

# BEFORE THE RECLAMATION COMMISSION

SPRING INDUSTRIES, INC.,	:	Case No. RC-10-016
	:	
Appellant,	:	
	:	Review of Chief's Order 2537-IM,
-vs-	:	Permit IM-73
	:	
	:	
DIVISION OF MINERAL RESOURCES	:	<b><u>ORDER OF THE</u></b>
MANAGEMENT,	:	<b><u>COMMISSION DISMISSING</u></b>
	:	<b><u>APPEAL</u></b>
	:	
Appellee.	:	

Appearances: Larry A. Zink, Counsel for Appellant Spring Industries, Inc.; Molly Corey, Megan DeLisi, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management.

This matter came before the Reclamation Commission upon appeal by Spring Industries, Inc. ["Spring Industries"] from Chief's Order 2537-IM. This Chief's Order alleges a failure to reclaim certain acreage that had been affected by mining pursuant to surface mining permit IM-73.

The notice of appeal was filed on September 28, 2010 by attorney Larry Zink, acting on behalf of Spring Industries. Several status conferences have been conducted in this matter.

On June 21, 2012, this matter was scheduled for merit hearing before the Reclamation Commission. The Notice of Hearing was sent to attorney Larry Zink, via e-mail, fax, and Certified Mail, sent to counsel's business address. The Certified Mail receipt indicates that this Notice was received by counsel for Spring Industries on June 22, 2012.

The hearing was scheduled to commence at 10:30 a.m. on July 25, 2012. The Commission's Notice of Hearing contained the following language:

Failure to appear at the hearing will result in a determination of the issues against you.

At 8:50 a.m. on July 25, 2012, Mr. Zink sent an e-mail communication to the Commission's Hearing Officer, indicating that, due to a personal matter that had arose during the morning of July 25, 2012, Mr. Zink would be unable to attend the scheduled merit hearing. Attempts to contact Mr. Zink at his cell phone number and at his office number were unsuccessful. Mr. Zink did not respond to messages left on the voice mail systems associated with these numbers.

At 10:30 a.m. on July 25, 2012, this matter came on for hearing before the Reclamation Commission. A quorum of Commission members was present for hearing. Representatives of the Appellee Division were also present and prepared to proceed. No representative of Spring Industries appeared on July 25, 2012.

The record in this matter was opened, and the Appellee Division, who appeared with witnesses, moved for a dismissal of this appeal pursuant to O.A.C. §1513-3-16(G), based upon Spring Industries' failure to appear and prosecute this matter.

By order issued on July 25, 2012, the Commission ordered Appellant Spring Industries to show cause why appeal RC-10-016 should not be dismissed for Appellant's failure to appear at a scheduled hearing. Appellant was to respond to this Show Cause Order, and support its response with an affidavit.

On July 31, 2012, Appellant Spring Industries filed a response to the Commission's Show Cause Order. No supporting affidavit was included with this filing, and counsel for Spring Industries provided no explanation of the Appellant's failure to appear at the scheduled hearing. On August 6, 2012, the Division filed a reply. Counsel for Appellant has made no further efforts to contact the Commission regarding this matter.

O.A.C. §1513-3-16(G) provides:

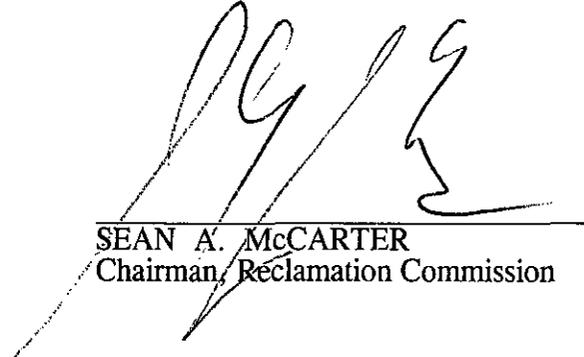
If the appellant fails to appear personally or by counsel or other authorized representative at a hearing scheduled after being duly notified of the hearing by mailing of a notice of hearing to such party's last known address, and if good cause for such a failure is not shown, the commission shall dismiss the appeal.

The Reclamation Commission **FINDS** that the Appellant has not shown good cause for its failure to appear at the Commission's July 25, 2012 hearing in the matter of Spring Industries v. Division, RC-10-016.

## ORDER

**WHEREFORE**, the Division's Motion to Dismiss case number RC-10-016 for the Appellant's failure to appear at hearing is hereby **GRANTED**, and case number RC-10-016 is **DISMISSED**.

8/15/12  
DATE

  
SEAN A. McCARTER  
Chairman, Reclamation Commission

Spring Industries  
RC-10-016

**DISTRIBUTION:**

Larry A. Zink, via e-mail [zinklaw3711@yahoo.com], fax [330-492-3956] & Certified Mail #: 91 7108 2133 3936 6716 8026  
Molly Corey, Megan DeLisi, via e-mail [molly.corey@ohioattorneygeneral.gov;  
megan.delisi@ohioattorneygeneral.gov], fax [614-268-8871] & Inter-Office Certified Mail #: 6683