

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Skye Metals Recovery, Inc.,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-836 (ERAC No. 12-076593)
Scott J. Nally, Director, Ohio Environmental Protection Agency,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

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D E C I S I O N

Rendered on April 16, 2013

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*Jackson Kelly PLLC, and Edward L. Kropp, for appellant.*

*Michael DeWine, Attorney General, Clint R. White, and Samuel Peterson, for appellee.*

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**APPEAL from the Environmental Review Appeals Commission.**

McCORMAC, J.

{¶ 1} Appellant, Skye Metals Recovery, Inc., appeals from an order of the Environmental Review Appeals Commission ("commission") dismissing appellant's appeal for lack of subject-matter jurisdiction. For the following reasons, we affirm.

{¶ 2} Appellant owns and operates a spent nickel catalyst and metal grinding facility in Warren Township, located in Washington County, Ohio. Appellant's principal place of business is in Mobile, Alabama. On March 28, 2012, appellee, Director, Ohio Environmental Protection Agency, issued a permit authorizing appellant to install and operate certain equipment at the Ohio facility. Appellee sent a copy of the permit via

certified mail to appellant's principal place of business in Alabama, which was the address appellant identified in its permit application. On April 2, 2012, the wife of appellant's president signed on behalf of appellant for the delivery of the permit; however, she failed to notify the president or any other corporate officers that the permit had been issued.

{¶ 3} On May 2, 2012, appellant's company officials learned of the permit's issuance. The next day, May 3, 2012, 31 days after receiving the permit, appellant filed a notice of appeal, challenging certain terms and conditions included in the permit. On June 19, 2012, appellee filed a motion to dismiss for lack of subject-matter jurisdiction, arguing that appellant's failure to file a notice of appeal within the 30-day time period prescribed in R.C. 3745.04(D) divested the commission of jurisdiction to hear the appeal.

{¶ 4} In an order issued August 16, 2012, the commission granted appellee's motion and dismissed appellant's appeal. The commission concluded that appellant's failure to comply with the statutorily established deadline for filing a notice of appeal set forth in R.C. 3745.04(D) deprived it of subject-matter jurisdiction over the appeal.

{¶ 5} In a timely appeal, appellant advances a single assignment of error for our review:

The Environmental Review Appeals Commission erred in granting the Appellee Director's Motion to Dismiss Skye Metals Recovery, Inc.'s Appeal based solely on the fact that Skye Metals Recovery, Inc. filed the Notice of Appeal thirty-one days after the final permit was issued.

{¶ 6} Administrative tribunals possess jurisdiction limited by their statutory or regulatory grant. *Johnson v. Williams*, 10th Dist. No. 77AP-776 (Feb. 16, 1978). In this case, R.C. 3745.04 confers jurisdiction on the commission. R.C. 3745.04(D) provides, in relevant part, that an appeal "shall be filed with the commission within thirty days after notice of the action." In *Johnson*, this court held that compliance with the statutorily established 30-day deadline is a mandatory condition precedent to the commission's authority to hear an appeal, and that noncompliance with this requirement precludes the commission from exercising jurisdiction.

{¶ 7} Appellant acknowledges this jurisdictional requirement; it further acknowledges that its appeal was untimely, having been filed 31 days after it received notice of the issuance of the permit. Nonetheless, appellant contends that the appeal

should have been allowed to proceed in accordance with equitable principles. In particular, appellant maintains that because appellee sent the copy of the permit to the Alabama facility, rather than to the Ohio facility which housed the offices of the corporate officials with whom appellant had corresponded, it is entitled to equitable consideration that justifies an exception to the 30-day appeal deadline. Appellant further contends that it will be prejudiced by dismissal of the appeal because it will be unable to challenge certain cost-prohibitive provisions contained in the permit. Appellant raised these equitable arguments before the commission, and the commission properly rejected them. Equitable arguments cannot overcome fatal jurisdictional defects. *See Meadows Dev., L.L.C. v. Champaign Cty. Bd. of Rev.*, 124 Ohio St.3d 349, 2010-Ohio-249, ¶ 14 (administrative bodies do not exercise equitable jurisdiction).

{¶ 8} Because appellant failed to comply with the 30-day deadline imposed by R.C. 3745.04(D) for filing a notice of appeal, the commission lacked subject-matter jurisdiction over the appeal. Accordingly, the commission properly granted appellee's motion to dismiss appellant's appeal.

{¶ 9} Appellant's single assignment of error is overruled, and the order of the Environmental Review Appeals Commission is affirmed.

*Order affirmed.*

BRYANT and CONNOR, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).

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