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Division of Oil and Gas

# BEFORE THE OIL & GAS COMMISSION

CALVIN & PAULA ADKINS,	:	Case No. 631
	:	
Appellants,	:	
	:	Review of Chief's Orders 97-152
-vs-	:	(Cabot Oil & Gas)
	:	
DIVISION OF OIL & GAS,	:	
	:	
Appellee.	:	<b><u>ORDER GRANTING MOTION</u></b>
	:	<b><u>TO DISMISS APPEAL</u></b>

Appearances: Calvin & Paula Adkins, Appellants *pro se*; Raymond Studer, Assistant Attorney General, Counsel for Appellee Division of Oil & Gas.

Date Issued: Feb. 25, 1998

## **BACKGROUND**

This matter came before the Oil & Gas Commission upon appeal by Calvin & Paula Adkins from Chief's Order 97-152. This Chief's Order established mandatory pooling for the drilling unit requirements of the well to be known as the David Rhodeback #1 well. This proposed well is to be drilled by Cabot Oil & Gas Corporation.

Chief's Order 97-152 was issued to the Adkins on September 17, 1997. The Order was sent by Certified Mail. On September 20, 1997, the Order was received by Paula Adkins.

Chief's Order 97-152 contained instructions for filing an appeal with the Oil & Gas Commission. The instructions informed the Adkins that they were required to file their notice of appeal within 30 days of receipt of the Chief's Order. The Receipt for Certified Mail (attached as an exhibit to the Adkins' Memorandum in Opposition to the Division's Motion to Dismiss) indicates that the Adkins did not mail their notice of appeal until October 20, 1997 - the date on which the filing was required. The Adkins' appeal was received and filed with the Commission on October 22, 1997, 32 days after their receipt of Chief's Order 97-152.

On December 10, 1997, 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 Adkins responded to the Motion on January 2, 1998.

## 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.)

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, Oil & Gas Commission appeal #232 (March 23, 1987); Progressive Oil & Gas, Inc. v. Biddison, Oil & Gas Commission appeal #307 (August 22, 1988); Charles & Loretta Mertens v. Mason, Oil & Gas Commission appeal #494 (July 16, 1992); Paul Grim v. Mason, Oil & Gas Commission appeal #577 (June 26, 1996); Hanley Hardin v. Mason, Oil & Gas Commission appeal #566 (June 27, 1996).

Mr. & Mrs. Adkins filed their appeal without aid of counsel. The Commission understands that unrepresented appellants may be unfamiliar with the procedures employed in administrative appeals. Notwithstanding this lack of familiarity with procedures, 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. Mason, Oil & Gas Commission #604 (May 12, 1997); Beverly Jo Dobbin Williams v. Mason, Oil & Gas Commission appeal #528 (April 26, 1994); Charles & Loretta Mertens v. Mason, *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 Adkins 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 number 631, with prejudice.

  
WILLIAM J. TAYLOR, Chairman

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GAIL IGNATZ-HOOVER

  
JAMES H. CAMERON

  
BENITA KAHN, Secretary

  
JOHN A. GRAY