

# BEFORE THE OIL & GAS COMMISSION

L.B.J. DRILLING CO.,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES  
MANAGEMENT,

Appellee.

Appeal No. 730

Review of Chief's Order  
2003-90

## ORDER OF COMMISSION GRANTING MOTION TO DISMISS APPEAL

Appearances: Jeffrey G. Moran, on behalf of Appellant L.B.J. Drilling Co., Holly N. Deeds, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued:

3/19/04

## BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by L.B.J Drilling Company from Chief's Order 2003-90. This Chief's Order required L.B.J Drilling to plug the D. Lacy & Mary E. Laird #1 well, located in Coshocton County, Ohio.

Chief's Order 2003-90 was issued to L.B.J. Drilling on October 3, 2003. The Order was sent by Certified Mail, and was received by L.B.J. Drilling sometime after October 3, 2003. Chief's Order 2003-90 contained instructions for filing an appeal with the Oil & Gas Commission. The instructions informed L.B.J Drilling that it was required to file a copy of its notice of appeal with the Division Chief.

On November 8, 2003, the Commission received L.B.J. Drilling's notice of appeal. On December 16, 2003, the Division filed a Motion to Dismiss this appeal, stating that L.B.J Drilling failed to serve the Chief with a copy of the notice of appeal as required by law. The Division argued that this failure constitutes a jurisdictional defect, requiring dismissal of this appeal. L.B.J Drilling was given an opportunity to respond to the Division's Motion. No response was filed.

## 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.)

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 requirement that the Chief be served with a copy of a notice of appeal is mandatory and jurisdictional. Clippard Instruments Laboratory, Inc. v. Lindley, 50 Ohio St. 2d 121 (1977). Indeed, the Oil & Gas Commission has dismissed prior appeals for the appellant's failure to serve the Division Chief. See: Art & Carol Crann v. Division, appeal #671 (October 1, 1999); Diane Bakarlis v. Division, appeal #652 (November 4, 1998); Halwell Company, Inc. v. Division, appeal #594 (March 10, 1997).

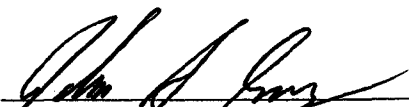
Jeffrey G. Moran, President of L.B.J. Drilling filed the notice of appeal in this matter without aid of counsel. The Commission understands that unrepresented appellants may be unfamiliar with the procedures employed in administrative appeals. Yet, some statutory requirements are mandatory, and cannot 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: John & Gladys Spillman v. Division, appeal # 604 (May 12, 1997); Beverly Jo Dobbins Williams v. Division, appeal #528 (April 26, 1994); Charles & Loretta Mertens v. Division, appeal #494 (July 16, 1992).

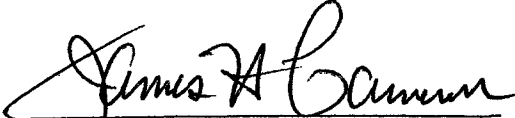
In order to invoke the jurisdiction of the Commission, an appellant must serve a copy of the notice of appeal upon the Chief within 3 days after filing the notice with the Commission. By law, the failure of an appellant to comply with this procedure results in the dismissal of an appeal. L.B.J. Drilling 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. 730, with prejudice.

  
WILLIAM J. TAYLOR, Chairman

  
JOHN A. GRAY

  
JAMES H. CAMERON

  
BENITA KAHN, Secretary

  
MARILYN ENNIS

L.B.J. Drilling  
Appeal # 730

**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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