

**BEFORE THE  
OIL & GAS COMMISSION**

ROBERT D. ARMSTRONG,	:	Appeal Nos. 819
	:	820
Appellant,	:	821
	:	
-vs-	:	Review of Chief's Orders 2010-03,
	:	2010-04 & 2010-06
DIVISION OF MINERAL RESOURCES	:	
MANAGEMENT,	:	<b><u>ORDER OF COMMISSION</u></b>
	:	<b><u>FINDING MOTION TO DISMISS</u></b>
Appellee.	:	<b><u>MOOT AND CLOSING APPEALS</u></b>

Appearances: Robert D. Armstrong, Appellant *pro se*; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: May 19, 2010

**BACKGROUND**

These matters came before the Oil & Gas Commission upon the Division's delivery to the Commission of a letter written by Robert D. Armstrong ["Mr. Armstrong"]. Mr. Armstrong's letter addressed Chief's Order 2010-03 (the Schlarb Wells), Chief's Order 2010-04 (the Cullen Wells) and Chief's Order 2010-06 (the Harrington Wells). These Chief's Orders require Mr. Armstrong to transfer, plug or produce eleven oil & gas wells owned by Mr. Armstrong, and located in Washington County, Ohio. The Orders contain a ten-day deadline for transferring or placing the wells into production, and a thirty-day deadline for plugging and abandoning the eleven wells.

Chief's Orders 2010-03, 2010-04 and 2010-06 were issued by certified mail to Mr. Armstrong on February 3, 2010, and were received at his address on February 11, 2010. (See Certified Mail Receipts attached to Appellee's Motion to Dismiss.)

On February 26, 2010, Mr. Armstrong mailed a letter to the Division Chief. On March 5, 2010, the Chief of the Division of Mineral Resources Management received this letter, which states in its entirety:

I would like to ask for a[n] appeal for 90 days after the dead line because of the weather. The snow and mud is so bad it would be hard on private and government land to do such work. Also in the time that I'm asking for I work a full time job, I'm working on the Harrington [Wells] as I speak.

Mr. Armstrong did not send the original, or a copy, of his February 26, 2010 letter to the Commission. However, based upon the language of that letter, wherein Mr. Armstrong states "I would like to ask for a[n] appeal," the Division delivered Mr. Armstrong's February 26, 2010 letter to the Commission. This delivery was made on March 23, 2010.

Upon receipt of the February 26, 2010 Armstrong letter from the Division, the Commission docketed this letter as an attempted appeal by Mr. Armstrong from Chief's Order 2010-03 (case #819), Chief's Order 2010-04 (case #820) and Chief's Order 2010-06 (case #821). The Commission also made efforts to contact Mr. Armstrong, in order to determine if his February 26, 2010 letter was, indeed, an attempt at appeal.

On April 15, 2010, the Division filed a Motion to Dismiss these appeals, stating that the appeals were not properly filed with the Oil & Gas Commission within the thirty-day appeal period provided by law. The Division argued that this failure constitutes a jurisdictional defect, requiring the dismissal of these appeals. Mr. Armstrong was given the opportunity to respond to the Division's Motion, and, on April 27, 2010, he responded as follows:

At the time I asked for the first appeal which I may have sent it to the wrong building I had asked for 90 days but I have had time to get the [Chief's Order] 2010-06 [the Harrington Wells] almost in production since then. It will be complete in 5 or 6 days from this letter. So therefore I should not need but 60 days to complete the other two [the Schlarb and Cullen Wells] because the weather is getting better.

## 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 claiming to be aggrieved or adversely affected by an order by the chief of the division of mineral resources management may appeal to the oil and gas commission . . . The appeal shall be filed with the commission within thirty days after the date upon which appellant received notice by registered mail of the making of the order complained of. Notice of the filing of such appeal shall be filed with the chief within three days after the appeal is filed with the commission . . .

(Emphasis added; see also O.A.C. §1509-1-11.)

The Commission has reviewed Mr. Armstrong's February 26, 2010 letter, and **FINDS** that this letter was not directed to the Oil & Gas Commission as an appeal; but rather was submitted to the Division Chief. The Commission further **FINDS** that the February 26, 2010 letter constitutes a request for the extension of certain abatement deadlines contained in Chief's Orders 2010-03, 2010-04 and 2010-06. As a request for the extension of abatement deadlines, the letter was appropriately submitted to the Division Chief, who is the proper party to address such requests. Finally, Mr. Armstrong's February 26, 2010 letter does not contest the issuance of the Chief's Orders in question, nor does it ask that these Orders be vacated or overturned.

Thus, the Commission **FINDS** that Mr. Armstrong has not filed an appeal with the Commission. Rather, he has requested that the Division Chief grant extensions of certain abatement deadlines contained in the Chief's Orders at issue. Mr. Armstrong's February 26, 2010 request for extension was properly directed to the Division Chief. We trust that the Division Chief will exercise his discretion as to whether to grant such an extension wisely and in accordance with the law.

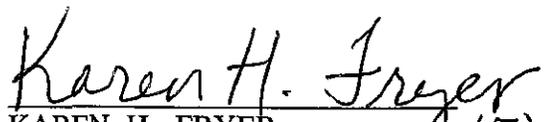
Since Mr. Armstrong has not invoked the jurisdiction of the Commission over Chief's Orders 2010-03, 2010-04 and 2010-06, the Commission shall **CLOSE** case numbers 819, 820 and 821. Having found that Mr. Armstrong did not attempt to invoke the Commission's jurisdiction over these matters, the Commission further **FINDS** the Division's Motion to Dismiss to be **MOOT**.

Consideration of Mr. Armstrong's requests for the extension of certain abatement deadlines articulated in Chief's Orders 2010-03, 2010-04 and 2010-06, rests with the Division Chief.

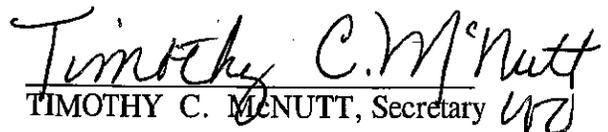
## ORDER

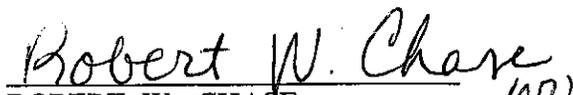
The Oil & Gas Commission has read and considered the Division's Motion to Dismiss, and Mr. Armstrong's response thereto. The Commission has also reviewed its prior orders and decisions. The Commission hereby **CLOSES** the matters of case numbers 819, 820 and 821, as the Commission's jurisdiction to review Chief's Orders 2010-03, 2010-04 and 2010-06 has not been invoked. The Commission further **FINDS** that the Division's Motion to Dismiss has been rendered **MOOT**.

  
M. HOWARD PETRICOFF, Chairman *WJ*

  
KAREN H. FRYER *WJ*

  
JAMES H. CAMERON

  
TIMOTHY C. McNUTT, Secretary *WJ*

  
ROBERT W. CHASE *WJ*

**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:**

Robert D. Armstrong, Via Certified Mail #: 91 7108 2133 3936 5364 8839 & Regular Mail (Rinard Mills address)  
Robert D. Armstrong, Via Certified Mail #: 91 7108 2133 3936 5364 8808 & Regular Mail (New Matamoras address)  
Molly Corey, Via Inter-Office Certified Mail #: 6572