

BEFORE THE OIL & GAS COMMISSION

HALL & HORNING OILFIELD,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee,

and

ALAN H. COOGAN & ROBERT BARR, JR.,

Intervenors.

Appeal No. 787

Review of Chief's Order 2007-58
(Oravec Well #3)

ORDER OF COMMISSION GRANTING MOTION TO DISMISS APPEAL

Appearances: Bruce Smith, Counsel for Appellant Hall & Horning Oilfield Services; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; Alan H. Coogan, Intervenor *pro se* and Counsel for Intervenor Robert Barr, Jr.

Date Issued:

Oct. 31, 2008

PROCEDURAL BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Hall & Horning Oilfield Services ["Hall & Horning"] from the Chief of the Division of Mineral Resources Management's Order number 2007-58. This Chief's Order addresses spacing requirements for an oil & gas well, known as the Oravec Well #3. Hall & Horning drilled the Oravec #3 Well, pursuant to a permit issued by the Division of Mineral Resources Management ["the Division"]. The Oravec Well #3 is owned and operated by Hall & Horning, and is located in Newbury Township, Geauga County, Ohio.

Chief's Order 2007-58 was issued by the Division on September 28, 2007. The Order was served upon Randy Hall, President of Hall & Horning, via Certified Mail. Chief's Order 2007-58 was received on October 4, 2007.

On December 3, 2007, Hall & Horning appealed Chief's Order 2007-58 to the Oil & Gas Commission. This matter has been assigned case number 787, and is the subject of the instant decision.

On December 24, 2007, Alan H. Coogan and Robert Barr, Jr. filed a request to intervene into the appeal of Chief's Order 2007-58. Mr. Coogan identified himself as a fractional interest owner in the Oravec Well #3. Mr. Barr identified himself as an owner of an undivided fractional working interest in this well. On January 23, 2008, Messrs. Coogan and Barr filed a Motion to Clarify Status of Appellants, in which they suggested to this Commission, that they be viewed as appellants in the appeal of Chief's Order 2007-58. Messrs. Coogan and Barr assert that they are adversely affected by Chief's Order 2007-58, as they oppose the possible plugging of the Oravec Well #3.

On February 28, 2008, the Commission **granted** Messrs. Coogan and Barr intervenor status in case number 787, finding that these gentlemen qualify as "interested persons" under the Commission's procedural rules.¹ The Commission did not open a separate appeal of Chief's Order 2007-58 with Messrs. Coogan and Barr as appellants, nor has the Commission named Messrs. Coogan and Barr as appellants in case number 787.

On December 20, 2007, the Division filed a Motion to Dismiss appeal 787, asserting that Appellant Hall & Horning failed to file its appeal in a timely manner. The Division argued that this failure constitutes a jurisdictional defect, requiring the dismissal of appeal 787. The Division also asserted that Appellant Hall & Horning failed to serve a copy of its appeal upon the Division Chief, as required by Section 1509.36, Revised Code.

Appellant Hall & Horning and Intervenors Coogan and Barr opposed the Division's Motion. Each party has fully briefed the issues presented through this Motion. On February 29, 2008, the Commission heard oral arguments on the Motion to Dismiss. All parties, including the Intervenor, participated fully in these arguments.

¹ OAC §1509-1-14 defines an "interested person" as "any person, partnership, corporation, board or other entity having a pecuniary or proprietary interest directly affected by an appeal." The Commission is authorized to grant an "interested person" permission to appear and participate in an appeal before the Oil & Gas Commission. The Commission takes a broad view of "interested person status," in order to insure the fullest and fairest review of an order under appeal.

BACKGROUND & DISCUSSION

The Division's Motion to Dismiss asserts that the Commission lacks jurisdiction to hear and consider appeal number 787. The Oil & Gas Commission is an agency of state government, and as such may only exercise the authority expressly granted to it by the General Assembly. The General Assembly's delegation of authority to the Oil & Gas Commission is found in Sections 1509.35 and 1509.36, Revised Code. Section 1509.36, Revised Code requires that an appeal from an order of the Chief of the Division must be filed with the Commission within thirty days after receipt of the Chief's order by registered mail. Section 1509.36, Revised Code further requires that a copy of the appeal be served upon the Chief of the Division within three days of the filing of the appeal. Since the General Assembly, by statute, has limited the time to file an appeal to thirty days, the Commission has no discretion to extend that time period or to accept an appeal filed more than thirty days after receipt of the Chief's order.

Chapter 1509 of the Revised Code requires that oil & gas wells be drilled upon tracts of land meeting certain set-back, acreage and spacing requirements. See Section 1509.24, Revised Code. The depth of a well, determines the necessary size of the drilling unit. Pursuant to O.A.C. §1501:9-1-04(C)(3), a well drilled to a depth between 2000 and 4000 feet must be located "upon a tract or drilling unit containing not less than twenty (20) acres." O.A.C. §1509:9-1-04(C)(4) provides that wells drilled deeper than 4000 feet must be located "upon a tract or drilling unit containing not less than forty (40) acres." The spacing and acreage mandates are directed to the applicants for drilling permits. It is the responsibility of the applicant for a permit to establish drilling units of the appropriate size to conform to the requirements of the law.

Documents filed as part of the appeal of Chief's Order 2007-58 indicate that when applying for the drilling permit associated with the Oravec Well #3, Hall & Horning proposed to produce from the Clinton Sandstone Formation. The proposed depth of this well was 3999 feet. As the anticipated depth of the Oravec Well #3 was to be less than 4000 feet, Hall & Horning established a 20-acre drilling unit. This was a voluntary decision, as all spacing requirements are stated as minimums, and a 20-acre drilling unit would not support a well of a depth of 4000 feet or greater.

On June 18, 2007, the Division issued to Hall & Horning permit 34-055-21959-00-00. The proposed depth for this well was 3999. The permit contained a condition, specifically stating that if the well depth is greater than 4000, the permittee would expand the drilling unit or plug the well. Under the authority of its permit, Hall & Horning drilled the Oravec Well #3 in July 2007. Hall & Horning reported the depth of the completed well as 4460 feet,² which was 461 deeper than the well's proposed depth and 460 feet deeper than the existing 20-acre drilling unit could lawfully support. The well was placed into production in August 2007.

Chief's Order 2007-58 was issued on September 28, 2007. This Order alleged deficiencies in the spacing of the Oravec Well #3, in violation of O.A.C. §1501:9-1-04. The Order also alleged that Hall & Horning had failed to comply with the terms of its permit. Specifically, the Order found that the Oravec Well #3 was drilled to a depth of greater than 4000 feet. Because of this depth, Hall & Horning's 20-acre drilling unit was found to be insufficient in size. The Order also stated that, by exceeding the proposed well depth, Hall & Horning violated its approved permit. Chief's Order 2007-58 required Hall & Horning, to bring its well into compliance with the acreage requirements of O.A.C. §1501:9-1-04(C)(4). Hall & Horning was given the option of either increasing the size of the well's drilling unit, or plugging and abandoning the well.

Chief's Order 2007-58 was issued by Certified Mail, addressed to Randy Hall, President, Hall & Horning Oilfield Services in Ravenna, Ohio. Hall & Horning is the permittee, owner and operator of the Oravec Well #3. The mailing was received on October 4, 2007.

Chief's Order 2007-58 contained instructions for filing an appeal with the Oil & Gas Commission. The instructions stated:

Addressee is hereby notified that this action is final and effective and may be appealed to the Oil and Gas Commission pursuant to Section 1509.36 of the Ohio Revised Code. The appeal must be in writing and must set forth the Orders complained of and the grounds upon which the appeal is based. Such appeal must be filed with Linda Osterman, Hearing Officer, Oil and Gas Commission, Division of Mineral Resources Management, 2045 Morse Road, Bldg F-2, Columbus, Ohio 43229-6693, within thirty (30) days after receipt of this Order.

² The Clinton Sandstone Formation was found in this area at a depth of between 3916 - 3992 feet.

In addition, within three (3) days after the appeal is filed with the Oil and Gas Commission, notice of the filing must be submitted to Scott R. Kell, Acting Chief, Division of Mineral Resources Management, 2045 Morse Road, Building H3, Columbus, Ohio 43229-6605.

Hall & Horning appealed Chief's Order 2007-58 to the Oil & Gas Commission on December 3, 2007. The Notice of Appeal was filed 60 days after Hall & Horning's receipt of the Chief's Order.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Section 1509.36, Revised Code 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.)

Chief's Order 2007-58 was issued by Certified Mail to Hall & Horning. Appellant Hall & Horning and Intervenor Coogan and Barr have argued that the Division should have issued Chief's Order 2007-58 to other persons, who would then have the right to file an appeal from this Order. Under this argument, Messrs. Coogan and Barr suggest that the Chief's Order should have been issued to them as well as to Hall & Horning.³

³ The Appellant's and Intervenor's arguments are unclear as to how widely they would suggest that the Division distribute a spacing order, but the argument might include lease holders, royalty owners, and perhaps people simply residing in the vicinity of a well.

The Commission does not find any statutory requirement that the Chief issue a spacing order to any entity besides the owner-operator of the well at issue.⁴ Order 2007-58 is an enforcement action taken by the Division Chief, which requires that a well be brought into compliance with the mandates of the law and the language of an approved permit. The Chief's Order was properly directed to the permittee, owner and operator of the well, as this is the only entity with the legal authority to take the actions necessary to comply with the Chief's Order.

While there is the possibility that any order of the Chief could have some effect on persons not identified as the permittee, owner or operator, such effects would be indirect. The issuance of a Spacing Order is an enforcement tool, intended to ensure that wells are drilled upon appropriately-sized units. The Order is a communication between the regulated community and the regulating authority. The Commission finds no legal requirement that the Division include other, non-essential, persons in this enforcement scenario.

The Commission agrees that persons other than the permittee may have pecuniary or proprietary interests in matters appealed to the Commission. For this reason, the Commission has specifically provided a mechanism for allowing "interested persons" to participate in the appellate process. However, the Commission finds no statutory or regulatory requirement that the Chief notify any person other than the owner-operator designated by the permit, to receive enforcement actions, such as Spacing Orders. Furthermore, the law is clear that the limited time period for appeals established in Section 1509.36, Revised Code commences when the Chief serves such an enforcement order upon the order recipient.

The Commission finds that Chief's Order 2007-58 was properly issued to Hall & Horning. Hall & Horning attempted to appeal this Chief's Order, but failed to follow the mandates of Section 1509.36, Revised Code. Hall & Horning's appeal of Chief's Order 2007-58 was filed 60 days after the Appellant's receipt of the Order, which is outside the 30-day appeal period set forth by law.

⁴ There are certain sections of the law, which do mandate service of orders on persons other than the well owner, *i.e.*, mandatory pooling orders, Section 1509.27, Revised Code.

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, appeal # 604 (May 12, 1997).

Intervenors Alan Coogan and Robert Barr have argued that they did not receive a copy of Chief's Order 2007-58, and, therefore, should not be subject to the 30-day appeal period. The Commission finds no legal obligation for the Chief to serve Messrs. Coogan and Barr. Further, the Commission finds that, in accordance with Section 1509.36, the thirty-day limit on an appeal of an enforcement order directed at a permittee commences when such an order is served upon the permittee.

In order to invoke the jurisdiction of the Commission, an appellant must file its 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. Appellant Hall & Horning failed to satisfy this statutory requirement in its attempt to appeal Chief's Order 2007-58. For this reason, the Oil & Gas Commission lacks jurisdiction to hear and decide this appeal.

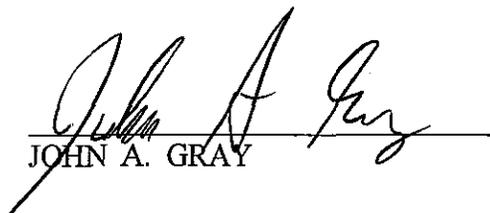
The Division has also argued that Appellant Hall & Horning failed to serve the Chief as required by Section 1509.36, Revised Code. In the past, the Commission has dismissed appeals based solely upon such a failure. Halwell Co., Inc. v. Mason, appeal #594 (March 10, 1997). There is some factual controversy on the question of whether the Chief was served, and whether service occurred within the required three-day period. As this appeal must be dismissed for Hall & Horning's failure to file its notice of appeal with the Commission in a timely manner, it is not essential for the Commission to resolve the factual issues presented by this argument.

ORDER

The Oil & Gas Commission has read and considered the Appellee's Motion to Dismiss, and the responses of Appellant Hall & Horning and Intervenors Coogan and Barr. The Commission has also reviewed its prior orders and decisions. The Commission finds the Appellee's arguments well taken. WHEREFORE, the Commission **GRANTS** Appellee's Motion and **DISMISSES** appeal number 787.



M. HOWARD PETRICOFF



JOHN A. GRAY



JAMES H. CAMERON

RECUSED
TIMOTHY C. McNUTT

ABSTAINED
ROBERT W. CHASE

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:

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