

**BEFORE THE
RECLAMATION COMMISSION**

FRED T. LOVE,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee,

and

OXFORD MINING COMPANY, LLC,

Intervenor.

Case No. RC-13-009

Review of Reclamation Issues;
Permit D-2272 (Oxford Mining)

**ORDER OF THE
COMMISSION GRANTING
MOTION TO DISMISS
APPEAL ON JURISDICTIONAL
GROUNDS**

Appearances: Fred T. Love, Appellant, *pro se*; Kristina Tonn, Brian Ball, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management; Mark S. Stemm, Michael B. Gardner, Counsel for Intervenor Oxford Mining Company, LLC.

BACKGROUND

This matter comes before the Reclamation Commission upon appeal by Mr. Fred Love. Mr. Love owns property in Harrison County, Ohio, which property was affected by Oxford Mining Company LLC's ["Oxford Mining's" or "Oxford's"] coal mining operations, conducted under permit D-2272. By law, Oxford is responsible for the reclamation of properties affected under permit D-2272. Mr. Love's appeal sets forth several concerns regarding Oxford's mining and reclamation of his property. Oxford has been **granted** intervenor status in this appeal.

On June 25, 2013, Mr. Love filed a notice of appeal with the Reclamation Commission. No decision of the Division Chief was attached to Mr. Love's notice of appeal. However, Mr. Love's concerns appear to address the Division's potential approval of Oxford's reclamation of the Love property and the Division's possible release of performance security held in support of permit D-2272.

The final paragraph of Mr. Love's notice of appeal begins:

I feel that there should be no more bond release until these [identified reclamation] problems are addressed.

On July 31, 2013, the Appellee Division filed a Motion to Dismiss this appeal, asserting that Mr. Love's June 25, 2013 appeal was not properly perfected, as no Chief's decision was attached to the notice of appeal. Moreover, the Division asserts that no appealable Chief's decision had been issued to Mr. Love within the thirty days prior to Mr. Love's filing of this appeal. The Division argues that Mr. Love has not properly invoked the Commission's jurisdiction in appeal RC-13-009, and that this appeal must be dismissed.¹

On August 23, 2013, Oxford Mining filed a Memorandum in Support of the Division's Motion to Dismiss. Mr. Love did not respond to the Division's Motion to Dismiss.

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** . . . **The notice of appeal shall contain a copy of the notice of violation, order, or decision complained of** and the grounds upon which the appeal is based.

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

¹ Significantly, on July 18, 2013, the Division did issue to Mr. Love a decision approving reclamation, and final security release, for that portion of permit D-2272 on which Mr. Love's property is situated. Mr. Love has separately appealed the Chief's July 18, 2013 decision. This second appeal has been docketed as appeal RC-13-011. Mr. Love's second notice of appeal, filed on July 25, 2013, had attached to it a copy of the Chief's decision announcing the Division's approval of Oxford's reclamation, and the Division's determination to release final performance security associated with the Love property. Appeal RC-13-011 is an active appeal before the Commission, and no Motion to Dismiss is currently pending in this second appeal.

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. *Kruger Coal Company v. Division*, RBR-6-83-089 (July 25, 1983).

The Reclamation Commission has a long history of dismissing appeals, where an appellant fails to adhere to the statutory conditions imposed upon the right of appeal. *Myron & Nikki Armstrong v. Division*, RC-12-005 (September 26, 2012); *Etta Mae, Inc. v. Division*, RC-13-006 thru 008 (April 4, 2013). This history includes cases where appeals have been specifically dismissed as a result of the appellant's failure to attach a decision of the Division Chief to a notice of appeal. *Irene Downs v. Division*, RBR-2-94-015 (June 15, 1994).² Notably, the Commission has dismissed appeals for such jurisdictional filing errors even where appellants were, like Mr. Love, unrepresented by counsel. *Robert & Edna Fenty v. Division*, RBR-4-85-237 (February 6, 1986); *Mrs. Charles Hassler v. Division*, RBR-3-86-181 (November 17, 1986).

The Division also contends that no Chief's decision, relating to Mr. Love's property, was issued within the thirty-day period prior to Mr. Love's June 25, 2013 filing of appeal RC-13-009. Indeed, it appears that Mr. Love's June 25, 2013 appeal may have been prematurely filed, as a decision relating to performance security release associated with the Love property was not issued by the Division Chief until July 18, 2013. (See Footnote #1.)

Notably, on July 25, 2013, Mr. Love filed a **second** notice of appeal. This second appeal was taken from the Chief's July 18, 2013 decision approving reclamation, and security release, associated with the Love property. Significantly, most – if not all – of the concerns raised by Mr. Love through his first appeal (RC-13-009) are also raised in Mr. Love's second appeal (RC-13-011).

² The Reclamation Commission has been in existence since 1949. Initially, this body was named the "Reclamation Board of Review." However, in February 1997, the "Reclamation Board of Review" was renamed the "Reclamation Commission."

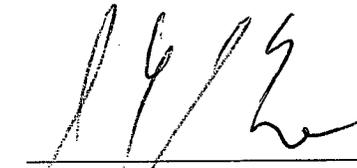
The doctrine of *stare decisis* suggests that a body adhere to, and follow, its decisions previously made in similar cases. In this case, Appellant Mr. Fred Love has provided the Commission with no reason to disturb its previous holdings that the failure to comply with the filing requirements for notices of appeal, as articulated in O.R.C. §1513.13, constitutes a jurisdictional defect in the perfection of an appeal. Therefore, it is appropriate for the Commission to issue a decision in conformity with its prior holdings.

As set forth in prior decisions, in order to invoke the jurisdiction of the Commission, an appellant must file: (1) a complete notice of appeal with the Commission within 30 days after service of the Chief's decision complained of, and the complete notice of appeal must contain (2) a copy of the Chief's decision complained of. (See O.R.C. §1513.13(A).) The failure of an appellant to comply with such jurisdictional requirements results in the dismissal of an appeal. In appeal RC-13-009, Mr. Love failed to satisfy the conditions precedent to the perfection of an appeal to the Reclamation Commission. For this reason, the Reclamation Commission lacks jurisdiction to hear and decide appeal RC-13-009.³

ORDER

Based upon the foregoing, the Board hereby **GRANTS** the Appellee's Motion, and **DISMISSES** the instant appeal for lack of jurisdiction.

9/4/13
DATE ISSUED


SEAN A. McCARTER
Chairman, Reclamation Commission

³ The dismissal of Mr. Love's first appeal (RC-13-009) does not affect Mr. Love's second appeal (RC-13-011), and the Commission will proceed in the second appeal (RC-13-011) in accordance with the Commission typical procedures.

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:

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