

JAN 24 2002

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BEFORE THE

OIL & GAS COMMISSION

Assistant General
Environmental Management

JAMES & MARY RIORDAN,

Appeal No. 703

Appellants,

Review of Chief's Order 2001-37
(Mandatory Pooling)

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

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

Appellee.

Appearances: Todd R. Riordan, on behalf of Appellants James & Mary Riordan; Raymond Studer, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: 1/18/02

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by James & Mary Riordan from Chief's Order 2001-37. This Chief's Order established mandatory pooling for the drilling unit requirements of the well to be known as the Barnett Unit #1. This well was to be drilled by Ohio Valley Energy Systems, Corporation.

Chief's Order 2001-37 was issued to the Riordans on June 1, 2001. The Order was sent by Certified Mail, and Regular Mail.

Chief's Order 2001-37 contained instructions for filing an appeal with the Oil & Gas Commission. The instructions informed the Riordans that they were required to file any notice of appeal within 30 days of their receipt of the Chief's Order. The Riordans' appeal was filed with the Oil & Gas Commission on July 16, 2001, which is 45 days after the Chief's Order was issued and mailed to the Riordans.

On October 10, 2001, the Division filed a Motion to Dismiss this appeal, stating that the appeal was not filed in a timely manner. The Division argued that this failure constitutes a jurisdictional defect, requiring dismissal of this appeal. The Division further argued that Todd R. Riordan could not proceed on behalf of his parents in this appeal, and that his actions constitute the unauthorized practice of law. On October 29, 2001, Todd Riordan responded to the Division's Motion. Mr. Riordan questioned the actual receipt date of Chief's Order 2001-37 and asserted that he holds a financial power of attorney on behalf of his parents. On November 1, 2001, the Division filed a Reply, to which Todd Riordan responded on November 16, 2001.

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 oil and gas may appeal to the oil and gas [commission] . . . Such 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.)

In accordance with statutory requirements, the Division issued Chief's Order 2001-37 by registered mail. This mailing was never claimed by Appellants. (See Affidavit of Crabtree and unreclaimed Certified Mail Green Card attached to Appellee's Reply Memorandum.) On June 1, 2001, the Division also sent Chief's Order 2001-37 by Regular U.S. Mail. (See Affidavit of Crabtree.) The Appellants' notice of appeal was filed on June 16, 2001, 45 days after the mailings by Certified and Regular Mail.

Appellants' refusal or failure to claim the Certified Mail, does not operate to extend the prescribed appeal period. Rhoden v. City of Akron, 61 Ohio St. 3dD 725 (Summit City, 1988). Moreover, the Appellants clearly received a copy of Chief's Order 2001-37. The mere fact that Appellants filed this appeal (without having claimed their Certified Mail) indicates that the copy of the Order mailed by Regular U.S. Mail was received by the Riordans. Under standard civil practice, there is a three-day allowance for service of Regular U.S. Mail. Therefore, if the Chief's Order was placed in Regular U.S. Mail on June 1, 2001, the law presumes that the mailing would be received on or before June 4, 2001. (See Ohio Civil Rules of Procedure, Rule 6.) Even allowing this additional three days for service, the Riordans' appeal would still be filed outside the thirty-day appeal period.

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).

The Riordans filed their appeal 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 an unrepresented. See: Beverly Jo Dobbins Williams v. Mason, appeal #528 (April 26, 1994); Charles & Loretta Mertens v. Mason, *supra*; John & Gladys Spillman, *supra*.


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 periods results in the dismissal of the appeal. The Riordans failed to satisfy this statutory requirement. For this reason, the Oil & Gas Commission lacks jurisdiction to hear and decide the immediate appeal.

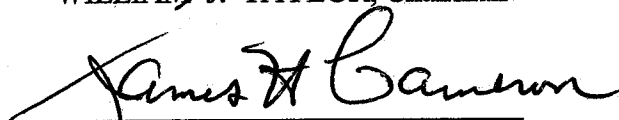
As this matter must be dismissed on the grounds of untimely filing, the Commission does not believe that it is necessary to address the question of whether Mr. Todd Riordan's actions in this appeal constitute the unauthorized practice of law

ORDER

The Oil & Gas Commission has read and considered the Appellee's Motion to Dismiss. 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 no. 703, with prejudice.


WILLIAM J. TAYLOR, Chairman


JOHN A. GRAY


JAMES H. CAMERON

RECUSED
BENITA KAHN, Secretary


MARILYN ENNIS

James & Mary Riordan
Appeal # 703

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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