed to be located in Goshen Township, Belmont County, Ohio. Under the provisions of O.R.C. §1561.06, Goshen Township has been identified as a "coal bearing township." Therefore, the provisions of O.R.C. §1509.08 apply.

Pursuant to O.R.C. §1509.08, when the DMRM Chief receives an application to drill an oil & gas well in a coal-bearing township, the DMRM Chief must first determine if this well will penetrate an "affected mine."

O.R.C. §1509.08 requires the DMRM Chief to notify the owner/lessee of an "affected mine" of the filing of a drilling application. The owner/lessee of the "affected mine" may then object to the proposed siting of a well. If the owner/lessee of an "affected mine" objects to the installation of the oil & gas well, the Chief must determine whether the miner's¹¹ objections are "well founded." If the DMRM Chief determines that the miner's objections are not "sufficiently well founded," the well drilling application will be approved, and a permit to drill will be issued. However, if the DMRM Chief determines that the miner's objections are "well founded," the Chief, pursuant to O.R.C. §1509.08 shall disapprove the application to drill or suggest alternative well locations.

Regarding the process to be followed where an oil & gas well is proposed to be located in a coal-bearing township, the DMRM has developed a guidance document, dated May 1, 2011.¹² This guidance documents states in part:

RC 1509.08 ... grants broad discretion to the Chief to determine whether to allow an oil and gas well to be drilled in areas where a coal mine may be adversely affected. The guidance offered by the statute is limited to a two-step process of determining if an "affected mine" exists in relation to the location of the proposed well and whether the objections, if any, filed by the coal owner/lessee are "sufficiently well founded." These terms are not defined. The problems and conflicts associated with the simultaneous pursuit to produce these resources are site specific and variable, especially in the context of longwall mining.

[DMRM Ex. A.]

The DMRM's guidance document also directs the DMRM staff to be:

¹¹ In the context of this decision, the term "miner" will refer to the owner or lessee of a mine.

¹² "Guidance documents" and "procedure directives" are developed by the DMRM to provide information to DMRM staff, operators and citizens, as to how the DMRM will interpret and apply Ohio law within the DMRM's areas of authority. These documents do not carry the weight of Ohio statutes and regulations. However, these documents do provide useful information to operators and citizens, and ensure the consistent application and enforcement of Ohio law. Such documents are not, however, independently enforceable. See Brad Fisher v. DMRM, et al. (August 5, 2010, Reclamation Commission) case no. RC-09-012, at pg. 12.

... mindful of the mission statement of the Department to ensure a wise balance between the wise use and protection of our natural resources for the benefit of all as well as the Division's mission to provide for the responsible development of Ohio's energy and mineral resources.

In testimony, the Division staff emphasized its desire to "balance" the interest of coal development against the competing interest of oil & gas development. Witness Michael McCormac indicated that such "balancing" was an important factor in the evaluation of the Russell Well drilling applications. In this regard, the Commission notes that, while mission statements may set forth the goals of an agency, and may even direct the policies developed by that agency, mission statements do not carry the force and effect of statutory or regulatory provisions, and can not overcome the statutory procedures set forth by the legislature.¹³

AFFECTED MINE

The identification of an "affected mine" in the area of a proposed well application is a threshold determination under the provisions of O.R.C. §1509.08. Indeed, if the DMRM Chief does not find that an "affected mine" exists, the provisions of O.R.C. §1509.08 do not come into play. Based upon the testimony of witness Michael McCormac, and consistent with the language of the DMRM Chief's May 13, 2011 decision, the DMRM never set forth in writing a specific basis for determining that an "affected mine" existed in this case. Clearly, the DMRM focused its review upon the objections raised by the Murray Companies, and not upon the specifics of whether an "affected mine" exists in the area of the proposed Russell Well.

The term "affected mine" is not defined in statute. The DMRM's guidance document attempts to provide some parameters for determining if an "affected mine" has been established under O.R.C. §1509.08. The guidance document states:

¹³ Indeed, to the extent that such "balancing" requires the DMRM Chief, or the Commission, to consider competing mineral property rights, the DMRM Chief and the Commission are not authorized to make such comparisons. *Floyd Simpson, et al. v. Division of Mines & Reclamation, et al.* (7th Dist. 2001) 145 Ohio App. 3d 817, 822.

Generally, a mine will be considered affected if the well is to be located within the limits of either an existing or pending permit. An active mine will generally not be considered affected if the proposed well is to be located 10 miles or more away.

[DMRM Ex. A.]

Ohio courts have also addressed the definition of "affected mine" under the provisions of O.R.C. §1509.08. In *Redman v. Ohio Department of Industrial Relations, et al.*, (1996), 75 Ohio St.3d 399, the Ohio Supreme Court held that the term "affected mine" should not be limited to areas of "active excavation," but may include areas where mining is planned for the future. The Supreme Court's decision in *Redman* focused upon the question of whether O.R.C. §1509.08 unconstitutionally delegated legislative authority to the DMRM Chief in his "affected mine" and "well-founded objection" determinations. However, the Court specifically held that:

... [w]e cannot find it unreasonable to interpret the term "affected mine" to encompass more than active mining operations.

[*Redman v. Ohio Department of Industrial Relations, et al.*, *id.*, at 412.]

Moreover, the Supreme Court did not disturb the trial court's discussion of the term "affected mine," quoting:

To construe "affected mine" to mean only mines with active extraction operations taking place, would be to jeopardize the economic and efficient mining of coal. If [oil and gas] wells can be placed on land which has already been analyzed, probed and planned [for coal extraction], but before actual [coal] extraction takes place, then a significant amount of coal could be lost *** [and] all the planning and operation would be wasted ...

The [Common Pleas] Court is aware of [the] concerns that if "mine" is construed to mean land which will be mined in the future, the coal companies, which own "thousands and thousands of acres of land in Ohio," may oppose all requests for permits to drill oil and gas wells on this land, even if no well-defined mining plans have been developed. To that end, the [Common Pleas] Court clarifies the [trial court referee's] Report by holding that "mine," as that term applies

to "affected mine," means not only land where active extraction is taking place, but also land which has had extensive, well-defined mining plans developed and where future mining has been thoroughly planned for and evolved to the point of realization.

[Emphasis added. *Redman v. Ohio Department of Industrial Relations, et al.*, *id.*, at 402.] See also *Redman v. Ohio Department of Industrial Relations, et al.* (10th Dist. 1994), *supra*, at pgs. 9-10. (In this case, the Court of Appeals specifically agreed with the Common Pleas Court's conclusions regarding the "affected mine" determination under O.R.C. §1509.08. This decision was then appealed to the Ohio Supreme Court, which Court did not disturb the discussion of "affected mine" contained in the Court of Appeals' decision.)

In this case, the coal reserves underlying the Russell property are not currently under permit, and no application to permit these reserves has been filed with the DMRM. Evidence adduced at hearing revealed that active mining pursuant to permit D-360 is occurring approximately 4 miles east of the proposed Russell Well location, and is moving in the direction of the Russell property. Thus, under the DMRM's guidance document, the proximity of active mining would seem to qualify the Powhatan #6 Mine as an "affected mine" with regards to the proposed Russell Well location.

Longwall mining plans project the future locations of coal extraction years in advance of the actual permitting of coal properties. As is typical of longwall mining operations, actual acreage subject to an approved mining permit is expanded as mining progresses. And, while the details of mine plans may change as mining progresses, a miner's ultimate intent to extract coal under its ownership does not change.

Witnesses for the Murray Companies testified that the companies have begun the field analyses necessary to seek an extension of the D-360 permit into the area of the proposed Russell Well. The Murray Companies have developed a future mine map, setting forth the projected timing of coal extraction in this area. Additionally, the Division staff is familiar with the Murray Companies future plans to mine this area.

Testimony at hearing reflected that mining could reach the area of the proposed Russell Well as early as 2014. However, the current mine projection map indicates that mining in this area will occur in 2021 or 2022.

Based upon the mine projection map, if objections to the drilling of the Russell Well are "well founded," the drilling of this well could be deferred for at least 10 years. Notably, the underlying facts in the *Redman* case indicate that applications to drill the two wells at issue in *Redman* were filed in 1990. The actual mining in the area of the Redman wells would not be concluded for 9 – 10 years for one well, and 12 – 13 years for the second well. (See *Redman v. Ohio Department of Industrial Relations, et al.*, (10th Dist. 1994), *id* at *8).¹⁴ Thus, the fact that future mining may not reach a proposed well site for 9 – 13 years, as in the *Redman* case, does not interfere with a finding that an "affected mine" exists. The Court of Appeals in the *Redman* case commented that deferring the drilling of the Redman wells for such periods may be an inconvenience to the oil & gas operator, but was not improper.

The DMRM Chief's decisions of May 13, 2011 and June 14, 2011 do not specifically address whether the Murray Companies own an "affected mine" in the area of the proposed Russell Well pursuant to O.R.C. §1509.08. The Commission's findings on other grounds in this appeal are dispositive of this case, regardless of whether there has been a proper determination as to the existence of an "affected mine." Therefore, this decision does not require the Commission to adjudicate the question of whether an "affected mine" exists in the area of the proposed Russell Well.

WELL FOUNDED OBJECTIONS

The next consideration under the provisions of O.R.C. §1509.08, is whether a miner's objections to the proposed siting of an oil & gas well are "well founded." If the DMRM Chief determines that the miner's objections are "not sufficiently well founded," the drilling permit will be issued. If the DMRM Chief determines that the miner's objections are "well founded," the issuance of a drilling permit will be denied, deferred, or the DMRM Chief may suggest the relocation of the well in a manner that will not interfere with mining. (See *Redman v. Ohio Department of Industrial Relations, et al.* (10th Dist. 1994) *supr*, at *6.)

¹⁴ The mine at issue in the *Redman* case was a large area surface mine.

Based upon the fact that O.R.C. §1509.08 sets forth a clear command regarding the process of reviewing objections by a miner, one would expect a clear determination by the Chief as to whether the Murray Companies' objections to the siting of the proposed Russell Well were, or were not, "well founded." However, in this case, the Chief's imposition of "conditions" upon the Russell Well drilling permit complicated the O.R.C. §1509.08 objection process.

OVCC and CLC filed objections to the proposed siting of the Russell Well. In their written objections, the Murray Companies asserted that they owned the coal and held the mining rights associated with the Russell property, that they intended to mine this coal, and that the presence of the Russell Well would interfere with their planned mining. (See Finding of Fact #13.)

The Murray Companies asserted that they could not mine through an unplugged well,¹⁵ and that there is a considerable expense associated with "mining around" an unplugged oil & gas well. A miner may "mine through" a properly-plugged oil & gas well.¹⁶ However, at hearing, witnesses for the Murray Companies testified that there are significant expenses and safety risks associated with "mining through" a plugged oil & gas well.

The DMRM Chief evaluated the Murray Companies' objections to the proposed siting of the Russell Well, and found:

Having reviewed the objections of OVCC and having given due consideration to all available relevant information, I have determined the objections as submitted are **not sufficiently well founded because conditions to the permit can reasonably be expected to prevent a substantial risk that the oil and gas operation will result in violations of RC Chapter 1509 that will present an imminent danger to public health or safety or damage to the environment.**

[DMRM Ex. G, emphasis added.]

¹⁵ Consistent with MSHA regulations, found at 30 CFR 75.1700, a mine operator must maintain a barrier (300 feet in diameter) around an unplugged oil & gas well that penetrates a coal seam in the area of a mine.

¹⁶ MSHA may approve a "101(c) petition" for a coal mine. An approved 101(c) petition may set forth the plans and procedures for plugging and "mining through" an oil & gas well that penetrates a coal seam in the area of a mine. See Section 101(c) of the Federal Mine Safety & Health Act of 1977, PL91-173. An approved 101(c) petition, addressing oil & gas wells, exists for the Powhatan #6 Mine. (See Murray Ex. 5.)

Under O.R.C. §1509.08, the Chief does not have the authority to disapprove a drilling application based upon a miner's objections, unless such objections are determined to be "well founded." The DMRM Chief's position, in this case, is that the Murray Companies' objections to the Russell Well were not sufficiently well founded, because conditions could be imposed to alleviate any concerns raised by these objections. The fact that the DMRM Chief found it necessary to impose conditions upon the drilling permit, by implication, establishes that the DMRM Chief found the Murray Companies' objections "well founded." The testimony of Michael McCormac, the permitting manager for the DMRM's oil & gas program, confirms the fact that the DMRM Chief found that the Murray objections to be "well founded," but for the imposition of permit conditions:

Question (by Attorney Mark Stemm, representing the Murray Appellants): Okay. Did you or, to your knowledge, anyone on the review team disagree with any of the statements set forth in reason number one as support for well-founded objection? ¹⁷

Answer by Witness Michael McCormac: No.

Question: And would you agree with me that but for the special permit condition being imposed, that the statements set forth in reason number one would constitute sufficiently well-founded objections to the well?

Answer: Yes.

Question: If you could turn to reason number two. I think we've already established, in your opinion, that mining simply cannot proceed through or near an unplugged well, correct?

Answer: Yes.

Question: And you agree that the statements in reason number two also constitute well-founded objections?

Answer: Yes.

Question: And reason number three, take a look at that. Did you or, to your knowledge, anyone on your review team disagree with any of the statements set forth in reason number three?

¹⁷ This line of questioning refers to the numbered reasons for objection submitted by OVCC and CLC to the DMRM Chief. (DMRM Ex. F; see Finding of Fact #13 for a description of the numbered reasons for objection.)

Answer: No.

Question: And reason number four, did you or anyone, to your knowledge, on your review team disagree with the statement made by the Franklin County Court of Appeals that is quoted there from the Redman Oil Company case?¹⁸

Answer: I will say on that one I don't know. ...

[Transcript, page 853, lines 22-24, page 854, lines 1-14, page 855, lines 1-4.]

The Commission concludes that, under the provisions of O.R.C. §1509.08, the DMRM Chief had to find the Murray Companies' objections "well founded" in order to take any action other than the approval of the drilling permit as submitted by Oxford.

THE IMPOSITION OF SPECIAL CONDITIONS

In an effort to "cure" the Murray Companies' objections to the proposed siting of the Russell Well, the DMRM Chief imposed conditions upon the well drilling permit. The Chief did so in reliance upon O.R.C. §1509.06(F).

O.R.C. §1509.06(F) addresses the DMRM Chief's authority to grant or deny drilling permits for oil & gas wells. This section of law allows for the imposition of conditions upon drilling permits:

The chief shall issue an order denying a permit if the chief finds that there is a substantial risk that the operation will result in violations of ... chapter [1509] or rules adopted under it that will present an imminent danger to public health or safety or damage to the environment, provided that where the chief finds that terms or conditions to the permit can reasonably be expected to prevent such violations, the chief shall issue the permit subject to those terms or conditions, ...

[Emphasis added.]

¹⁸ The referenced language of the Court of Appeals, quoted in the Murray Companies' objections to the Russell Well, is: [As the Franklin County Court of Appeals explained, R.C. 1509.08] further provides that in the event of a conflict, *i.e.*, when a mining location would be affected by a proposed oil and gas well and the mine owner offers a well founded objection, the statute mandates that the drilling of oil and gas wells be deferred until such time as the mining location is no longer affected. It is well-settled that where different persons have conflicting interests in development of the same property, the state may legitimately exercise its police power to protect one interest over another if it considers the favored interest to be of greater value to the public, even though the other interest may be impaired.

Redman Oil Co. v. Ohio Dept. of Industrial Relations, et. al., (September 6, 1994), Nos. 93-APE12-1670, 1671 WL 485750, at *6 (emphasis added by the Murray Companies). [DMRM Ex. F.]

Significantly, O.R.C. §1509.08 differs from O.R.C. §1509.06, in that O.R.C. §1509.08 does not explicitly call for the imposition of permit terms and conditions. Rather, O.R.C. §1509.08 provides the DMRM Chief with only three options when objections are raised to the siting of an oil & gas well in a coal-bearing township. Under O.R.C. §1509.08, the Chief may either (1) grant a drilling permit (if no sufficiently well founded objection is made), or (if a well founded objection is made) the Chief may (2) deny a drilling permit, or (3) suggest alternative drilling locations.

Assuming *arguendo* that O.R.C. §1509.08 anticipates the possible imposition of conditions upon a drilling permit, such conditions would need to address matters within the regulatory authority of the DMRM Chief. O.R.C. §1509.06(F) allows the DMRM Chief to impose conditions upon drilling permits, which conditions address matters of public health, public safety or environmental damage. O.R.C. §1509.06(F) does not authorize the DMRM Chief to impose conditions which address competing property rights.

In this case, the DMRM Chief has imposed a critical condition upon the Russell Well drilling permit. This condition requires that, unless Oxford Oil can establish superior property rights, Oxford will be required to plug the Russell Well before the Murray Companies' mining approaches the well location.

The DMRM Chief's imposition of the "produce superior property rights or plug" condition was specifically based upon the DMRM's familiarity with the decision of the Court of Common Pleas of Monroe County in the matter of *American Energy Corporation v. Charles W. Datkuliak, et al.*, (July 11, 2007) *unreported*, *Monroe County Common Pleas*, case nos. 2007-152 and 2007-153 (a property rights dispute). In testimony, Division permit manager Michael McCormac, stated:

Testimony of Michael McCormac: ... But [Condition 2(A)] was the part I was trying to find where it says that [the oil & gas operator] either have to submit to us that final, nonappealable order from the court of competent jurisdiction declaring the right ... to produce the Russell well despite existing coal rights, so [the oil & gas operators] have to

show us at the time that the oil and gas rights are superior to the coal rights. And the reason that's in there is because there was a decision in the State of Ohio a couple years ago called the *Datkuliak* case, which there was an existing producing oil and gas well and then the coal company actually - I believe it was AEC, American Energy Corporation, got a court order that says that well had to be plugged because the coal rights were superior to the oil and gas rights. So we're aware that decision exists, and so we interact with conditions. We're trying to take everything into consideration, and so basically because we know that court order exists, we're saying - we're acknowledging that unless the oil and gas company can actually come in with a court order that says their rights in this particular specific case are actually greater than the coal company's rights; otherwise, if they can't do that, then they have to - condition 2B says they have to plug and abandon the well, so we're making these - these conditions are actually trying to consider all the factors that exist in a fairly complicated situation like this.

[Transcript, page 495, lines 9-24, page 496, lines 1-16.]

Testimony of Michael McCormac: under the special permit condition in Exhibit I, page 3, 2A, which states, "submit to the Division of Mineral Resources Management the final nonappealable order from a court of competent jurisdiction declaring the right to produce the Russell number one well despite existing coal rights." So that's - that was an acknowledgement of the *Datkuliak* case.

[Transcript, page 959, lines 17-24, page 960, line 1.]

In the *Datkuliak* case, the Monroe County Court of Common Pleas, decided a real property dispute between a mine operator, who owned certain coal reserves, and the owner of an oil & gas well that had been drilled into these reserves. Interpreting the language of both the coal severance deed and the oil & gas reservation, the Common Pleas Court determined that the coal operator's rights under its severance deed were superior to the oil & gas reservation held by the well owner. Therefore, the Court ordered the well owner to plug a producing oil & gas well, so that this well would not interfere with the miner's right to safely mine all of its coal. (*American Energy Corporation v. Charles W. Datkuliak, et al., supra*, at ¶30.)

Under O.R.C. §1513.07(B)(1)(i) and §1513.07(E)(2)(e)(iii), the DMRM Chief is precluded from adjudicating property rights disputes. The DMRM Chief's (and hence the Commission's) lack of authority to address property rights issues was addressed by the Court of Appeals in the matter of *Floyd Simpson, et al. v. Division of Mines & Reclamation, et al.*, *supra*. The Court, in reviewing the Commission's dismissal of an appeal on jurisdictional grounds held:

In its order of February 4, 1999 the [Reclamation] Commission stated:

"The issue raised by the Simpsons addresses a dispute regarding competing mineral estates. Evaluation of the relative value of the recovery of one mineral over another mineral is not a comparison which the law requires the Division Chief to make."

The Commission correctly concluded, as did the Chief, both are barred by statute from resolving or considering competing mineral property rights in the application process. Jurisdiction to resolve that issue lies with the court of common pleas.

(*Floyd Simpson, et al. v. Division of Mines & Reclamation, et al.*, *supra*, at 822.)

It is clear that the "produce superior property rights or plug" condition placed upon the Russell Well drilling permit is based upon the Chief's recognition of the competing property rights held by the Murray Companies and Oxford Oil. As the DMRM Chief has no authority to address such property rights issues, the DMRM Chief has no legal authority to place conditions upon a drilling permit that are based upon such considerations. The imposition of a condition addressing a property rights dispute is beyond the statutory, regulatory and permitting authority of the DMRM Chief. The Court of Appeals' holding in the *Simpson* case (that the Chief is barred from considering competing mineral interest rights in the permitting process) is dispositive of this issue and this appeal. *Id.*

Moreover, it is unclear whether the conditions imposed by the DMRM Chief would, ultimately, be effectual. For example, the Russell Well drilling permit is ostensibly conditioned upon the requirement that Oxford Oil (or its successor) will be required to prematurely plug a producing well.¹⁹

However, to plug this well, a plugging permit (which is obtained independently from a drilling permit, and at a later point in time) will need to be sought and obtained. There is no assurance that Oxford will seek such a plugging permit at the time when mining is advancing towards the Russell property. Indeed, Oxford could challenge the condition's direction to prematurely plug this well because the DMRM Chief does not have the authority to condition a drilling permit upon property rights considerations. Such a challenge could certainly be made where there has been no site specific adjudication of these property rights.

Drilling permits do not typically designate a "term" or "life" of a drilled well. And, it is unclear whether any condition, requiring the plugging of a productive well, would actually be enforceable. While O.R.C. §1509.12(B) provides that an oil & gas well must be plugged "[w]hen the chief finds that a well should be plugged," O.R.C. §1509.062(A)(1) is more specific as to when the DMRM Chief may order the plugging of an oil & gas well:

The owner of a well that has not been completed, a well that has not produced within one year after completion, or an existing well that has no reported production for two consecutive reporting period as reported in accordance with section 1509.11 of the Revised Code shall plug the well in accordance with section 1509.12 of the Revised Code, obtain temporary inactive well status for the well in accordance with this section, or perform another activity regarding the well that is approved by the chief of the division of mineral resources management.

¹⁹ As a plugging permit would be sought at some time in the future, and as Oxford may transfer the Russell Well to another owner, in this section of the Commission's decision, reference to Oxford Oil will include reference to any possible successor-in-interest, should Oxford elect to transfer the Russell Well.

Based upon the plugging requirements set forth in O.R.C. §1509.062(A)(1), the DMRM Chief does not have explicit authority to order the premature plugging of a productive well. Moreover, the drilling permit may not be the appropriate vehicle for setting forth the timing or conditions of well plugging activities. Thus setting forth plugging requirements in a drilling permit, which are not in accordance with statutory requirements, is likely to result in unenforceable conditions. Further, the Chief did not receive, or require, any written agreement from Oxford, wherein Oxford explicitly waived its rights to challenge any of the imposed drilling permit conditions.

The conditions imposed upon the Russell Well drilling permit also direct Oxford to plug the Russell Well to "MSHA requirements." However, Oxford is not under the jurisdiction of MSHA, and is not required, by any statutory or regulatory mandates, to plug to the more stringent requirements of MSHA.

O.A.C. §1501:9-11-02(C) "encourages" cooperation between a well owner and a mine operator, when a well that penetrates a coal mine, is to be plugged. This regulation "encourages" plugging to MSHA standards, in an effort to ensure miner safety. However, the responsibility to meet MSHA requirements, regarding the plugging of an oil & gas well that penetrates a mine, ultimately falls upon the mine operator under MSHA regulation. Notably, the testimony at hearing was that pursuant to the conditions of the permit, Oxford, by implication, would bear the financial responsibility of plugging the Russell Well to MSHA requirements. (See McCormac Testimony, Transcript page 1102, lines 22-24, page 1103, lines 1-20.) Contrary to this, in its Post-Hearing Brief, Oxford states on page 13:

[O.A.C. 1501:9-11-02(C)] also requires the coal owner to bear the incremental costs of plugging to MSHA standards and to cooperate with the well owner to avoid delay. The Chief's letter decision of May [13], 2011, which is the subject of this appeal, does not, and cannot, alter the cost-shifting mechanism embodied in this rule.

[Emphasis added.]

Thus, there already is controversy as to whether the conditions imposed by the DMRM Chief upon the Russell Well drilling permit will be honored or whether the conditions are enforceable, to the extent that they are contrary to O.A.C. §1501:9-11-02(C). Assuming *arguendo* that the DMRM Chief could impose conditions relative to property rights issues, it is unclear whether the conditions imposed could, in light of statutory and regulatory requirements, be enforced.

The Commission **FINDS** that the conditions imposed upon the Russell Well drilling permit were based upon property rights considerations, which are outside the authority of the DMRM Chief and that these conditions, as imposed, conflict with statutory and regulatory provisions. Thus, the conditions as imposed are ineffective. Therefore, the Commission **FINDS** that the DMRM Chief's imposition of conditions on the Russell Well drilling permit (as set forth in DMRM Ex. I) was arbitrary, capricious and inconsistent with law.

CONCLUSIONS OF LAW

1. The ultimate burden of persuasion in this appeal is upon the Murray Appellants to prove by a preponderance of the evidence that the DMRM Chief's May 13, 2011 decision, approving applications to drill the Russell Well #1, with conditions, and the DMRM Chief's June 14, 2011 decision after informal review, were arbitrary, capricious or inconsistent with law. *See* O.R.C. §1513.13; O.A.C. §1513-3-16(B)(1).

2. Goshen Township, Belmont County, Ohio is a "coal-bearing township" as defined by O.R.C. §1561.06:

The chief shall designate as provided in this section as coal or mineral bearing townships those townships in which coal is being mined or in which coal is found in such thickness as to make the mining of such coal or mineral probable at some future time ...

3. O.R.C. §1509.08 provides in pertinent part:

If the application to drill, reopen, or convert concerns a well that is or to be located in a coal bearing township, the chief immediately shall notify the owner or lessee of any affected mine that the application has been filed and send to the owner or lessee [of the mine] two copies of the map accompanying the application setting forth the [proposed] location of the well.

If the owner or lessee [of an affected mine] objects to the location of the well or objects to any location within fifty feet of the original location as a possible site for relocation of the well, the owner or lessee [of the mine] shall notify the chief of the objection, giving the reasons for the objection and, if applicable, indicating on a copy of the map the particular location or locations within fifty feet of the original location to which the owner or lessee [of the mine] objects as a site for possible relocation of the well ... If the chief receives no objections from the owner or lessee of the mine ..., of if in the opinion of the chief the objections offered by the owner or lessee [of the mine] are not sufficiently well founded, the chief immediately shall notify the owner or lessee of those findings...

If the chief receives an objection from the owner or lessee of the mine as to the location of the well ..., and if in the opinion of the chief the objection is well founded, the chief shall disapprove the application and suggest a new location for the well, ... The chief immediately shall notify the applicant for the [drilling] permit of the disapproval and any suggestion as to a new location for the well....

4. O.R.C. §1509.06 addresses applications for permits to drill, reopen, convert or plug back an oil & gas well, and provides, in part:

(F) The chief shall issue an order denying a permit if the chief finds that there is a substantial risk that the operation will result in violations of this chapter or rules adopted under it that will present an imminent danger to public health or safety or damage to the environment, provided that where the chief finds that terms or conditions to the permit can reasonably be expected to prevent such violations, the chief shall issue the permit subject to those terms or conditions, including, if applicable, terms and conditions regarding subjects identified in rules adopted under section 1509.03 of the Revised Code...

This section does not grant the DMRM Chief authority to condition a drilling permit upon the plugging of a producing and active oil & gas well.

5. The DMRM Chief's decision to impose conditions upon the Russell Well #1 drilling permit was arbitrary, capricious and inconsistent with law.

ORDER

Based upon the findings of fact and conclusions of law, the Commission hereby **VACATES** the Chief's approval of the applications to drill the Russell Well #1, and **REMANDS** this matter to the DMRM Chief to take actions consistent with this decision.

10/6/11

DATE

SEAN A. McCARTER

Chairman, Reclamation Commission

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Appeals, within thirty days of its issuance, in accordance with Ohio Revised Code §1513.14 and Ohio Administrative Code §1513-3-22. If requested, copies of these sections of the law will be provided to you from the Reclamation Commission at no cost.

DISTRIBUTION:

Mark Stemm, Michael Wehrkamp, Via fax [614-227-2100] & Certified Mail 91 7108 2133 3936 6718 6891
Molly Corey, Dan Martin, Megan DeLisi, Via fax [614-268-8871] & Inter-Office Certified Mail 6643
John K. Keller, David Hardyman, Timothy McGranor, Michael J. Settineri, Via fax [614-719-4794 & 614-719-5146] &
Certified Mail 91 7108 2133 3936 6718 6884

**BEFORE THE
RECLAMATION COMMISSION**

MURRAY ENERGY CORPORATION, <i>et al.</i> ,	:	Case No. RC-11-006
Appellants,	:	
-vs-	:	
DIVISION OF MINERAL RESOURCES, MANAGEMENT,	:	Review of Chief's Decision re: Russell Well #1 (Oxford Oil); Permit D-360
Appellee,	:	
and	:	
OXFORD OIL COMPANY,	:	<u>INDEX OF EVIDENCE</u>
Intervenor.	:	<u>PRESENTED AT HEARING</u>

Before: Sean A. McCarter, Chairman.

In Attendance: A. Thomas Althaus, Richard Cappell, James McWilliams, Craig Porter, Ray Rummell and Hearing Officer Linda Wilhelm Osterman.

Appearances: Mark Stemm, Michael A. Wehrkamp, Counsel for Appellants Murray Energy Corporation, *et al.*; Molly Corey, Dan Martin, Megan DeLisi, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management; John K. Keller, David W. Hardyman, Michael J. Settineri, Timothy B. McGranor, Counsel for Intervenor Oxford Oil Company.

WITNESS INDEX

Appellant's Witnesses:

Robert Eugene Murray	Direct Examination; Cross Examination
John Robert Forelli	Direct Examination; Cross Examination
Jerry Martin Taylor	Direct Examination; Cross Examination

Richard D. Marcavitch
Dennis Dubiel
Ron Burdette
John Straker, Jr.

Direct Examination; Cross Examination
Direct Examination; Cross Examination
Direct Examination; Cross Examination
on Rebuttal; Direct Examination; Cross Examination

Appellee's Witnesses:

Michael Paul McCormac
Craig Corder

Direct Examination; Cross Examination
Direct Examination; Cross Examination

EXHIBIT INDEX

Appellants' Exhibits:

NO.	DESCRIPTION	Notes
3	Copy of 30 C.F.R. §75.1700; "Oil & Gas Wells"	1 page
4	Letter, from Husted (DMRM) to Stemm (TOVVC, CLC); dated June 14, 2011; re: response to request for informal review, with attached "Permit Conditions for Wells Drilled in Longwall Mine Plan Areas" (revised)	3 pages; same as Appellee's Ex. I
5	Proposed Decision and Order; Mine Safety and Health Administration, docket number M-89-67-C; issued to The Ohio Valley Coal Company; dated August 31, 1989 (Section 101(c) plan for the Powhatan #6 mine)	9 pages
6	Sample Set of Guidelines for Mining-Through Operations of a Well in the Powhatan #6 Mine	2 pages
7	Excerpt from Coal Deed, corresponding to the Russell Property	1 page; attached to Appellee's Ex. F
8	Diagram of typical longwall panel (with a theoretical location for the Russell Well #1 shown) (drawn by Witness Forelli)	1 oversized page
9	Affidavit of Susan K. Grant, with three attached maps: (1) Future Application Area Map, D-0360-24, (2) Future Application Area Map, and (3) Future Application Area Map, D-0360-25	4 pages; maps in color
10	Four letters, from Husted (DMRM) to Stemm (TOVVC, CLC); dated June 2, 2011; re: response to objections of The Ohio Valley Coal Company and Consolidated Land Company to well drilling applications, with attached "Permit Conditions for Wells Drilled in Longwall Mine Plan Areas"	12 pages

11	Diagram of longwall panel with a theoretical well sited within the area to be longwalled, and diagram of longwall shearer (drawn by Witness Marcavitch)	2 drawings on 1 oversized page
12	Diagram of theoretical well sited within a longwall panel, indicating where coal would need to be hand-picked (drawn by Witness Marcavitch)	1 oversized page
13	Proposed Decision and Order; U.S. Department of Labor; docket number M-2001-097-C; issued to American Energy Corporation; dated February 27, 2002 (Section 101(c) plan for the Century Mine)	9 pages; page 8 of Order appears to be missing
14	E-mail, from Burdette to Murray; dated August 27, 2007; re: Datkuliak & MSHA	1 page
15	E-mail, from Burdette to Murray & Mattes; dated August 28, 2007; re: Datkuliak up-date Tuesday	1 page
16	Memorandum of Opinion and Decision; Court of Common Pleas of Monroe County, Ohio; <u>American Energy Corp, et al. vs. Charles W. Datkuliak, et al.</u> , case no. 2007-152 & 2007-153; dated July 11, 2007	7 pages
17	Plugging Report; Form 55 (revised 4/2002)	2 pages
18	Well Plugging Report; Form 55 (revised 10/2005)	3 pages

Appellee's Exhibits:

NO.	DESCRIPTION	Notes
A	DMRM's Internal Permitting Guidance Document for Review, Direction and Consistency, re: Coordination of Reviews of Permit Applications to Drill Oil and Gas Wells in Coal-Bearing Townships; dated May 1, 2011	5 pages, including attached copy of O.R.C. §1509.08
B	Permit Application aPATT019353, Russell Well #1 (vertical)	11 pages
C	Permit Application aPATT019352, Russell Well #1 (horizontal)	11 pages
D	Letter, from Husted (DMRM) to The Ohio Valley Coal Company; dated February 14, 2011; re: application aPATT019352	2 pages
E	Letter, from Husted (DMRM) to The Ohio Valley Coal Company; dated February 14, 2011; re: application aPATT019353	2 pages
F	Letter, from Stemm (TOVCC, CLC) to Husted (DMRM); dated February 21, 2011; re: objections to applications aPATT019352 and aPATT019353	14 pages, including attachments (includes 2 colored maps)
G	Letter, from Husted (DMRM) to Stemm (TOVCC, CLC); dated May 13, 2011; re: response to objections to Russell Well #1 applications, with attached "Permit Conditions for Wells Drilled in Longwall Mine Plan Areas"	3 pages
H	Letter, from Stemm (TOVCC, CLC) to Husted (DMRM); dated May 31, 2011; re: request for informal review of May 13, 2011 decision on objections	5 pages, including attached letter (which letter is DMRM Ex. G)
I	Letter, from Husted (DMRM) to Stemm (TOVCC, CLC); dated June 14, 2011; re: response to request for informal review; with attached "Permit Conditions for Wells Drilled in Longwall Mine Plan Areas" (revised)	3 pages; same as Appellants' Ex. 4

Intervenor's Exhibits:

NO.	DESCRIPTION	Notes
1	Map, marked CONFIDENTIAL, displaying information relating to projected coal mining operations in the area of the proposed Russell Well #1; dated June 20, 2011	oversized; CONFIDENTIAL & UNDER SEAL
2	Map, marked CONFIDENTIAL, excerpted from Intervenor's Ex. 1, displaying information relating to projected coal mining operations in the area of the proposed Russell Well #1	excerpt from Intervenor's Ex. 1; CONFIDENTIAL & UNDER SEAL
3	Guidelines for Mining-Through Operations of a Well in the Century Mine	2 pages
4	Permit Application D-360-25	also provided on disc

Commission's Exhibits:

NO.	DESCRIPTION	Notes
1	Portion of O.A.C. §1501:9-11-08; "Plugging with Cement"	1 page
2	Packet of legal provisions, including O.R.C. §1509.151, O.R.C. §1509.18, O.R.C. §1509.34, O.A.C. §1501:9-11-02, O.A.C. §1501:9-11-06, O.A.C. §1501:9-11-08	8 pages
3	Diagram of oil & gas well, with casings shown (drawn by Witness McCormac)	1 oversized page