

# BEFORE THE OIL & GAS COMMISSION

CITY OF WOOSTER,	:	Appeal No. 859
	:	
Appellant,	:	
	:	Review of Chief's Order 2014-09
-vs-	:	(Enviro Clean Facility)
	:	
DIVISION OF OIL & GAS RESOURCES	:	
MANAGEMENT,	:	<b><u>ORDER OF THE</u></b>
	:	<b><u>COMMISSION DISMISSING</u></b>
Appellee.	:	<b><u>APPEAL #859 AS MOOT</u></b>

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

Date Issued: June 12, 2015

## **BACKGROUND**

This matter comes before the Oil & Gas Commission upon appeal by the City of Wooster from Chief's Order 2014-09. Chief's Order 2014-09 granted Enviro Clean Services ["Enviro Clean"] temporary authorization to operate a facility known as the Enviro Clean Facility. This facility is described in Chief's Order 2014-09 as a recycling and treatment facility that receives, and processes for disposal, certain oilfield wastes, associated with oil & gas exploration and production. The facility is located in Wooster, Ohio.

Initially, Enviro Clean Services intended to participate in appeal #859, and on February 12, 2014, Enviro Clean moved for intervention into this matter. On May 10, 2014, the Commission **granted** Enviro Clean full-party status in case #859. However, on December 17, 2014, Enviro Clean filed a *Motion to Withdraw as Intervenor*. This motion was **granted** by the Commission on February 17, 2015, and Enviro Clean was **removed** as a party to appeal #859.

The Commission scheduled appeal #859 for merit hearing, to commence on March 12, 2015. However, on March 11, 2015, the Division filed a *Motion to Dismiss* appeal #859. The Division asserted that, because of significant and voluntary operational changes at the Enviro Clean Facility, Chief's Order 2014-09 (the subject of appeal #859) was no longer relevant to actual operations at the Enviro Clean Facility. The Commission was informed that Enviro Clean had submitted a new application to operate its facility, and that the Division had **revoked** Chief's Order 2014-09 (the order under appeal in case #859).<sup>1</sup> In light of these developments, the Commission **cancelled** the hearing scheduled in appeal #859.

In its *Motion to Dismiss*, the Division argues alternatively: (1) that the City's appeal of the "First Authorization Order" has been rendered moot by the Division's revocation of that order and by the Division's replacement of the "First Authorization Order" by the "Second Authorization Order," or (2) that, in light of the revocation of "First Authorization Order," the City no longer possesses sufficient standing to maintain an appeal of the revoked order.

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<sup>1</sup> 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. On February 3, 2014, the City of Wooster appealed Chief's Order 2014-09 to the Commission. This appeal was assigned #859 (the immediate appeal). Chief's Order 2014-09 will hereinafter be referred to as the "**First Authorization Order.**"

**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.**"

**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." The Division maintains that, based upon operational changes at the facility, the operational terms and conditions addressed under Chief's Order 2015-70 differs from those addressed under 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.**"

Both the "Revocation Order" and the "Second Authorization Order" are appealable to the Oil & Gas Commission. And, indeed, the City of Wooster has appealed both of these orders. It is the Commission's intent to schedule these two appeals for merit hearing in August 2015.

The Commission has reviewed the filings of both parties relative to the Division's *Motion to Dismiss*. On April 8, 2015, the City filed a *Motion for Leave to File Surreply Instanter*. The Commission hereby **grants** the City's motion for leave, and the Commission has reviewed, and considered, the City's surreply. On June 9, 2015, the Division made a Notice of Filing Supplemental Authority in support of its Motion to Dismiss. The supplemental authorities submitted by the Division were previous rulings by this Commission, wherein appeals were dismissed as moot, under various circumstances, but all in situations where the Commission determined that a matter under appeal had been resolved, or modified, in a manner that removed the controversy initially raised by appeal. (See *Century Surety Company vs. Division*, case # 517 (June 26, 1996).

The "First Authorization Order" (the subject of the immediate appeal) has been revoked and replaced, thereby rendering the directives of the "First Authorization Order" void and without effect. The specific **revocation** of the "First Authorization Order" indicates that the "First Authorization Order" will not be capable of re-initiation should the "Second Authorization Order" ultimately be vacated.

The revocation of the "First Authorization Order," and its replacement by the "Second Authorization Order," renders the subject matter of appeal #859 moot, as this appeal no longer addresses a matter in controversy.<sup>2</sup>

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<sup>2</sup> In arguing against dismissal of the appeal #859, the City cited as authority the Supreme Court's decision in *Lorain City School District Board of Education*, 46 Ohio St. 3d 12 (1989). The Commission does not disagree with the Supreme Court's decision in *Lorain*. However, in drawing analogies, it is essential that the parties be mindful of the "level of administrative review" at issue in any particular case. The Commission's position in appeal #859 is analogous to SERB's position in the *Lorain* case. The Commission would agree that, if a Commission decision is appealed into the courts, the Commission would lose jurisdiction and would not be authorized to take any action to revise, modify or reconsider its decision in a case appealed to the courts. The City uses the *Lorain* decision to stand for the proposition that the **Division** cannot alter an enforcement action under appeal to the **Commission**. This is not the holding of *Lorain*. *Lorain* addresses the jurisdiction of an administrative review board, and not the jurisdiction of a regulatory agency. The holding of ERAC in *City of Monroe v. Korleski, et al.*, 10th Dist. Nos. 10AP-718, 10AP-721 thru 10AP-724, 2011-Ohio-1784 (April 12, 2011), is more accurately applicable to the situation presented in the instant case.

## ORDER

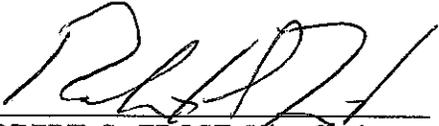
The Oil & Gas Commission has considered Appellee's *Motion to Dismiss* and finds it well taken. **WHEREFORE**, the Commission hereby **DISMISSES** appeal #859, finding that appeal #859 has been rendered moot by the revocation of Chief's Order 2014-09 and by the replacement by Chief's Order 2014-09 by Chief's Order 2015-70.

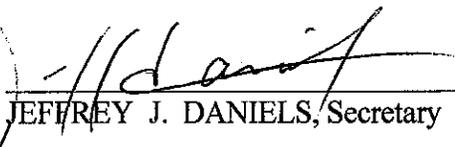
Date Issued:

6/12/2015

RECUSED

J. BRANDON DAVIS, Chairman

  
ROBERT S. FROST, Vice Chairman

  
JEFFREY J. DANIELS, Secretary

  
ROBERT E. SMITH

### 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:

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