

BEFORE THE OIL & GAS COMMISSION

CITY OF WOOSTER, :
 :
 : Appeal No. 900
 :
 Appellant, :
 : Review of Chief's Order 2015-68
 : (Enviro Clean Facility)
 :
 -vs- :
 :
 :
 :
 DIVISION OF OIL & GAS RESOURCES : ORDER OF THE
 : COMMISSION DISMISSING
 MANAGEMENT, : APPEAL #900 AS MOOT
 :
 Appellee. :

Appearances: Stephen P. Samuels, Thaddeus H. Driscoll, Alana R. Shockey, Richard R. Benson, Jr., Counsel for Appellant City of Wooster; Brian Ball, Brian Becker, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

Date Issued: Nov. 16, 2015

BACKGROUND

This matter comes before the Oil & Gas Commission upon appeal by the City of Wooster from Chief's Order 2015-68. Chief's Order 2015-68 **revoked** a previously-issued Chief's Order (Chief's Order 2014-09).¹

¹ The immediate decision discusses the interplay between three separate Chief's Orders. The orders are:

Chief's Order 2014-09. Chief's Order 2014-09 was issued by the Division to Enviro Clean Services on January 3, 2014. This order temporarily authorized operations at Enviro Clean's Wooster facility, which facility handles oilfield waste. On February 3, 2014, the City of Wooster appealed Chief's Order 2014-09 to the Commission. This appeal was assigned #859. Chief's Order 2014-09 will hereinafter be referred to as the "**First Authorization Order.**" Appeal #859 was **dismissed** by this Commission on June 12, 2015. The Commission found appeal #859 moot, as the First Authorization Order had been revoked (by Chief's Order 2015-68) and replaced (by Chief's Order 2015-70).

Chief's Order 2015-68. Chief's Order 2015-68 was issued by the Division to Enviro Clean Services on March 10, 2015. This order revoked the "First Authorization Order." On March 25, 2015, the City of Wooster appealed Chief's Order 2015-68 to the Commission. This appeal was assigned #900. Chief's Order 2015-68 will hereinafter be referred to as the "**Revocation Order.**" This order is the subject of the immediate appeal.

Chief's Order 2015-70. Chief's Order 2015-70 was issued by the Division to Enviro Clean Services on March 11, 2015. Similar to the "First Authorization Order," Chief's Order 2015-70 temporarily authorized operations at Enviro Clean's Wooster facility. Chief's Order 2015-70 replaced the "First Authorization Order." On March 25, 2015, the City of Wooster appealed Chief's Order 2015-70 to the Commission. This appeal was assigned #901. Chief's Order 2015-70 will hereinafter be referred to as the "**Second Authorization Order.**"

As grounds for its appeal of the Revocation Order, the City of Wooster asserts that:

1. The Chief lacked jurisdiction to issue the [Revocation] Order while [the First Authorization Order] is on appeal to the Commission.
2. The [Revocation] Order is unreasonable and unlawful because it was issued in the absence of governing rules that the [Division] must adopt pursuant to R.C. 1509.22(C) and 1509.03(A).

(First Amended Notice of Appeal, case #900.)

On September 22, 2015, the Division filed a *Motion to Dismiss* appeal #900, arguing that this matter is moot. On October 2, 2015, Appellant the City of Wooster filed a *Memorandum in Opposition* to dismissal.

In its Motion to Dismiss, the Division argues that the City's appeal of the Revocation Order should be dismissed as moot because the appeal of the First Authorization Order (which the Revocation Order, at issue in the immediate appeal, revoked) had already been dismissed by this Commission as moot. See *City of Wooster v. Division*, case #859 (June 12, 2015).

However, the situation in appeal #859 is different from the situation in the immediate appeal. In appeal #859, the order under appeal had been revoked. Here, the order under appeal remains effective, and has not been revoked, terminated or revised.

Generally, a case is "moot" when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. *State ex rel. Gaylor, Inc. v. Goodenow*, 2010 Ohio 1844 ¶10 (April 29, 2010), citing *Los Angeles County v. Davis* (1979), 440 U.S. 625, 631.

To determine if a matter is moot, the Commission may examine the circumstances of the particular case to determine if any meaningful or substantive relief can be granted regarding matters raised by the appeal.

In this case, the only purported purpose of Chief's Order 2015-68 was to revoke the First Authorization Order. The First Authorization Order has now been revoked and replaced by the Second Authorization Order.

The Second Authorization Order is currently under appeal to the Commission as case #901, and is set for merit hearing on December 2 & 3, 2015.

A review of the Revocation Order will not present circumstances in which the Commission can grant meaningful relief. Even if the Commission were to find in favor of the City of Wooster in this case, the Commission's decision would have no meaningful effect. The First Authorization Order has already been replaced by the Second Authorization Order. If the Commission were to find the Revocation Order unlawful or reasonable, it would not resurrect the now-replaced First Authorization Order.

Moreover, the City's pending appeal of the Second Authorization Order preserves to the City all issues raised by its appeal of the Revocation Order. If the City wishes to litigate the Division's authority to change or revoke an order that is actively under appeal, this issue can be addressed in appeal #901. Also, the City's allegation that the Division has acted in the absence of governing rules is already identified as an issue in the City's appeal of the Second Authorization Order (appeal #901).

ORDER

The Oil & Gas Commission has considered Appellee's *Motion to Dismiss* and finds it well taken. **WHEREFORE**, the Commission hereby **DISMISSES** appeal #900, finding that appeal #900 is moot as the Commission can grant no meaningful relief in this matter. The Commission will proceed to hearing on the City's appeal of the Second Authorization Order (appeal #901) on **December 2 & 3, 2015**, as scheduled.

Date Issued: Nov. 16, 2015

RECUSED
J. BRANDON DAVIS, Chairman


JEFFREY J. DANIELS, Secretary *wz*


ROBERT C. SMITH *wz*


GREGORY J. NEW *wz*

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas of Franklin County, within thirty days of your receipt of this Order, in accordance with Ohio Revised Code Section §1509.37.

DISTRIBUTION:

Stephen P. Samuels, Thaddeus H. Driscoll, Alana R. Shockey, Via E-Mail [ssamuels@fbtlaw.com; tdriscoll@fbtlaw.com and ashockey@fbtlaw.com] & Certified Mail #: 91 7199 9991 7030 3099 0517
Richard R. Benson, Jr., Via E-Mail [dbenson@woosteroh.com] & Regular Mail
Brian Ball, Brian Becker, Via E-Mail [brian.ball@ohioattorneygeneral.gov & brian.becker@ohioattorneygeneral.gov]
& Inter-Office Certified Mail #: 6789
Patrick E. Noser, J. Douglas Drushal, Via Regular Mail