

BEFORE THE RECLAMATION COMMISSION

WATERLOO COAL COMPANY,	:	Case No. RC-07-014
	:	
Appellant,	:	
	:	Review of Cessation Order I-13184;
-vs-	:	Permit D-712
	:	
DIVISION OF MINERAL RESOURCES	:	
MANAGEMENT,	:	<u>ORDER OF THE</u>
	:	<u>COMMISSION DISMISSING</u>
Appellee.	:	<u>APPEAL</u>

Appearances: William C. Martin, Counsel for Appellant Waterloo Coal Company; Mark G. Bonaventura, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

BACKGROUND

This matter came before the Reclamation Commission upon appeal by Waterloo Coal Company ["Waterloo"] from Imminent Harm Cessation Order I-13184. This Order was issued to Waterloo on August 10, 2007. The Order alleged that Waterloo had constructed a haul road beyond the permit limits of coal mining and reclamation permit D-712.

On October 22, 2007, Waterloo filed a notice of appeal with the Reclamation Commission, seeking the reversal of Cessation Order I-13184.

Also, on October 22, 2007, Waterloo filed appeals from Failure to Abate Cessation Order 12174 and Individual Civil Penalty Assessment I-673. These appeals were separately docketed as case numbers RC-07-012 and RC-07-013. These enforcement actions are factually related to the immediate appeal of Imminent Harm Cessation Order I-13184. However, appeals RC-07-012 and RC-07-013 are not subject to the Division's Motion to Dismiss, and both appeals remain pending before the Commission.

On November 5, 2007, the Division filed a Motion to Dismiss appeal RC-07-014 (the appeal of Imminent Harm Cessation Order I-13184). The Division argues that the Commission lacks jurisdiction to hear this matter because the appeal was not timely filed. Waterloo responded to the Division's Motion on November 20, 2007, suggesting that the focus of its appeal was a letter from Division Assistant Regional Manager Greg Mills, written October 9, 2007, rather than the August 10, 2007 Cessation Order. The Division replied on November 23, 2007, reiterating that the appeal was filed in an untimely manner, and asserting that the October 9, 2007 letter from Mr. Mills is not a final appealable order.

DISCUSSION

O.R.C. §1513.13 sets forth the method by which an appeal is perfected to the Reclamation Commission. That section of law provides *inter alia*:

(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, . . . or by any modification, vacation, or termination of such a notice, order, or decision, 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 or within thirty days after its modification, vacation, or termination 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. The notice of appeal shall contain a copy of the notice of violation, or decision complained of and grounds upon which the appeal is based.

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

Where a statute confers the right of appeal, adherence to the conditions imposed thereby is essential to the enjoyment of the right. American Restaurant and Lunch Co. v. Glander, 147 Ohio St. 147 (1946). Such conditions are mandatory and jurisdictional. Kruger Coal Company v. Division of Reclamation, RBR-6-83-089 (ODNR, July 25, 1983); Mineral Mining Corp. v. Division of Reclamation, RBR-4-83-115 (ODNR, Aug. 25, 1983).

The relief sought by Waterloo through its notice of appeal is specifically stated as: "the reversal of the Cessation Order," (referencing Imminent Harm Cessation Order I-13184). Thus, Waterloo's appeal appears to be taken directly from Cessation Order I-13184, rather than from the Mills letter. The Commission has carefully reviewed the October 9, 2007 letter from Greg Mills and believes that his letter constitutes merely communication, clarification and explanation regarding several enforcement actions stemming from the initial Imminent Harm Cessation Order. The Mills letter does not "modify, vacate or terminate" the original Imminent Harm Cessation Order. Rather, it reinforces the rationale for Cessation Order I-13184. The Mills letter is silent about appealing the original Imminent Harm Cessation Order, but does indicate that the window was still open for appealing the Failure to Abate Cessation Order (issued September 20, 2007, and currently under appeal in RC-07-012). Moreover, in order to constitute a "final appealable order," the Mills letter would need to affect a substantial right of the Appellant. The Commission cannot find that the October 9, 2007 letter affects any substantial right of Waterloo. Therefore, the Commission **FINDS** that the October 9, 2007 Mills letter is not a final appealable order.

As the notice of appeal is taken from Imminent Harm Cessation Order I-13184, the appeal period must be calculated from Waterloo's receipt of that Order. Cessation Order I-13184 indicates personal service of this Order upon a representative of Waterloo on August 10, 2007.

A notice of appeal taken to the Reclamation Commission must be filed within the time frame set forth in O.R.C. §1513.13. The notice of appeal in this case was filed **73 days** after Waterloo's receipt of Imminent Harm Cessation Order I-13184, which is outside the mandatory 30-day appeal period.

In the instant case, Waterloo did not follow the mandatory provisions of O.R.C. §1513.13 for perfecting an appeal to the Reclamation Commission. For this stated reason, the Reclamation Commission lacks jurisdiction to hear and decide this appeal.

ORDER

Based upon the foregoing, the Commission hereby **GRANTS** the Division's Motion and **DISMISSES** the instant appeal of Imminent Harm Cessation Order I-13184 for lack of jurisdiction.

December 13, 2007
DATE ISSUED



JAMES K. McWILLIAMS, 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:

William C. Martin, Via Fax [740-286-1878] & Certified Mail #: 91 7108 2133 3932 9127 6258
Mark G. Bonaventura, Via Fax [614-268-8871] & Inter-Office Certified Mail #: 6386