

# BEFORE THE RECLAMATION COMMISSION

ETTA-MAE, INC.,	:	Case Nos. RC-13-006
	:	RC-13-007
Appellant,	:	RC-13-008
	:	
-vs-	:	Review of Civil Penalty Assessments
	:	12527, 12528 & 12529; Permit
	:	D-984
DIVISION OF MINERAL RESOURCES	:	
MANAGEMENT,	:	<b><u>ORDER OF THE COMMISSION</u></b>
	:	<b><u>DISMISSING APPEALS FOR</u></b>
Appellee.	:	<b><u>LACK OF JURISDICTION</u></b>

Appearances: Timothy Linn, on behalf of Appellant Etta-Mae, Inc.; Brian Ball, Kristina Tonn, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management.

## **BACKGROUND**

These matters come before the Reclamation Commission upon appeal by Etta-Mae, Inc. ["Etta-Mae"] from three Civil Penalty Assessments ["CPAs"] issued by the Chief of the Division of Mineral Resources Management [the "Division"]. These CPAs are based upon violations of Ohio's mining and reclamation law, alleged to have occurred on Etta-Mae's permit D-984 area.

Three Notices of Violation ["NOVs"] were issued to Etta-Mae on April 20, 2012.<sup>1</sup> On July 24, 2012, three Cessation Orders were issued to Etta-Mae, based upon Etta-Mae's alleged failure to abate the NOVs issued on April 20, 2012. On August 8, 2012, three CPAs were issued to Etta-Mae, being:

1. CPA 12527, issued in the amount of \$15,000 and based upon NOV 29329 and Cessation Order 12184,
2. CPA 12528, issued in the amount of \$14,250 and based upon NOV 29331 and Cessation Order 12185, and
3. CPA 12529, issued in the amount of \$15,000 and based upon NOV 29330 and Cessation Order 12186.

---

<sup>1</sup> No evidentiary hearing has been conducted in this matter. This factual background is taken from the Appellant's notice of appeal, and the attachments thereto.

Each CPA issued to Etta-Mae contained the following instructions for filing an appeal with the Reclamation Commission:

Pursuant to Sections 1513.02 and 1513.13 O.R.C. and 1501:13-14-03 O.A.C., this assessment may be appealed by filing a notice of appeal and forward[ing] the amount of [the] penalty, for placement in [an] escrow account, with the Reclamation Commission, ... within thirty (30) days after [the penalty] is issued, ... . The notice of appeal shall contain a copy of the civil penalty assessment and the grounds upon which the appeal is based.

On April 2, 2013, Etta-Mae filed a notice of appeal with the Reclamation Commission, requesting review of CPAs 12527, 12528 and 12529.<sup>2</sup> Etta-Mae's notice of appeal was not accompanied by payments in the amounts of the CPAs appealed.

## DISCUSSION

O.R.C. §1513.13 sets forth the method by which an appeal is perfected to the Reclamation Commission. This section of law provides in part:

(A)(1) Any person having an interest that is or may be adversely affected by a notice of violation, order, or decision of the chief of the division of mineral resources management, . . . may appeal by filing a notice of appeal with the reclamation commission for review of the notice, order, or decision within thirty days after the notice, order, or decision is served upon the person . . . and by filing a copy of the notice of appeal with the chief within three days after filing the notice of appeal with the commission.

(Emphasis added; see also O.A.C. §1513-3-04(D)(1).)

---

<sup>2</sup> The notice of appeal referenced CPAs 12527, 12528 [sic] and 12529 [sic]. However, CPAs 12527, 12528 and 12529 were attached to the notice of appeal, and are clearly the CPAs which Etta-Mae intended to appeal.

Where a person seeks to appeal a civil penalty, O.R.C. §1513.02 includes the additional requirement that the penalty be pre-paid into escrow:

(E)(3) Upon the issuance of a notice or order charging that a violation of this chapter has occurred, the chief shall inform the operator within thirty days of the proposed amount of the penalty and provide opportunity for an adjudicatory hearing pursuant to section 1513.13 of the Revised Code. The person charged with the penalty then **shall have thirty days to** pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, **file a petition for review of the proposed assessment with the secretary of the reclamation commission** pursuant to section 1513.13 of the Revised Code. ... **At the time the petition for review of the proposed assessment is filed with the secretary, the person shall forward the amount of the penalty to the secretary for placement in the reclamation penalty fund ... . Failure to forward the money to the secretary within thirty days after the chief informs the operator of the proposed amount of the penalty shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.**

(Emphasis added; see also O.A.C. §1513-3-04(D)(6).)

Where a statute confers the right of appeal, adherence to the conditions imposed thereby is essential to possessing that right. *American Restaurant and Lunch Co. v. Glander*, 147 Ohio St. 147, 70 N.E. 2d 93 (1946). Such conditions are mandatory and jurisdictional. *Myron & Nikki Armstrong v. Division & Oxford Mining Company*, RC-12-005 (September 26, 2012).

The Reclamation Commission has a long history of dismissing appeals, when an appellant has failed to adhere to the conditions imposed upon the right of appeal. This history includes cases where appeals have been specifically dismissed as a result of an appellant's failure to file a timely notice of appeal. *E.K. Development, Inc. v. Division*, RC-03-026, 027 & 028 (October 16, 2003). Moreover, the Commission has dismissed appeals where an appellant failed to pre-pay a civil penalty. *Burrell Industries, Inc v. Division*, RC-12-012 (February 20, 2013); *Lyle Construction, Inc. v. Division* (1987) 34 Ohio St. 3d 22.

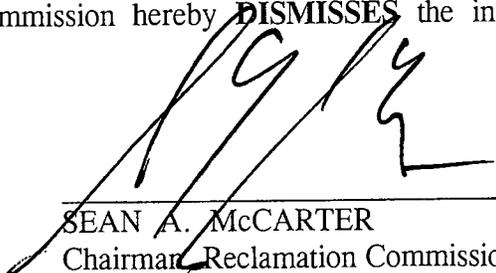
The doctrine of *stare decisis* suggests that a body adhere to, and follow, its decisions previously made in similar cases. In this case, the Appellant's failure to file its notice of appeal within the time constraints of O.R.C. §1513.13(A)(1), as well as Appellant's failure to pre-pay the civil penalties into escrow as required by O.R.C. §1513.02(E)(3), constitute two distinct jurisdictional defects in the perfection of the three appeals in question.

Here, Etta-Mae did not file its notice of appeal from the CPAs in question until approximately 7 months after the Division Chief's issuance of the penalties. Additionally, Etta Mae did not pre-pay the penalties upon appeal. Therefore, Etta-Mae failed to satisfy two conditions precedent to the perfection of an appeal to the Reclamation Commission, and it is appropriate for the Commission to issue a decision, in conformity to its prior rulings, **dismissing** these appeals for lack of jurisdiction.

## ORDER

Based upon the foregoing, the Commission hereby **DISMISSES** the instant appeals for lack of jurisdiction.

4/4/13  
DATE ISSUED

  
SEAN A. McCARTER  
Chairman, Reclamation Commission

### INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Appeals, within thirty days of its issuance, in accordance with Ohio Revised Code Section §1513.14 and Ohio Administrative Code Section §1513-3-22.

#### DISTRIBUTION:

Timothy H. Linn, Via E-Mail [linneng@sbcglobal.net] & Certified Mail #: 91 7199 9991 7030 3132 9675  
Brain Ball, Kristina Tonn, Via E-Mail [brian.ball@ohioattorneygeneral.gov & kristina.tonn@ohioattorneygeneral.gov]  
& Inter-Office Certified Mail #: 6703