

**BEFORE THE
OIL & GAS COMMISSION**

ANDY RATAICZAK,
dba BEAVER VALLEY GAS,

Appellant,

-vs-

DIVISION OF OIL & GAS RESOURCES
MANAGEMENT,

Appellee.

Appeal Nos. 968-972

Review of Chief's Orders 2018-405,
2018-406, 2018-407, 2018-408,
2019-409

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

Appearances: Andy Rataiczak, Appellant *pro se*; Jacquelyn Fisher, Brian Ball, Assistant Attorneys General,
Counsel for Appellee Division of Oil & Gas Resources Management.

Date Issued: _____

BACKGROUND

This matter comes before the Oil & Gas Commission upon appeal by Andy Rataiczak *dba* Beaver Valley Gas ("Appellant") from Chief's Orders 2018-405, 2018-406, 2018-407, 2018-408, and 2018-409 ("Appealed Orders"). The Orders require Appellant to plug and abandon the Bates RA 1 Well, Bates JL #3 Well, Bates JL #7 Well, Bates JL #5 Well, and Bates JL #6 Well, respectively. The Orders were issued by the Division of Oil & Gas Resources Management [the "Division"] on December 10, 2018. The Orders were served upon Appellant by certified mail and received by Appellant on December 19, 2018.

The Orders contained the following language:

Addressee is hereby notified that this action is final and effective and may be appealed pursuant to Section 1509.36 of the Ohio Revised Code. If the Order is

appealed to the Ohio Oil and Gas Commission, the appeal must be in writing and must set forth the Orders complained of and the grounds upon which the appeal is based. Such appeal must be filed with the Oil and Gas Commission, 2045 Morse Road, Building A-2, Columbus, Ohio 43229-6693, within thirty (30) days after receipt of this Order.

On January 24, 2019, Appellant - without benefit of counsel - filed with the Division a hand-written letter which was interpreted by the Commission as a *Notice of Appeal* on behalf of Andy Rataiczak *dba* Beaver Valley Gas. Appellant did not file a copy of this *Notice of Appeal* with the Commission. This *Notice of Appeal* did not attach or otherwise set forth the Order being appealed.

On October 28, 2019, the Division filed a *Motion to Dismiss* this appeal, asserting that the appeal was improperly filed. Specifically, the Division argued that the appeal was untimely, the appeal did not attach or set forth the Chief's Orders being appealed, and the appeal was not properly filed with the Commission. The Division maintains that these items constitute jurisdictional defects, requiring the dismissal of this appeal. Appellant did not respond to the Division's *Motion to Dismiss*.

DISCUSSION & 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 adversely affected by an order of the chief of the division of oil and gas resources management may appeal to the oil and gas commission for an order vacating or modifying the order.

* * *

The appeal shall be in writing and shall set forth the order complained of and the grounds upon which the appeal is based. The appeal shall be filed with the commission within thirty days after the date upon which the appellant received notice by certified mail ...

(Emphasis added.)

The Appealed Orders are dated December 10, 2018 and were issued to Appellant by the Division on that date, through Certified Mailing. The Orders were served upon Appellant as evidenced by the United States Postal Service tracking data included with the affidavit of a Division Administrative Professional, Sandra Evans. Appellant received the Appealed Orders on December 19, 2018.

Appellant's *Notice of Appeal* was received by the Division and filed with the Commission on January 24, 2019, 36 days after the Appealed Orders were received by Appellant. Appellant's Notice of Appeal did not attach, or specify, the Chiefs' Orders being appealed. Appellant only mailed one copy of his Notice of Appeal and that copy was sent to the Division.

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). And, this Commission has dismissed prior appeals for an appellant's failure to file a timely notice of appeal. See *Andrew & Kristi Stalker v. Division & Chesapeake Exploration LLC*, #844 (January 9, 2013); *Robert W. Barr, dba Big Sky Petroleum v. Division*, #728 (January 23, 2004); *Thomas & Belle Blair v. Division*, #791 (November 6, 2008); *Hall & Horning Oilfield v. Division & Alan H. Coogan, et al.*, #787 (October 31, 2008).

O.R.C. §1509.36 requires that appeals to the Commission be filed within 30 days of the appellant's receipt, by Certified Mail, of a contested order. The Division established that the Appealed Orders were received by Appellant on December 19, 2018. Not counting the day of receipt, pursuant to O.R.C. §1509.36, Appellant's Notice of Appeal was to be filed on or before January 18, 2019. Hence, Appellant's Notice of Appeal was filed **six days** beyond the mandatory time limit imposed by Ohio law.

Notices of Appeals to the Oil and Gas Commission are required to "state clearly the order appealed from, the relief sought, a brief statement of the facts involved in the appeal, and

the grounds which are the basis for the requested review.” Ohio Adm.Code 1509-1-11(D). Appellants should also include a copy of the Chief’s Order being appealed to their Notices of Appeal. Ohio Adm.Code 1509-1-11(E). Failure to comply with these requirements “shall be sufficient basis for dismissing an appeal.” Ohio Adm.Code 1509-1-11(I).

Appellant’s *Notice of Appeal* does not set forth the orders appealed from. Therefore, he failed to comply with the provisions of Ohio Adm.Code 1509-1-11(D).

Notices of Appeals to the Oil and Gas Commission are required to be filed with the Commission. Ohio Adm.Code 1509-1-11(A).

Appellant mailed one copy of his *Notice of Appeal* and that copy went to the Division. Appellant did not file a copy of his *Notice of Appeal* with the Commission. Therefore, Appellant failed to comply with Ohio Adm.Code 1509-1-11(A).

Appellant presented no arguments countering the Division's position relative to the procedural defects of this appeal. Appellant was unrepresented by counsel. The Commission understands unrepresented appellants may be unfamiliar with the procedures employed in administrative appeals.

However, certain statutory requirements are mandatory, and cannot be overlooked or waived. The law requires the Commission to dismiss appeals for such jurisdictional failures. This is true even where an appellant is unrepresented. *See Andrew & Kristi Stalker v. Division & Chesapeake Exploration LLC, supra; L.B.J. Drilling v. Division, #730 (March 19, 2014); James & Mary Riordan v. Division, supra.*

Moreover, the doctrine of *stare decisis* suggests that a body adhere to, and follow, its decisions previously made in similar cases. This Commission has a history of requiring

compliance with the statutorily mandated filing requirements of O.R.C. §1509.36. Indeed, Commission rule O.A.C. §1509-1-22(B) specifically provides:

Failure to comply with the provisions of section 1509.36 of the Revised Code governing the filing of appeals with the commission shall be sufficient basis for dismissing an appeal.

Appellant did not provide a response to the Division's *Motion to Dismiss*. Thus, Appellant has provided this Commission with no just cause to disturb its previous holdings; and it is appropriate for the Commission to issue a decision in conformity with prior decisions.

In order to invoke the jurisdiction of the Commission, an appellant must comply with the statutorily-mandated filing requirements of O.R.C. §1509.36, which include but are not limited to: filing a Notice of Appeal in a timely manner, setting forth the Chief's Order which is the subject of the appeal, and properly filing the appeal with the Commission. By law, the failure of an appellant to comply with the statutorily-mandated filing requirements of O.R.C. §1509.36 results in dismissal.

The Commission **FINDS** that Appellant failed to comply with statutorily mandated filing requirements set forth in O.R.C. §1509.36. For this reason, the Commission lacks jurisdiction to hear and decide the immediate appeals.

ORDER

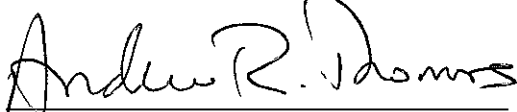
This Commission **FINDS** that Andy Rataiczak dba Beaver Valley Gas did not file its appeal to the Commission in a timely manner, failed to set forth the Chief's Orders being appealed, and failed to properly file the appeal with the Commission, thereby failing to properly invoke the Commission's jurisdiction over Chief's Orders 2018-405, 2018-406, 2018-407, 2018-408, and 2018-409. **WHEREFORE**, the Commission **GRANTS** Appellee's motion, and this matter is hereby **DISMISSED**.

Date Issued:


12/11/19



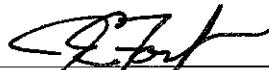
J. BRANDON DAVIS, *Chairman*



ANDREW R. THOMAS, *Secretary*



BLAKE T. ARTHUR, *Vice Chairman*



JEFFREY E. FORT

PHILLIP L. PARKER

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:

Andy Rataiczak, Via Certified Mail # 91 7199 9991 7037 2001 4868
Jacquelyn Fisher, Brian Ball, Via Inter-Office Certified Mail #6909