

BEFORE THE OIL & GAS COMMISSION

ANDREW & KRISTI STALKER,

Appellants,

-vs-

DIVISION OF OIL & GAS RESOURCES
MANAGEMENT,

Appellee,

and

CHESAPEAKE EXPLORATION LLC,

Intervenor.

Appeal No. 844

Review of Chief's Order 2012-13;
Rufener Unit (Chesapeake Exploration)

**ORDER OF THE
COMMISSION GRANTING
MOTION TO DISMISS
APPEAL**

Appearances: Andrew & Kristi Stalker, Appellants, *pro se*; Megan DeLisi, Kristina Tonn, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management; John K. Keller, Michael J. Settineri, Counsel for Intervenor Chesapeake Exploration LLC.

Date Issued: January 9, 2013

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Andrew & Kristi Stalker from Chief's Order 2012-13. This order approved an application, sought by Chesapeake Exploration LLC ["Chesapeake"], for unit operations of the Utica/Point Pleasant Formations associated with a unit to be known as the Rufener Unit. The Stalkers own land within the area proposed to be included within this unit, and are identified as unleased landowners under Chief's Order 2012-13. Chesapeake has been granted intervenor status in this appeal.

Chief's Order 2012-13 was issued by the Division on July 10, 2012. The Chief's Order was served upon the Stalkers via Certified Mail. The Chief's Order was received by the Stalkers on July 18, 2012. On August 21, 2012, Andrew & Kristi Stalker filed a notice of appeal from Chief's Order 2012-13 with the Oil & Gas Commission

On November 19, 2012, Chesapeake filed a Motion to Dismiss the Stalker appeal, arguing that the notice of appeal was filed outside the 30-day appeal period provided by statute. Chesapeake argues that the Stalkers' failure to file their appeal in a timely manner constitutes a jurisdictional defect, requiring dismissal of this appeal. On November 26, 2012, the Stalkers responded to Chesapeake's motion. The Division did not oppose Chesapeake's Motion to Dismiss, but made no formal filing. Chesapeake replied to the Stalker's response on December 6, 2012.

Chief's Order 2012-13 contained instructions for filing an appeal with the Oil & Gas Commission. These instructions informed the Stalkers that they were required to file any notice of appeal within 30 days of their receipt of the Chief's Order. The Stalker's appeal was filed with the Oil & Gas Commission on August 21, 2012, 34 days after Chief's Order 2012-13 was received at the Stalker home.

CONCLUSIONS OF LAW

O.R.C. §1509.36 sets forth the method by which an appeal is perfected to the Oil & Gas Commission. That section of law provides *inter alia*:

Any person adversely affected by an order by the chief of the division of oil and gas resources management may appeal to the oil and gas commission for an order vacating or modifying the order.

* * *

The appeal shall be in writing and shall set forth the order complained of and the grounds upon which the appeal is based. The appeal shall be filed with the commission within thirty days after the date upon which the appellant received notice by certified mail and, for all other persons adversely affected by the order, within thirty days after the date of the order complained of ...

(Emphasis added.)

The Division issued Chief's Order 2012-13 to the Stalkers by Certified Mail. This mailing was received at the Stalker home on July 18, 2012. (See United States Postal Service Certified Mail Receipt attached to Intervenor's Motion to Dismiss.) The Stalkers acknowledge receipt of Chief's Order 2012-13 on July 19, 2012. (See Stalkers response to Intervenor's Motion to Dismiss.) The Appellants' notice of appeal was filed on August 21, 2012, 34 days after Appellants' receipt of Chief's Order 2012-13 as confirmed by the United States Postal Service receipt, or 33 days after Appellants' recollection of their receipt of Chief' Order 2012-13.

Where a statute confers the right of appeal, adherence to the conditions imposed thereby is essential to the enjoyment of that right. *American Restaurant and Lunch Co. v. Glander*, 147 Ohio St. 147 (1946).

The filing deadlines for notices of appeal are mandatory and jurisdictional. Indeed, the Oil & Gas Commission has dismissed prior appeals for the appellant's failure to file an appeal within the statutorily mandated 30-day appeal period. See: *Quest Energy Corp. v. Biddison*, appeal #232 (March 23, 1987); *Progressive Oil & Gas, Inc. v. Biddison*, appeal #307 (August 22, 1988); *Charles & Loretta Mertens v. Mason*, appeal #494 (July 16, 1992); *Paul Grim v. Mason*, appeal #577 (June 26, 1996); *Hanley Hardin v. Mason*, appeal #566 (June 27, 1996); *John & Gladys Spillman v. Division*, appeal # 604 (May 12, 1997); *James & Mary Riordan v. Division*, appeal # 703 (January 18, 2002); *Robert W. Barr, dba Big Sky Petroleum v. Division*, appeal # 728 (January 23, 2004).

The Stalkers filed their appeal on August 21, 2012, without aid of counsel. The Commission understands that unrepresented appellants may be unfamiliar with the procedures employed in administrative appeals. Yet, some statutory requirements are mandatory, and cannot be overlooked or waived. The law requires the Commission to dismiss appeals for jurisdictional failures. This is true even where the appellant is unrepresented. See: *Beverly Jo Dobbin Williams v. Mason*, appeal #528 (April 26, 1994); *Charles & Loretta Mertens v. Mason, supra*; *John & Gladys Spillman v. Division, supra*; *Robert W. Barr, dba Big Sky Petroleum v. Division, supra*.

The Stalkers have argued that the language of Chief's Order 2012-13 specifically encouraged negotiation between unleased landowners and Chesapeake (the applicant for unitization). The Stalkers assert that they received an offer from Chesapeake dated July 27, 2012, and received telephone communication from Chesapeake as late as August 22, 2012. The Stalkers argue that the 30-day appeal period is inadequate, in light of the negotiations that occurred after the Chief's Order was issued.¹

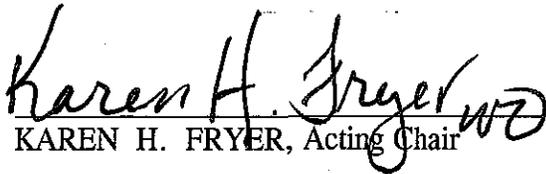
"Jurisdiction" is a term used to define the Commission's authority to act. Where jurisdiction fails, the Commission is without power to decide a matter. Jurisdictional matters are not such that the Commission may ignore, or attempt to draw exceptions to, the statutory requirements. In that sense, the jurisdictional requirements of the statute are uniquely important.

In order to invoke the jurisdiction of the Commission, an appellant must file the notice of appeal in a timely manner. By law, the failure of an appellant to file its appeal within the statutorily-mandated time period results in the dismissal of the appeal. The Stalkers failed to satisfy this statutory requirement. For this reason, the Oil & Gas Commission lacks jurisdiction to hear and decide the immediate appeal.

¹ Chief's Order 2012-13 required further negotiations between Chesapeake and unleased landowners. At page 5 of Chief's Order 2012-13, the Chief gives Chesapeake 14 days to either: (1) make good faith efforts to lease unleased tracts proposed for unitization, or (2) make good faith efforts to owners of unleased tracts to participate as working interest owners. On page 5 of Chief's Order 2012-13, the unleased tract owners are then given 30 days to respond to any such good faith offers from Chesapeake. Thus, this "negotiation process" could take 44 days. The Commission understands that the parallel operation of the "negotiation process" anticipated by the language of Chief's Order 2012-13 and the appeal period to the Oil & Gas Commission could cause confusion for landowners attempting to take advantage of all of their options under the Chief's Order. However, the statutorily-mandated time period is not tolled during negotiations under the Chief's Order.

ORDER

The Oil & Gas Commission has read and considered all filings relative to the Intervenor's Motion to Dismiss. The Commission has also reviewed its prior orders and decisions, as well as the provisions of O.R.C. §1509.36. The Commission **finds** the Intervenor's arguments well taken. **WHEREFORE**, the Commission **GRANTS** Intervenor's Motion and **DISMISSES** appeal number 844.


KAREN H. FRYER, Acting Chair


ROBERT S. FROST


DOUGLAS W. GONZALEZ

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.

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