

**AOPA COMMITTEE
OF THE
NATURAL RESOURCES COMMISSION
January 23, 2024, Meeting Minutes**

AOPA COMMITTEE MEMBERS PRESENT

Jane Ann Stautz, Chair
Jennifer Jansen
Bart Herriman

NRC, DIVISION OF HEARINGS STAFF PRESENT

Elizabeth Gamboa
Aaron Bonar
Scott Allen

GUESTS PRESENT

Joe Langerak
Ihor Boyko

Call to Order

Jane Ann Stautz, Chair, called the meeting to order at approximately 8:41 a.m., ET, at the Fort Harrison State Park, The Garrison, 6002 North Post Road, Indianapolis, Indiana. With the presence of three members, the Chair observed a quorum.

Consideration and approval of minutes for the meeting held on November 14, 2023

Jansen made a motion to approve the minutes of the November 14, 2023, AOPA meeting. The Chair seconded the motion. Upon a voice vote, the motion carried with Herriman abstaining from the vote.

Consideration of Summary Judgment with Findings of Fact, Conclusions of Law, and Nonfinal Order in the matter of *Gibson County Coal, LLC v. Department of Natural Resources & Pioneer Oil Company Inc.*; Administrative Cause No. 22-069G

The Chair recognized Joe Langerak, counsel for the Petitioner, Gibson County Coal, LLC. (GCC).

Langerak presented oral argument, which is summarized as follows:

The matter has been briefed, and the legal arguments are not new. The simple facts are that an oil driller wants to drill on top of a coal mine with an active coal mining permit for the purpose of flaring coal bed methane for carbon tax credits. This is the first time this has happened in Indiana.

GCC argues that the Finding of Fact, Conclusion of Law, and Nonfinal Order (Nonfinal Order) was a bad decision based on both legalities and policy. There is an issue on who and who is not an “operator.” Pioneer Oil Company, Inc. (Pioneer) says they are an operator by virtue of the permit being issued meaning that, when an applicant files for a drilling permit, it doesn’t matter if the operator intends to violate the law. Pioneer says they are an operator because they applied for and were granted a permit, but that is not the case unless they are an operator of a coal mine or drilling for oil and gas in a coal mine.

Pioneer has said GCC can stop Pioneer by going to state court to stop their illegal activities, but that defies logic. A company should not be able to violate the code and still be an operator by virtue of holding a permit.

It makes sense the legislature considered the benefits of extracting coal bed methane to the operation of a mine. The operation of a mine has detrimental effects on the environment, including the management of methane, so it would stand to reason that burning the coal bed methane is part of operating the coal mine. Instead, what is happening is that people who see an opportunity to monetize the flaring of coal bed methane are doing so when they did not generate the methane.

Unless Pioneer is an owner and operator of a well producing oil and gas or they own a coal mine, Pioneer cannot capture coal bed methane under the statute. It is bad precedent and inconsistent with current Indiana law.

Herriman asked if the landowner granted a lease agreement to GCC and also to Pioneer and, if so, whether the issue is if GCC was under the impression they were to be the sole operator on the landowner’s property. Langerak said the landowner did have a lease with GCC and with Pioneer but, when the language of each lease was drafted, no one anticipated the coal bed methane would be valuable. Langerak said the dispute between the parties has to do with statutory interpretation and not the leasehold rights.

The Chair recognized Ihor Boyko, counsel for the Respondent, Department of Natural Resources (Department).

Boyko presented oral argument, which is summarized as follows:

The Nonfinal Order is very comprehensive and points out that the Department met all the statutory requirements when issuing the permits. Mr. Langerak cited the statute that would support denying the permit and the Administrative Law Judge (ALJ) found that statute not applicable.

Finding 78 of the Nonfinal Order may have a typographical error where it cites I.C. 14-27, and it should cite I.C. 14-37.

GCC is relying on I.C. 14-37-11 and that is an enforcement or punitive statute applied when someone commits waste, but the Department cannot deny a permit based on that statute. The ALJ determined that a permit should not be denied on the basis that someone might violate the law in the future.

There is no reason to reverse the Nonfinal Order and it should be upheld and made a Final Order. Boyko noted that the attorney for Pioneer was not present and would stand on what was already filed in the matter.

Herriman asked if the Department agrees with GCC's argument that this is the first time a driller has flared coal bed methane for carbon tax credits on top of an active coal mine. Boyko said he believes this is the first time a coal mining permit and an oil and gas permit have been issued for the same location. Boyko said there are two separate regulatory rules and the ALJ found the Respondents complied with what they were required to do.

Boyko said the Department does not get involved in land leasing issues, which would be a matter for a court of appropriate jurisdiction.

Herriman asked if there was a Department or Commission policy to maximize the efficiency and use of property where there would be cooperation to capture gas at the same time a mine is operating. Boyko said the Department is trying to come up with guidance on the flaring of coal bed methane for oil and gas purposes so a company would not just get tax credits, but also pay royalties for the product.

The Chair said these were new areas of practice from a policy and statute standpoint the Department will need to review for potential modifications.

Jansen suggested modifications to finding 78 and 79 to remove I.C. 14-27 and replace with the cite I.C. 14-37.

Herriman suggested additional modifications to the Nonfinal Order: change "according the" in the first paragraph of Finding 79 to "according to;" 2) remove the apostrophe and "s" from GCC on page five, paragraph 36; on page eight, paragraph 58, change "for the mine" to "of the mine;" and beginning on page thirteen change the bolded paragraph numbers to regular text.

Jansen moved to approve the Summary Judgment with Findings of Fact and Conclusions of Law with Nonfinal Order, with amendments. Herriman seconded the motion.

The Chair called for a vote to accept the Summary Judgment with Findings of Fact and Conclusions of Law with Nonfinal Order, with amendments, in the matter of *Gibson County Coal, LLC v. Department of Natural Resources & Pioneer Oil Company Inc.* On a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 9:01 a.m. ET.