

Virginia Division of Gas and Oil  
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David E. Asbury Jr., Director, Division of Gas and Oil

By Decision of the Director in

**Informal Fact Finding Conference 24010 (Herein "IFFH 24010")**

**Wellmore Coal Company  
(Herein "Coal Owners")  
and  
People Inc. - Gerald Gray Law Firm  
(Herein "Surface Owners")\**

**Vs.**

**Appalachian Energy Inc (AEI)  
(Herein "Permit Applicant")**

**Permit Applications for Gas and Oil operations:  
Application No. 16884, for Coalbed Methane Well AE-261 with pipeline  
(Herein "Application")**

**Background**

On March 3 2010, the Division of Gas and Oil (DGO) received Application No. 16884 for permit of Coalbed Methane Well with pipeline AE-261 from Appalachian Energy Inc (AEI). The evidence regarding the application and objections filed support the fact, the objections were timely and appropriate under Virginia Statute.

The objections filed by Wellmore Coal Company against the permit were relative to Coal Owner Objections allowed under statute: § 45.1-361.11 and § 45.1-361.12.

**§ 45.1-361.11. Objections by coal Owner**

**§ 45.1-361.12. Distance limitations of certain wells.**

*A. If the well operator and the objecting coal owners present or represented at the hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.*

*B. The minimum distance limitations established by this section shall not apply if the proposed well will be drilled through an existing or planned pillar of coal required for protection of a preexisting well drilled to any depth, and the proposed well will neither require enlargement of the pillar nor otherwise have an adverse effect on existing or planned coal mining operations*

Objections filed by People Inc. against the permit were relative to Surface Owner Objections allowed under statute: § 45.1-361.35.

**§ 45.1-361.35. (C) Objections to permits; hearing.**

*C. The only objections to permits or permit modifications which may be raised by royalty owners are whether the proposed well work:*

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

The Mineral and Surface Owners' objections were deemed acceptable under § 45.1-361.35

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**Hearing Date and Place**

IFFH 24010 was convened on Tuesday June 8, 2010 in the Southwest Virginia Technology Development Center, Jefferson Room (A-105), and 141 Highland Drive, Lebanon Virginia. All parties with standing to object to Permit Applications 16884 were notified of the time and place by United States certified mail, return receipt requested.

**Appearances:**

**For Wellmore Coal:**

A pre-hearing meeting was arranged by AEI with Wellmore Coal on Friday June 4, 2010. At that meeting the parties negotiated a tentative agreement that when final will allow the objection by Wellmore Coal to be withdrawn. The tentative agreement and action between the parties was confirmed via phone conversation and email by the Director. There were no representatives present at the IFFH.

**For People Inc.:**

Dr. Michael Rush

**For Appalachian Energy Inc.:**

Mr. Frank Henderson, President, AEI  
Mr. Justin Phillips, Land Manager, AEI

### **Findings of Fact:**

1. In accordance with § 45.1-361.35.H, notice of **IFFH 24010** was given to the Permit Applicant and to every person with standing to object as prescribed by §45.1-361.30.
2. Wellmore Coal Company and People Inc. were notified as coal and surface owners of properties to be affected by the proposed operations, a Coalbed Methane Gas Well with pipeline AE-261 and, as such, have standing to object to the proposed operations.
3. **IFFH 24010** was convened at the time and place indicated in the notice. The Hearing start time was delayed from 9:00 am until 9:55 am to allow additional time for members of the objecting parties to appear.

### **Controlling Law and Regulation**

1. Section 45.1-361.30.A (1) of the Virginia Gas and Oil Act requires that permit applicants notify all surface owners, coal owners, and mineral owners on tracts to be drilled.
2. Section 45.1-361.30.A (3) of the Virginia Gas and Oil Act requires that permit applicants notify all surface owners on tracts where the surface will be disturbed.
3. Section 45.1-361.30(D) of the Virginia Gas and Oil Act gives standing to object to permit applications to all parties receiving required notice.
4. Section 45.1-365.35(B) of the Virginia Gas and Oil Act details objections that may be filed by surface owners.
5. Section 45.1-361.35(H) of the Virginia Gas and Oil Act requires the Director to schedule an informal fact finding hearing concerning objections, and provide notice of the hearing to all parties with standing to object to the permit.
6. Section 45.1-361.35(I) of the Virginia Gas and Oil Act requires the Director to issue a decision regarding the objection if the parties to the hearing fail to reach an agreement.

As the Informal Fact Finding Hearing process is governed by the Administrative Process Act, such proceedings can be recessed at any time if the involved parties mutually agree that they would like to negotiate off the record.

This opportunity was afforded to the parties and accepted.

After a time of negotiation, the parties requested to go on record with the following testimony:

### **I. TESTIMONY BY THE SURFACE OWNER**

After brief negotiations, the parties have mutually agreed to site locations and development of gas resources on the People Inc. property. AEI is to provide People Inc. a letter and description of activities agreed to in today's talks, prior to commencing construction. With this agreement in place, the objection to the permit will be withdrawn by People Inc.

## **II. TESTIMONY BY THE APPLICANT**

The Applicant has worked cooperatively with the objecting parties and agrees with the negotiated settlement reached today, allowing the objection to be withdrawn and the permit process and gas resource development to continue.

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### **Decision of the Director**

Section 45.1-361.35(I) of the Virginia Gas and Oil Act requires the Director to issue a decision regarding the objection if the parties to the hearing fail to reach an agreement.

With evidence and testimony of a negotiated agreement between the parties, no decision by the Director is required. The Director will receive written evidence of the settlement, accompanied by a written request of withdrawal from the objecting parties. Once objections are withdrawn, the application review and permit issuance process will continue for Application 16884, AE-261.

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### **Right of Appeal**

Any party aggrieved by this decision of the Director may appeal the decision to the Virginia Gas and Oil Board **by filing a petition with the Board within ten (10) days** following the decision (§45.1-361.36). No petition or appeal may raise any matter other than matters raised by the Director or which the petitioner put in issue either by application or by objections, proposals or claims made and specified in writing at the informal fact finding conference.

Signed this 8<sup>th</sup> day of June, 2010

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David E. Asbury Jr., Director  
Virginia Division of Gas and Oil