

# BEFORE THE OIL & GAS COMMISSION

THOMAS & BELLE BLAIR,	:	Appeal No. 791
	:	
Appellants,	:	Review of Chief's Order 2007-57
	:	(Oravec Well #2)
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES	:	<u>ORDER OF COMMISSION</u>
MANAGEMENT,	:	<u>GRANTING MOTION TO</u>
	:	<u>DISMISS APPEAL</u>
Appellee.	:	

Appearances: Alan H. Coogan, Counsel for Appellants Thomas & Belle Blair; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: Nov. 6, 2008

## PROCEDURAL BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Thomas & Belle Blair from the Chief of the Division of Mineral Resources Management's Order number 2007-57. This Chief's Order addresses spacing requirements for an oil & gas well, known as the Oravec Well #2. Hall & Horning drilled the Oravec #2 Well, pursuant to a permit issued by the Division of Mineral Resources Management ["the Division"]. The well is located in Newbury Township, Geauga County, Ohio. This well is owned and operated by Hall & Horning. The Blairs are landowners in the vicinity of the well, and are also royalty interest owners in the Oravec Well #2.

Chief's Order 2007-57 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 2007-57 was received by Mr. Hall on October 4, 2007.

On January 28, 2008, Thomas & Belle Blair appealed Chief's Order 2007-57 to the Oil & Gas Commission. This matter has been assigned case number 791, and is the subject of the instant decision. The Blairs assert that they are adversely affected by Chief's Order 2007-57, as they oppose the possible plugging of the Oravec Well #2.

On February 8, 2008, the Division filed a Motion to Dismiss appeal 791, asserting that Appellants Thomas & Belle Blair failed to file their appeal in a timely manner. The Division argued that this failure constitutes a jurisdictional defect, requiring dismissal of appeal 791. The Division also questioned the Blairs' standing, as royalty interest owners, to bring an appeal of an enforcement order directed to the well owner, Hall & Horning.

Appellants 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. Both parties participated fully in these arguments.

## **BACKGROUND & DISCUSSION**

The Division's Motion to Dismiss asserts that the Commission lacks jurisdiction to hear and consider appeal number 791, for, as an agency of state government, the Oil & Gas Commission may only exercise the authority expressly granted to it by the General Assembly. The Division reasons that since Section 1509.36 of the 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, the Commission could not hear an appeal filed on or after the thirty-first day following service. Further, the Division asserts that 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 order. Thus, the Division believes it is entitled to a motion to dismiss the appeal in the matter at bar. The Appellants claim that the thirty-day Period for them to file an appeal has not run, since the thirty-day clock commences with individual service of the Chief's spacing violation order upon them, and presumably upon every other royalty owner.

Chapter 1509 of the Revised Code requires that oil and 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 2,000 and 4,000 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 4,000 feet must be located "upon a tract or drilling unit containing not less than forty (40) acres." Note that these are minimum spacing requirements and an oil and gas producer may have a drilling unit that is larger than the minimums stated above. It is the responsibility of the permit holder to observe all the requirements of the permit issued by the Chief, and 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 2007-57 indicate that when applying for the drilling permit associated with the Oravec Well #2, Hall & Horning – the permit holder - proposed to produce from the Clinton Sandstone Formation.<sup>1</sup> The proposed depth of this well was 3,950 feet. As the anticipated depth of the Oravec Well #2 was to be less than 4,000 feet, Hall & Horning was granted a permit, but the maximum total depth authorized was limited to less than 4,000 feet, as the committed drilling unit was only 20 acres. On November 27, 2006, the Division issued to Hall & Horning permit 34-055-21920-00-00. Under the authority of its permit, Hall & Horning drilled the Oravec Well #2 in February 2007. Hall & Horning reported the total depth of the completed well as 4,175 feet,<sup>2</sup> some 225 feet below the total depth requested in the permit application and 175 feet below the maximum total depth authorized by the permit. The well was placed into production in June 2007.

Chief's Order 2007-57 was issued to Hall & Horning on September 28, 2007. This Order alleged deficiencies in the spacing of the Oravec Well #2, in violation of O.A.C. §1501:9-1-04, and alleged that Hall & Horning had failed to comply with the terms of its permit. Specifically, the Order found that the Oravec Well #2 was drilled to a depth of greater than 4,000 feet. Because of the actual maximum total depth of the Oravec Well #2, 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.

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<sup>1</sup> Hall & Horning separately appealed Chief's Order 2007-57 (appeal #786). A Motion to Dismiss was argued in appeal #786 on February 29, 2008. Appeal #786 has been dismissed by this Commission.

<sup>2</sup> The Clinton Sandstone Formation was found in this area at a depth of between 3,931 – 4,022 feet.

Chief's Order 2007-57 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 2007-57 was issued by Certified Mail, addressed to Randy Hall, President, Hall & Horning Oilfield Services in Ravenna, Ohio. Hall & Horning is the permittee, and also the owner and operator of the Oravec Well #2. The mailing was received by Mr. Hall on October 4, 2007. Hall & Horning filed an appeal of Chief's Order 2007-57, which was dismissed in a companion case (see appeal # 786). The Division did not serve a copy of Chief's Order 2007-57 upon any royalty holders, including Ms. Speidel.

## **FINDINGS OF FACT & CONCLUSIONS OF LAW**

Chief's Order 2007-57 was issued by Certified Mail to Hall & Horning, the permit holder for the Oravec Well #2, for an alleged violation of the spacing provisions of the permit and of O.A.C. §1501:9-1-04. The Commission does not find any statutory requirement that the Chief must issue copies of Spacing Violation Orders to any entity besides the permit holder of the well at issue.<sup>3</sup> Order 2007-57 is an enforcement action taken by the Chief of the Division, which requires that a well be brought into compliance with the mandates of the rules governing spacing of wells and unit size. The Chief's Order was properly directed to the permit holder, as this was 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 a Spacing Violation Order of the Chief could have some effect on persons not identified as the permittee, such effects would be indirect in that the Chief would not be ordering them to take or refrain from any action. 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 a regulated entity, in this case the drilling permit holder, and the regulating authority. The Commission finds no legal requirement for the Division to determine what other persons may have an interest in an action against a permit holder for violation for that permit. If other persons do have an interest they are free to intervene and establish their interest.

<sup>3</sup> 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.

The Commission found that Blairs have an interest and thus granted them standing to intervene and appeal the Chief's Order, but they cannot require that the appeal period be different, or altered, from the statutory requirement for filing an appeal that commences with proper service upon the permit holder.

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.)

Thus, while the Blairs, as persons claiming to be aggrieved, may appeal the Chief's Order, the clock for that appeal begins when the Chief's Order is served upon the permit holder. 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). Neither the above-quoted statute, or any other statute or rule, establishes the right of the Blairs to receive a copy of the Chief's Spacing Violation Order, let alone allowing them to create a different time period for an appeal based upon when that copy was served.

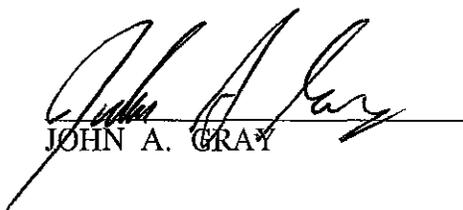
The filing deadlines for notices of appeal are mandatory and jurisdictional. The Oil & Gas Commission has a long-established precedent of dismissing appeals for the appellant's failure to file an appeal within the statutorily-mandated 30-day appeal period. See: Quest Energy Corp. v. Biddison, appeal #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).

By law, the failure of an appellant to file its appeal within the statutorily-mandated time period results in the dismissal of the appeal. Thomas & Belle Blair filed their Notice of Appeal from Chief's Order 2007-57 116 days after the Chief's Order was issued and served upon the permittee Hall & Horning. Appellants Thomas & Belle Blair failed to satisfy this statutory requirement in their attempt to appeal Chief's Order 2007-57. For this reason, the Oil & Gas Commission **grants** the Division's Motion to Dismiss.

## ORDER

The Oil & Gas Commission has read and considered the Appellee's Motion to Dismiss, and the response of Appellants Thomas & Belle Blair. 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 791.

  
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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