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1991 SEP -4 PM 12:12

*Laurine Hoy*  
VINTON COUNTY  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

VINTON COUNTY, OHIO

STATE OF OHIO, ex rel. )  
 LEE FISHER )  
 ATTORNEY GENERAL OF OHIO, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BAY STATE EXPLORATION COMPANY, )  
 INC., et al., )  
 )  
 Defendants. )

CASE NO. 90CV8-75  
 JUDGE MICHAEL A. BRAME

JUDGMENT ENTRY

This matter came for hearing on plaintiff State of Ohio's ~~charges in contempt~~ against defendant Frank A. Horgos, and for trial to the Court as to all parties on June 10, 1991. ~~Neither defendants~~ Bay State Exploration Company, Inc. and Frank A. Horgos ~~nor any counsel representing these defendants appeared before this~~ Court. The Court admitted evidence entered by plaintiff, and ruled at the end of the trial that defendant Frank A. Horgos was in contempt of the lawful order of this Court, and that both defendant Bay State and defendant Horgos have failed to comply with Orders of the Chief of the Division of Oil and Gas, numbers 86-195 and 85-47. Thus, defendant Horgos is in contempt and both defendants are subject to permanent injunctive relief and civil penalties pursuant to R.C. 1509.33 for their violations of Ohio's environmental oil and gas laws.

TO THE CLERK:

FINAL APPEALABLE  
 ORDER: YES  NO

## FINDINGS OF FACT

1. On May 2, 1986, the Chief of the Division of Oil and Gas issued Chief's Order No. 86-195 to defendant Bay State, its successors, assignees, and agents, ordering the proper plugging and abandonment and restoration of three oil and gas wells located in Vinton County, Ohio, having permit numbers 489, 491, and 631.

2. On May 27, 1986, defendant Bay State filed an appeal of Chief's Order No. 86-195 with the Oil and Gas Board of Review that was docketed as Appeal No. 183, and, on July 17, 1986, Appeal No. 183 was set for hearing before the Board. Defendant Bay State failed to appear at the scheduled hearing, and an Order was entered by the Oil and Gas Board of Review dismissing Appeal No. 183, and affirming Chief's Order No. 86-195 as reasonable and lawful.

3. On May 13, 1985, the Chief issued Chief's Order No. 85-47 to defendant Bay State, its successors, assignees and agents, ordering the proper plugging and abandonment and restoration of two oil and gas wells located in Vinton County, Ohio, having permit numbers 496 and 500.

4. Defendant Bay State filed an appeal of Chief's Order No. 85-47 with the Oil and Gas Board of Review that was docketed as Appeal No. 134. On January 17, 1986, prior to hearing, a settlement with regard to Appeal No. 134 was reached, whereby defendant Bay State withdrew its appeal, the Chief agreed to amend Chief's Order No. 85-47, and defendant Bay State waived any further right to appeal Amended Order No. 85-47. Thereafter, on January 23, 1986, the Chief issued Amendment to Order 85-47, whereby

defendant Bay State was ordered to take action to comply with the original Chief's Order No. 85-47 to ~~properly plug and abandon and restore~~ the two idle oil and gas wells in a prudent and workmanlike manner ~~by April 22, 1986.~~

5. ~~As of the date of trial, June 10, 1991, neither defendant Bay State, nor defendant Horgos has plugged and abandoned and restored~~ any of the five subject wells, in accordance with the lawful Orders of the Chief.

6. On August 20, 1990, plaintiff State of Ohio filed its Complaint seeking permanent injunctive relief against defendants for the plugging and abandonment of the five idle wells and civil penalties for defendants failure to comply with the lawful orders of the Chief. Service of summons on the Complaint was obtained on ~~defendant Horgos, but he failed to answer or otherwise defend.~~ Therefore, upon motion of the State, on October 2, 1990, this Court entered ~~default judgment against defendant Horgos,~~ and further found that defendant Horgos, as President of defendant Bay State, is ~~individually liable~~ for the violations of law alleged in the Complaint. ~~This Court ordered defendant Horgos to properly plug and abandon the five oil and gas wells within forty-five (45) days from October 2, 1990.~~

7. ~~On March 3, 1991, service of summons on the Complaint was obtained on defendant Bay State, and, on March 4, 1991, defendant Bay State filed its Answer in the form of a letter. In paragraph one of its Answer, defendant Bay State states that the wells are "non-producing."~~

8. Inspections conducted and photos taken of the five wells by Division of Oil and Gas Investigator Randy Bartow on April 11, 1991, demonstrated that none of the five idle wells had been plugged and abandoned, in accordance with the orders of the Chief, the settlement agreement, and this Court's Order of October 2, 1990.

9. On April 17, 1991, plaintiff State of Ohio filed its Charges in Contempt against defendant Horgos for his wanton disregard and contempt of the lawful Order of this Court, ordering defendant Horgos to properly plug and abandon the five idle wells within forty-five (45) days of the Court's Entry. An Affidavit of Division of Oil and Gas Inspector Dudley Meadows was attached demonstrating that based upon inspections conducted at each well that none of the wells had been properly plugged and abandoned, as ordered by this Court.

10. Defendant Bay State is a corporation for profit incorporated under the laws of the State of Massachusetts, whose corporate license to do business within the State of Ohio was cancelled by the Ohio Secretary of State on January 15, 1986.

11. Defendant Horgos is the President of defendant Bay State.

12. Division of Oil and Gas Geologist Tom Tomastik testified that these wells were drilled and completed approximately a decade ago in 1981. Records indicate that only one well, Permit No. 496, had ever produced, and this well has been idle since February 8, 1984. No production records for the remaining wells were found on

file with the Division of Oil and Gas, indicating that none of these wells ever produced. None of the wells have any production equipment, lines or meters attached to the wells. ~~The idle condition of these wells poses a serious threat to the environment and public health and safety, because they present a potential avenue for migration of oil, gas and brine to the surface.~~ The wells are not completely cemented in, and sections of the casing can be corroding and deteriorating, posing potential malfunctions of the tubing and casing downhole. The wells, in their present condition, present an avenue for the release of oil, gas and brine to the surface, which ~~could then contaminate freshwater supplies.~~

Unplugged wells, like these, can also effect the recovery of potential oil and gas reserves, ultimately damaging the oil and gas producing reservoir.

13. Defendants have substantial financial holdings within the State of Ohio. Columbia Gas Transmission Corporation has two active contracts with defendants. Defendants have numerous oil and gas wells located throughout Vinton, Hocking, Ashtabula and Trumbull Counties.

14. The Division has incurred extraordinary and unnecessary enforcement costs in the amount of \$1,076.43.

15. Defendants have conducted business in the State of Ohio with the Division since at least 1979.

CONCLUSIONS OF LAW

1. Defendants are liable for each violation of law set forth in plaintiff State of Ohio's Complaint.

2. Pursuant to R.C. 1509.33(A) and R.C. 1509.12, the Court may impose upon each defendant a civil penalty of Four Thousand Dollars (\$4,000.00) per day, per well, including each day of violation subsequent to the filing of the Complaint, for each day each of the five wells remain unplugged.

3. The purpose of civil penalties assessed pursuant to R.C. 1509.33 is to compensate the State for harm, or threat of harm done to the public health and safety and the environment, and to deter persons from future violations of law.

4. ~~In determining civil penalties, the Court is to consider the recalcitrance of the defendant, the harm or threat of harm posed to the environment as a result of defendant's conduct, any gain defendant might have realized from non-compliance, the defendant's economic status, any extraordinary and unnecessary expenses associated with enforcement, and mitigating factors, if any. State v. Dayton Malleable (1982), 1 Ohio St.3d 151.~~

5. Defendants did not attempt to comply with the Chief's Orders, and the Court could find no mitigating factors. Defendants did not even appear at trial to produce any.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED that defendants Bay State Exploration Company, Inc. and Frank A. Horgos are:

A. ~~Permanently enjoined from violating R.C. 1509.03 and R.C.~~

1509.12 and enjoined to comply with Chief's Order No. 86-195 and Amended Chief's Order No. 85-47 by properly plugging and abandoning and restoring each of the five wells and well sites set forth in plaintiff State of Ohio's Complaint in accordance with the orders of the Chief, R.C. Chapter 1509 and the rules adopted pursuant thereto, ~~within thirty (30) days~~ after entry of this Judgment;

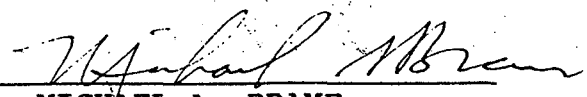
B. ~~Defendant Horgos is in willful contempt~~ of an Order of this Court for his failure to plug and abandon each of the five wells;

C. For defendant Horgos' contempt, and for a civil penalty, the Court hereby orders that ~~defendants are jointly and severally liable to plaintiff State of Ohio for a civil penalty of Twenty Five Thousand Dollars (\$25,000.00) per well, for a total civil penalty of One Hundred Twenty Five Thousand Dollars (\$125,000.00),~~ which sum shall be paid to the Division of Oil and Gas. Payment shall be made by sending a certified check in such amount, made payable to the "Treasurer, State of Ohio," and delivered to plaintiff State of Ohio's counsel of record, Laura J. Steffee, Assistant Attorney General, Division of Oil and Gas, Building A, 4435 Fountain Square Drive, Columbus, Ohio 43224, ~~within thirty (30) days~~ after entry of this Judgment;

D. Defendants shall comply with this Judgment, or be subject to the imposition of a further penalty of One Hundred Dollars (\$100.00) per day, per well, for each day any of the five wells remain unplugged and/or for each day the full amount of the penalty remains unpaid;

E. Defendants shall pay all costs of this action.

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
HON. MICHAEL A. BRAME  
Judge, Vinton County Court of  
Common Pleas

cc: Laura J. Steffee, Assistant Attorney General  
Frank A. Horgos and Bay State Exploration Company, Inc.  
P.O. Box 100 Chestnut Hill, Massachusetts 02167





Attorney General  
Lee Fisher

MEMORANDUM

TO: Jack Van Kley, Lyndia, and all EES attorneys

FROM: Laura J. Steffee, Assistant Attorney General

DATE: September 12, 1991

RE: *State, ex rel. Fisher, v. Bay State Exploration Company, Inc., et al.*, Case No. 90CV8-75, ~~Vinton County~~ Court of Common Pleas

I have attached with this memo a copy of a recent decision from Judge Brame in Vinton County, who found the defendant ~~corporation and president liable~~ for their violations of R.C. Chapter 1509 for ~~failing to properly plug and abandon five idle oil and gas wells~~. In addition to finding the ~~president individually liable~~ for the violations of law, the Court found the ~~president in contempt for his failure to abide by an earlier Order~~ requiring him to plug and abandon the wells by early November.

~~In assessing a civil penalty, the Court cited Dayton Malleable~~ and based its assessment upon the four factors set forth in that case. The Court assessed a civil penalty of \$25,000.00 per well, for a total civil penalty of a whopping \$125,000.00 for unplugged wells.

I hope this is useful in your trials and tribulations.

Att.

