

BEFORE THE OIL & GAS COMMISSION

HALWELL COMPANY, INC.,
(B.T. ENERGY CORPORATION),

Appellant,

-vs-

DIVISION OF OIL & GAS,

Appellee.

Appeal No. 619

Review of Chief's Order 97-76

**ORDER GRANTING MOTION
TO DISMISS APPEAL**

Appearances: Karen A. Smith, on behalf of Appellant Halwell Company, Inc.; 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 Halwell Company, Inc., on behalf of B.T. Energy, Corp., from Chief's Order 97-76. This Chief's Order required the plugging of certain oil & gas wells operated by Halwell Company or B.T. Energy.

Chief's Order 97-76 was issued to B.T. Energy on May 9, 1997. The Order was sent by Certified Mail. On May 12, 1997, the Order was received by B.T. Energy. Chief's Order 97-76 contained instructions for filing an appeal with the Oil & Gas Commission. The instructions informed B.T. Energy that it was required to file its notice of appeal within 30 days of its receipt of the Chief's Order. Halwell's appeal was filed with the Oil & Gas Commission on June 14, 1997, which is 33 days after B.T. Energy's receipt of Chief's Order 97-76.

On November 7, 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.

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).

Halwell filed its 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 an unrepresented. See: 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. Halwell 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. 619, with prejudice.



WILLIAM J. TAYLOR, Chairman



JAMES H. CAMERON



JOHN A. GRAY

RECUSED

GAIL IGNATZ-HOOVER



BENITA KAHN, Secretary

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas of Franklin County, within thirty days of your receipt of this Order, in accordance with Ohio Revised Code Section §1509.37.

DISTRIBUTION:

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