

BEFORE THE OIL & GAS COMMISSION

MICHAEL MALVASI,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee.

Appeal No. 724

Review of Chief's Order
2003-54

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

Appearances: Michael Malvasi, Appellant *pro se*; Mark G. Bonaventura, Assistant Attorney General,
Counsel for Appellee Division of Mineral Resources Management.

Date Issued: October 27, 2003

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Michael Malvasi from Chief's Order 2003-54. This Chief's Order established mandatory pooling for the drilling unit requirements of the well to be known as the Zipay #1D. This well is to be drilled by Everflow Eastern Partners, LP

Chief's Order 2003-54 was issued on May 30, 2003. The Order was delivered to Michael & Margaret A. Malvasi via certified mail on June 4, 2003.

Chief's Order 2003-54 contained instructions for filing an appeal with the Oil & Gas Commission. The instructions informed the Malvasis that they were required to file any notice of appeal within 30 days of their receipt of the Chief's Order. The Malvasis' appeal was filed with the Oil & Gas Commission on July 21, 2003, which is 47 days after Chief's Order 2003-54 was received at the Malvasi home.

On August 19, 2003, 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. Michael Malvasi has not responded to the Division's motion.

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.)

In accordance with statutory requirements, the Division issued Chief's Order 2003-54 by registered mail. This mailing was received at the Malvasi home on June 4, 2003. (See Certified Mail Green Card attached to Appellee's Motion to Dismiss.) The Appellant's notice of appeal was filed on July 21, 2003, 47 days after Appellant's receipt of Chief's Order 2003-54.

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).

Michael Malvasi filed this 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 unrepresented. See: Beverly Jo Dobbin 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 period results in the dismissal of the appeal. Michael Malvasi failed to satisfy this statutory requirement. For this reason, the Oil & Gas Commission lacks jurisdiction to hear and decide the immediate appeal.

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. 724, with prejudice.



WILLIAM J. TAYLOR, Chairman



JOHN A. GRAY



JAMES H. CAMERON

RECUSED
BENITA KAHN, Secretary



MARILYN ENNIS

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:

Michael Malvasi
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