

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Application for a Field-Wide Variance from the Statewide 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 Oil Wells, and for the Establishment of a Limiting Gas-Oil Ratio Pursuant to Section 556.1

**ORDER OF
DISPOSITION**

DEC Order No.
DMN 08-V-04

- for the -

WHITESVILLE FIELD,

Allegany and Steuben Counties, New York.

EAST RESOURCES, INC.,

Applicant.

Appearances of Counsel:

-- Alison H. Crocker, Deputy Commissioner and General Counsel (Jennifer Maglienti of counsel), for staff of the Department of Environmental Conservation

-- The West Law Firm (Thomas S. West of counsel), for applicant East Resources, Inc.

-- Roger Downs, Sierra Club Atlantic Chapter, for party-status petitioner Sierra Club Atlantic Chapter

-- Ross Scott Law Firm (W. Ross Scott of counsel), for party-status petitioners Preserve Our Water and Environmental Resources and Terrence M., Pamela J., Daniel L., and Susan H. Dempsey

-- Terrence M. Dempsey, pro se and on behalf of party-status petitioners Pamela J., Daniel L., and Susan H. Dempsey

**ORDER OF DISPOSITION OF THE CHIEF ADMINISTRATIVE LAW
JUDGE**

Proceedings

Applicant East Resources, Inc., proposes to produce oil and associated natural gas from the Fulmer Valley sandstone in an oil field known as the Whitesville Field. East Resources requested that the Department of Environmental Conservation ("Department") establish a limiting gas to oil ratio ("GOR") for the field pursuant to section 556.1(g) of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

After a legislative hearing and issues conference were duly noticed and convened, the undersigned presiding Administrative Law Judge ("ALJ") issued a ruling on issues and party status (see Ruling of the Chief ALJ on Issues and Party Status, Dec. 11, 2009). In that ruling, I joined for adjudication issues concerning the appropriate GOR for the Whitesville Field and the appropriate conditions for the development of oil-bearing formations (see id. at 20). Department staff and East Resources are automatically full parties on the GOR variance issues (see id.).

With respect to petitions for full party status filed by the Sierra Club Atlantic Chapter and by Terrance M., Pamela, Daniel L., and Susan H. Dempsey (the "Dempsey petitioners") (collectively, the "petitioners"), I concluded that petitioners failed to raise adjudicable issues of their own, or demonstrate that they could make a meaningful contribution to the record regarding an adjudicable issue raised by another party (see id. at 20-21). Accordingly, I denied the petitions for full party status filed by the Sierra Club and the Dempsey petitioners. With respect to the petition for full party status filed by Preserve Our Water and Environmental Resources ("POWER"), I dismissed its petition based upon POWER's post-issues conference withdrawal (see id. at 21).

The deadline for appeals to the Commissioner from the issues ruling was set for January 6, 2010. No timely appeals were filed. Accordingly, my determinations denying party status to the Sierra Club, the Dempsey petitioners, and POWER have become final.

In addition to setting an appeal schedule, based upon the request of Department staff and East Resources, I adjourned without date further adjudicatory proceedings, and referred the matter to ALJ Richard R. Wissler for mediation of the issues identified for adjudication, among other issues. A mediation session was conducted in January 2010.

By email dated February 16, 2010, Department staff informed me that, as a result of the mediation before ALJ Wissler, an agreement was reached concerning a well casing and cementing plan for wells proposed for the Whitesville Field. Department staff agreed to a drawing submitted to staff by East Resources on January 15, 2010, provided that the Penny and Fulmer sands are not hydrofractured. In addition, East Resources is required to submit to the Department quarterly GOR testing for the Sea Level sands. Staff informed East Resources that it may submit modified well permit applications to the Region conforming to the agreed upon drawing. Department staff indicated that as a result of the agreement, staff considers the matter resolved.

By email of the same date, East Resources also indicated that as a result of the agreement, all issues pending before me have been resolved, subject to East Resource's reservation of rights to pursue the completion of multiple sandstone formations in the future. East Resources further indicated that it will pursue permit applications in accordance with the agreement reached during the mediation process.

Order of Disposition

All issues identified for adjudication in the December 11, 2009, issues ruling have been resolved by mutual agreement of Department staff and East Resources. The party status petitioners did not file appeals from the issues ruling and, accordingly, the denial of those petitions has become final. Accordingly, consistent with the Department's Organization and Delegation Memorandum 94-13, the matter is hereby remanded to Department staff for any further administrative proceedings they deem appropriate. The hearing record in this matter is hereby closed.

/s/

James T. McClymonds
Chief Administrative Law Judge

Dated: February 16, 2010
Albany, New York

Attachments

TO: Attached Active Parties Service List