

**BEFORE THE
OIL & GAS COMMISSION**

ROBERT W BARR,
dba BIG SKY PETROLEUM,

Appellant,

Appeal No. 728

Review of Chief's Order
2003-69

-vs-

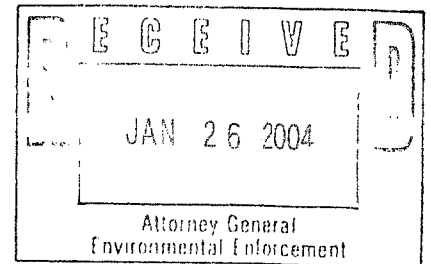
DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee.

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

Appearances: Robert W. Barr, Appellant *pro se*; Mark G. Bonaventura, Holly Deeds, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: January 23, 2004



BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by Robert W. Barr, *dba* Big Sky Petroleum, from Chief's Order 2003-69 This Chief's Order cited Mr. Barr for failure to demonstrate financial responsibility

Chief's Order 2003-69 was issued on August 15, 2003. The Order was delivered to Robert W Barr, Big Sky Petroleum, via certified mail on August 19, 2003.

Chief's Order 2003-69 contained instructions for filing an appeal with the Oil & Gas Commission. The instructions informed Mr. Barr that he was required to file any notice of appeal within 30 days of his receipt of the Chief's Order Mr Barr filed a notice of appeal from Chief's Order 2003-69 with the Oil & Gas Commission on September 24, 2003, which is 36 days after Chief's Order 2003-69 was received by Mr Barr.

On October 16, 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. On October 27, 2003, Mr. Barr 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 2003-69 by registered mail. This mailing was received by Robert Barr on August 19, 2003. (See Certified Mail Green Card attached as Appendix A.) The Appellant's notice of appeal was filed on September 24, 2003, 36 days after Appellant's receipt of Chief's Order 2003-69.

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).

Mr. Barr 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. Robert Barr, Big Sky Petroleum, 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 and the Appellant's response thereto. 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. 728, with prejudice.



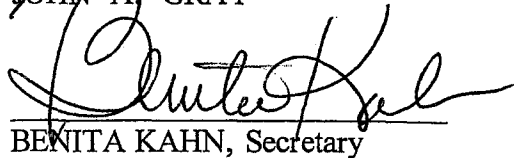
WILLIAM J. TAYLOR, Chairman



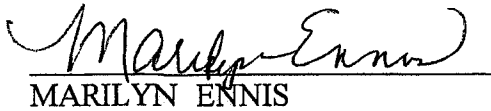
JOHN A. GRAY



JAMES H. CAMERON



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:

Robert W Barr
Certified Mail #: 7000 0600 0028 2172 3734

Mark G. Bonaventura / Holly Deeds
Inter-Office Certified Mail #: 5924

APPENDIX A

Certified Mail Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Robert Barr/dba Big Sky Petro.
 1245 FRIENDSHIP DR
 CAMBRIDGE OH 43762

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery
 Robert W BARR 8-19-03

C. Signature Agent
 X *Robert W Barr* Addressee

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Copy from service label)
 7000 0600 0027 4730 0170

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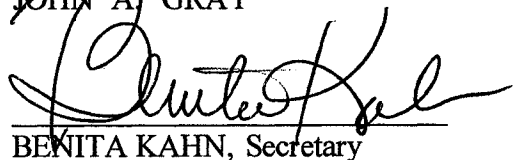
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<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<table border="1"> <tr> <td data-bbox="852 892 1185 955">A. Received by (Please Print Clearly)</td> <td data-bbox="1185 892 1364 955">B. Date of Delivery</td> </tr> <tr> <td data-bbox="852 955 1185 1018">Robert W BARR</td> <td data-bbox="1185 955 1364 1018">8-19-03</td> </tr> <tr> <td colspan="2" data-bbox="852 1018 1364 1050">C. Signature</td> </tr> <tr> <td data-bbox="852 1018 1185 1050">X <i>Robert W Barr</i></td> <td data-bbox="1185 1018 1364 1050"> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee </td> </tr> <tr> <td colspan="2" data-bbox="852 1050 1364 1081">D. Is delivery address different from item 1? <input type="checkbox"/> Yes</td> </tr> <tr> <td colspan="2" data-bbox="852 1081 1364 1113">If YES, enter delivery address below: <input type="checkbox"/> No</td> </tr> </table>	A. Received by (Please Print Clearly)	B. Date of Delivery	Robert W BARR	8-19-03	C. Signature		X <i>Robert W Barr</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee	D. Is delivery address different from item 1? <input type="checkbox"/> Yes		If YES, enter delivery address below: <input type="checkbox"/> No	
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<p>2. Article Number (Copy from service label) 7000 0600 0027 4730 0170</p>													