

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
625 BROADWAY  
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

the Application for a Permit and Variance  
from State-wide Gas Well Spacing Requirements  
Pursuant to Environmental Conservation Law  
§ 23-0503(8) and Parts 552 and 553 of Title 6  
of the Official Compilation of Codes, Rules  
and Regulations of the State of New York,

- by -

**PINE VALLEY CENTRAL SCHOOL DISTRICT,**

Applicant.

DEC Project No. DMN 08-MV-02

SUMMARY HEARING REPORT AND ORDER OF DISPOSITION

November 4, 2008

SUMMARY HEARING REPORT AND ORDER OF DISPOSITION

Appearances:

- Peter Morgante, Superintendent of Schools, for applicant Pine Valley Central School District
- Alison H. Crocker, Deputy Commissioner and General Counsel (Jennifer Hairie of counsel), for staff of the Department of Environmental Conservation

Proceedings:

On January 14, 2008, applicant Pine Valley Central School District filed an application for a permit to drill and a variance from the natural gas well spacing provisions of section 553.1 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") for the drilling of a natural gas well known as Fee No. 1 located in the Town of Cherry Creek, Chautauqua County. Applicant proposes to drill the well to a total depth of 3,525 feet, targeting the Medina formation. The proposed well is to be located on school property 750 feet west of the Junior/Senior High School and 1,290 feet west of New York State Route 83. If successful, applicant would use the natural gas for its exclusive use on the property.

A variance from the gas well spacing provisions of 6 NYCRR 553.1 is required because the well is proposed to be located less than 660 feet from the boundary line of the property. In support of its variance application, applicant provided a geologic report dated December 19, 2007, which notes that the Federal Energy Regulatory Commission has designated the Medina formation in Chautauqua County as a "tight sand" formation.

Staff of the Department of Environmental Conservation ("Department") reviewed the application and prepared a draft order finding that (1) applicant will use all natural gas produced from the proposed well for its exclusive use, (2) no other entity will develop the natural gas resource proposed to be developed by applicant within twelve months of the close of the hearing, (3) applicant's project will prevent waste and provide for greater ultimate recovery of natural gas, and (4) the rights of all persons including landowners and the general public will be fully protected. Pursuant to ECL 23-0503(8), Department staff referred the matter to the Department's Office of Hearings and Mediation Services ("OHMS") for hearings under 6 NYCRR part 624

("Part 624"). Chief Administrative Law Judge ("ALJ") James T. McClymonds was assigned as presiding ALJ.

A combined notice of application and public hearing was issued September 5, 2008 to all parties deemed to have an interest in the application. The notice was also published in the Department's electronic Environmental Notice Bulletin on September 10, 2008, and in the Dunkirk Observer on September 11, 2008.

With respect to compliance with the State Environmental Quality Review Act ("SEQRA") (ECL article 8), the notice stated that Department staff published a Final Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program in July 1992 ("GEIS") and, on September 1, 1992, issued a SEQRA (ECL article 8) findings statement. The GEIS and findings statement provide a detailed description of well drilling and spacing, and establish the basis for environmental review and approval of actions subject to the Oil, Gas and Solution Mining Law. Department staff, on behalf of the Department as lead agency, reviewed the application for the permit to drill the natural gas well and concluded that the proposed action conforms to the standards, criteria and thresholds discussed in the GEIS and findings statement. Accordingly, no further action is required under SEQRA (see 6 NYCRR 617.10[d][1]).

The notice indicated that a legislative hearing, issues conference and adjudicatory hearing were scheduled to begin on October 21, 2008, in Board Conference Room 5, Elementary School, 7755 Route 83, South Dayton, New York. The notice also established a deadline of October 1, 2008 for the filing of petitions for party status and written comments. The notice further provided that if no petitions for party status were received by 4:00 P.M. on October 1, 2008, the public hearing would be cancelled pursuant to ECL 23-0503(8), the variance would be granted, and the Department would continue processing the drilling permit application for the well.

The only comment received during the public comment period was from the Chautauqua County Health Department, which indicated that the gas well has to have a minimum separation of 1,000 feet from a public water supply. The comment was forwarded to the Department's Region 9 Minerals Manager for consideration on the permit application.

No petitions for party status or other written comments were filed by close of business on October 1, 2008. Accordingly, a notice of cancellation of public hearing was issued to all

interested parties on October 8, 2008, cancelling the hearing and extending the deadline for written comment to October 21, 2008. The notice of cancellation was also published in the Environmental Notice Bulletin on October 15, 2008, and in the Dunkirk Observer on October 10, 2008. No further public comments were filed by the October 21, 2008 deadline.

Discussion:

ECL 23-0503(8) provides that the Department, without considering correlative rights, may grant a permit to a public entity such as applicant for the purposes of natural gas development if the Department determines, after notice and hearing, that the natural gas resource would not be developed by any other entity within twelve months of the close of the hearing record. Section 23-0503(8) further provides that in the event the Department does not receive timely notices of appearance prior to the scheduled date of hearing, it may dispense with such hearing.

In this case, no timely petitions for party status were filed with the Department prior to the scheduled date of the hearing. Accordingly, pursuant to ECL 23-0503(8), the hearing was cancelled. There being no timely petitions for party status, and no dispute between applicant and the Department concerning the draft order granting the variance sought, no adjudicable issues requiring hearing are presented (see 6 NYCRR 624.4[c][5]).

Order of Disposition:

The hearing record is closed and the matter is remanded to Department staff to continue processing the application to issue the requested variance and permit.

\_\_\_\_\_/s/\_\_\_\_\_  
James T. McClymonds  
Chief Administrative Law Judge

Dated: November 4, 2008  
Albany, New York

TO:

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