CHAPTER 22

Plugging Oil and Gas Wells:

Who's in Control -- Lessor or Lessee?

Are Some Pennsylvania Courts Changing the Rules?

Wesley A. Cramer[1]

Peacock, Keller, Yohe, Day & Ecker

Washington, Pennsylvania

Synopsis

§ 22.01. Introduction.

Historically, in their interrelationships with their lessors,[2] oil and gas lessees[3] have been allowed to exercise wide latitude in plugging their own oil and gas wells.[4] Recently, however, some lessors in Greene County, Pennsylvania, have taken legal action to block the plugging of certain natural gas production wells. The Greene County court has gone to significant lengths to uphold the wishes of the lessors in most of these disputes.

§ 22.02. Scope.

The principal focus of this Chapter is the recent Greene County, Pennsylvania, trial court decisions. Accordingly, the majority of the law discussed will be that which has originated in Pennsylvania.

In this Chapter, we define the importance of the topic, examine the historical background of well plugging rights and privileges, and examine the relative rights of the lessor and lessee under the recent Greene County, Pennsylvania, decisions. We compare these recent Greene County decisions to historical and current statutory and regulatory well-plugging requirements. Also, we take a brief look at the impact the Greene County decisions, if upheld on appeal, may have on other industries.

Finally, while this Chapter addresses the various Pennsylvania statutes and regulations pertaining to oil and gas well pluggings, the focus is not upon what enforcement action may be taken against a lessee by a government agency. Rather, the focus is on who, as between lessor and lessee, is in control of oil and gas well plugging decisions.

§ 22.03. The Parties and Their Interests.

Inevitably, the existence of every oil and gas well sooner or later spawns the plugging issue. However, the motivation for plugging or not plugging oil and gas wells takes on various shades of difference, depending on the circumstances surrounding a particular well. With the substantial number of active, inactive, and improperly abandoned wells in existence, the plugging issue has become quite pervasive and important to various parties.

[1]--The Lessor's Interest.

Historically, oil and gas wells in the Appalachian region have not produced enormous royalties for lessors. Nevertheless, lessors have jealously guarded their desire for an uninterrupted flow of what is only a small income. Some lessors have been motivated to continue their interest in a well for as long as possible because of the perceived prestige that accompanies having a legal interest in an oil or gas well.

More important to some lessors than the royalties from the well has been the lessor's appetite for free or domestic gas.[5] More often than not, lessors have been interested in having the plugging of a gas well delayed for as long as the well can continue to serve their domestic needs.

However, the Greene County cases reveal a rather unexpected, yet important and valuable reason for lessors' desiring control over oil and gas well plugging decisions. If a lessor can successfully assert control