

BEFORE THE OIL & GAS COMMISSION

PONDEROSA CONSULTING SERVICES,	:	Appeal No. 897
	:	
Appellant,	:	
	:	Review of Chief's Order 2014-94
-vs-	:	
	:	
DIVISION OF OIL & GAS RESOURCES	:	
MANAGEMENT,	:	<u>ORDER OF THE COMMISSION</u>
	:	<u>DISMISSING APPEAL</u>
Appellee.	:	

Appearances: Bob Breneman, on behalf of Appellant Ponderosa Consulting Services, Inc.; Brian Ball, Gerald Dailey, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Ponderosa Consulting Services, Inc. ["Ponderosa"] from Chief's Order 2014-94. Ponderosa is the owner of 36 oil & gas wells located within the State of Ohio. Chief's Order 2014-94 alleged that Ponderosa failed to maintain liability insurance "to pay damages for injury to persons or damage to property caused by the drilling, operation, or plugging of all the owner's wells in this state." (*See O.R.C. §1509.07(A)(1).*)

On February 5, 2015, Mr. Bob Breneman, President of Ponderosa Consulting Services, Inc., without benefit of counsel, filed an appeal of Chief's Order 2014-94. In his letter of appeal, Mr. Breneman asserted that liability insurance was, indeed, in place for all wells under Ponderosa's ownership.

On February 6, 2015, Chief's Order 2014-94 was terminated, indicating that the Division had determined that liability insurance was in place and effective for the Ponderosa wells. However, Ponderosa's appeal to the Commission remained pending, and this matter was ultimately set for hearing on June 11, 2015.

Commission Rule O.A.C. §1509-1-15 provides:

(A) When an appeal has been placed upon the calendar for hearing, the commission will, not less than ten days in advance of the hearing, notify the parties to an appeal of the place where, and the date and time when, the appeal will be called for hearing.

(B) Notice of hearing sent by certified mail to a party at the last known address of such person shall be deemed sufficient notice of hearing if mailed at least ten days prior to the date set for hearing.

Notice of the date, location and time for the June 11, 2015 hearing was sent to Mr. Breneman via Certified Mail on May 15, 2015, at the address provided in his letter of appeal. When this notice was not claimed by Mr. Breneman, the notice was re-sent by Regular Mail.¹

¹ In this matter, the Commission made multiple attempts to notify Ponderosa and Mr. Breneman of the scheduling of a hearing in this appeal. The Commission also attempted to reach out to Mr. Breneman regarding the status of his appeal and the possibility that – in light of the termination of Chief's Order 2014-94 – he may wish to withdraw this appeal. However, the Commission received no response from Mr. Breneman, as demonstrated by the following chronology:

1. On February 5, 2015, Mr. Breneman filed his appeal.
2. On February 10, 2015, the Commission sent a letter to Mr. Breneman describing the appeal process and informing him that a telephone pre-hearing conference would be scheduled for February 25, 2015.
3. On February 10, 2015, a Notice of Telephone Pre-Hearing Conference was issued by Regular U.S. Mail to Mr. Breneman at the address provided in his letter of appeal. This notice scheduled the February 25, 2015 pre-hearing conference.
4. On February 25, 2015, the Commission's Executive Director attempted to contact Mr. Breneman for pre-hearing conference and was unable to reach him (no answer at the telephone number provided in his letter of appeal). It was during this conference call that the Commission was informed by counsel for the Division that Chief's Order 2014-94 had been terminated on February 6, 2015.
5. On February 25, 2014, the Commission sent a letter to Mr. Breneman via Regular U.S. Mail, noting his absence at the pre-hearing conference and explaining procedures for withdrawing his appeal in light of the termination of Chief's Order 2014-94.
6. On April 6, 2015, the Commission again called Mr. Breneman, but was unable to reach him or leave a message. The mailbox was identified as full. However, the Commission was able to leave a call-back number. Mr. Breneman did not return this call.
7. On April 6, 2015, the Commission sent another letter to Mr. Breneman via Regular U.S. Mail, explaining how he could withdraw his appeal and indicating that if the appeal were not withdrawn by May 1, 2015, a hearing would be scheduled for June 11, 2015.
8. On May 5, 2015, the Commission again attempted to contact Mr. Breneman by telephone. Again his mailbox was full and a call-back number was left. Mr. Breneman did not return this call.
9. On May 15, 2015, the Commission issued a Notice of Hearing via Certified Mail, scheduling a hearing for June 11, 2015.
10. On June 3, 2015, the Commission checked the tracking number for the Certified Mailing of the Notice of Hearing. The Commission discovered that the Notice of Hearing was unclaimed. At that time, the Notice of Hearing was being held, and was available for pickup, at the Wooster, Ohio Post Office.
11. On June 3, 2015, the Commission resent the Notice of Hearing via Regular U.S. Mail.
12. On June 3, 2015, the Commission also sent Mr. Breneman a letter via Regular U.S. Mail, describing the Commission's hearing procedures and explaining how Mr. Breneman could withdraw his appeal if he had decided not to pursue this matter.
13. On June 11, 2015, this matter came on for hearing. No representative of Ponderosa Consulting Services appeared.
14. On June 23, 2015, the Commission's Notice of Hearing (sent by Certified Mail on May 15, 2015) was returned to the Commission, marked as unclaimed.

On June 11, 2015, this matter came on for hearing before the Commission. No representative of Ponderosa appeared. The Commission received no communication from Ponderosa relative to its absence at hearing.

The Division did appear, and verbally moved for the dismissal of the immediate appeal. Also on June 11, 2015, the Division filed with the Commission a written Motion to Dismiss. This motion was served upon Mr. Breneman.

Commission Rule O.A.C. §1509-1-22(C) provides:

If an appellant fails to appear personally or by counsel or other authorized representative at a hearing scheduled, after being duly notified of the hearing by the certified mailing of a notice of hearing to such party's last known address, and if good cause for such failure to appear is not shown, the commission shall dismiss an appeal.

Since June 11, 2015, the Commission has not received any communication from Mr. Breneman showing just cause for Ponderosa's failure to appear at hearing.

The Oil & Gas Commission has a long history of dismissing appeals, where an appellant, after being duly notified, fails to appear for hearing and prosecute its appeal. (*See Mansfield Drilling Company, Inc., et al. vs. Division*, case #21 (July 15, 1975); *B & B Petroleum vs. Division*, case #742 (September 5, 2006). In the immediate appeal, the Appellant has provided the Commission with no reason to disturb its previous holdings.

Moreover, the Division's termination of Chief's Order 2014-94 on February 6, 2015 effectively rendered Ponderosa's appeal moot, as this appeal no longer addresses a matter in controversy. (*See Century Surety Company vs. Division*, case #517 (June 26, 1996); *City of Wooster vs. Division*, case #859 (June 12, 2015).)


ORDER

Based upon the foregoing, the Oil & Gas Commission hereby **DISMISSES** the instant appeal for the Appellant's failure to appear at hearing and in light of the fact this this appeal has been rendered moot.

Date Issued: 8/12/2015



J. BRANDON DAVIS, Chairman *WD*



ROBERT S. FROST, Vice Chairman



JEFFREY J. DANIELS, Secretary *WD*



ROBERT C. SMITH

INSTRUCTIONS FOR APPEAL

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

DISTRIBUTION:

Bob Breneman, Via Certified Mail #: 91 7199 9991 7030 3102 4303 & Regular Mail
Brian Ball, Gerald Dailey, Via Inter-Office Certified Mail #: 6773