

BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION
STATE OF OHIO

KASSIE LESTER,	:	Case No. ERAC 19-7012
and	:	
RON LESTER,	:	Case No. ERAC 19-7013
and	:	
BRADLEY MARTIN,	:	Case No. ERAC 19-7014
and	:	
PHILIP SNELL,	:	Case No. ERAC 19-7015
and	:	
ANGIE RATLIFF,	:	Case No. ERAC 19-7016
and	:	
RANDY RATLIFF,	:	Case No. ERAC 19-7017
and	:	
PATRICIA HILL,	:	Case No. ERAC 19-7018
and	:	
STEPHANIE MCCLAREN,	:	Case No. ERAC 19-7019
and	:	
RENATA JONES,	:	Case No. ERAC 19-7021
and	:	
RENEE HENDERSON,	:	Case No. ERAC 19-7022
and	:	
MICHAEL GUNTHER,	:	Case No. ERAC 19-7023
and	:	
SARAH COOPER,	:	Case No. ERAC 19-7024

and	:	
OSMOND COOPER,	:	Case No. ERAC 19-7025
and	:	
ZENA TARHAN,	:	Case No. ERAC 19-7026
and	:	
FRANK O'NEILL,	:	Case No. ERAC 19-7027
and	:	
LINDSEY ADCOX,	:	Case No. ERAC 19-7028
and	:	
KATIE SWANEY,	:	Case No. ERAC 19-7029
and	:	
ROBIN MCCALL,	:	Case No. ERAC 19-7030
and	:	
DAVID FISCHER,	:	Case No. ERAC 19-7031
and	:	
MIKE SMITH,	:	Case No. ERAC 19-7032
and	:	
GAIL SMITH,	:	Case No. ERAC 19-7033
and	:	
CHRISTOPHER DEMAREY,	:	Case No. ERAC 19-7034
and	:	
BARBARA DEMAREY,	:	Case No. ERAC 19-7035
and	:	
SHAWN MONROE,	:	Case No. ERAC 19-7036

and
GRETCHEN MONROE,

Case No. ERAC 19-7037

and
PHIL HARRIS,

Case No. ERAC 19-7038

and
MADELYN HARRIS,

Case No. ERAC 19-7039

and
JOSHUA HAIL,

Case No. ERAC 19-7040

and
DENNIS WARD,

Case No. ERAC 19-7041

and
LUKE BORINTRAGER,

Case No. ERAC 19-7042

Appellants,

v.

LAURIE STEVENSON, DIRECTOR OF
ENVIRONMENTAL PROTECTION,

and
DOVETAIL ENERGY, LLC,

and
TOM PITSTICK,

and
JASON M. GRIECO,

Appellees.

RULING ON DIRECTOR'S MOTION TO DISMISS

Rendered on October 8, 2020

Kassie Lester, Ron Lester, Bradley Martin, Philip Snell, Angie Ratliff, Randy Ratliff, Patricia Hill, Stephanie McClaren, Renata Jones, Renee Henderson, Michael Gunther, Sarah Cooper, Osmond Cooper, Zena Tarhan, Frank O'Neill, Lindsey Adcox, Katie Swaney, Robin McCall, David Fischer, Mike Smith, Gail Smith, Christopher Demarey, Barbara Demarey, Shawn Monroe, Gretchen Monroe, Phil Harris, Madelyn Harris, Joshua Hail, Dennis Ward, and Luke Borntrager, Appellants pro se

Dave Yost, Attorney General, *Nicole Candelora-Norman*, *Amber Wootton Hertlein*, and *Katherine A. Walker* for Appellee Laurie Stevenson, Director of Environmental Protection

Michael S. McMahon, *Gregory J. Degulis*, and *Erin McDevitt-Franz* for Appellee Dovetail Energy, LLC

Tom Pitstick, Appellee pro se

Jason M. Grieco, Appellee pro se

{¶1} This matter comes before the Environmental Review Appeals Commission (“Commission,” “ERAC”) on a Notice of Appeal filed on August 20, 2019, by thirty-one pro se Appellants from the Fairborn, Ohio area. These Appellants challenge the July 19, 2019 issuance of a Permit-to-Install (“Permit”) by Appellee Laurie Stevenson, Director of Environmental Protection (“Director,” “Ohio EPA,” “Agency”) to Appellee Dovetail Energy, LLC (“Dovetail”). Case File Item A.

{¶2} Appellant Ben Jones filed a motion for voluntary dismissal on January 24, 2020, which the Commission granted on January 28, 2020. Case File Items L, M.

{¶3} On September 1, 2020, the Director filed a Motion to Dismiss (“Motion”). The Commission has not received a response from any of the remaining thirty Appellants or from Appellees. Case File Item T.

{¶4} Based on a review of the pleadings and relevant statutes, regulations, and case law, the Commission issues these Findings of Fact, Conclusions of Law, and Final Order GRANTING the Director’s Motion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Issue Presented

{¶5} On July 19, 2019, the Director issued the Permit to Dovetail. Case File Item A.

{¶6} On April 3, 2020, the Director revoked the Permit from Dovetail at Dovetail’s request. The Director filed a Notice of Revocation with the Commission on May 13, 2020.¹ Case File Item P.

{¶7} Initially, the Director’s Notice of Revocation lacked a certificate of service. Accordingly, the Commission ordered the Director to serve the Notice of Revocation upon each party and provide the Commission with proof of service. The Commission received proof of service May 22, 2020. Case File R.

{¶8} An appellant may file an objection with the Commission within 30 days of the Director’s filing of a notice of revocation. Revised Code (“R.C.”) 3745.04(B). The Director perfected her filing on May 22, 2020; thus, Appellants’ 30-day period to file an objection in this appeal expired on June 22, 2020. To date, the Commission has received

¹ Revised Code 3745.04(B) requires, “Not later than thirty days after the * * * revocation [of a permit under appeal at ERAC,] the director shall file with the commission * * * a statement notifying the commission * * * that the appealed action was revoked * * *.”

no communication, objection or otherwise, from any of the thirty Appellants. Similarly, Appellants have not filed a separate appeal challenging the Director's revocation.

{¶9} On September 1, 2020, the Director filed the present Motion to Dismiss. In her Motion, the Director argues that her April 2020 revocation of the Permit renders this appeal moot. The Commission has not received a response from any of the Appellants. Case File Item T.

II. Mootness

{¶10} Generally, courts will not resolve issues that are moot. *See Miner v. Witt*, 82 Ohio St. 237 (1910). “The doctrine of mootness is rooted both in the ‘case’ or ‘controversy’ language of Section 2, Article III of the United States Constitution and in the general notion of judicial restraint. * * * While Ohio has no constitutional counterpart to Section 2, Article III, the courts of Ohio have long recognized that a court cannot entertain jurisdiction over a moot question.” *James A. Keller, Inc. v. Flaherty*, 74 Ohio App. 3d 788, 791 (1991) (internal citations omitted). “Thus, the ‘duty of * * * every * * * judicial tribunal * * * is to decide actual controversies by a * * * judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Ohio Civ. Serv. Emp. Assn., AFSCME, Local 11, AFL-CIO v. Ohio Dept. of Transp.*, 104 Ohio App. 3d 340 (1995).

III. Analysis

{¶11} Here, the Director has revoked the Permit that is the subject of this appeal. Thus, there is no actual, live controversy before the Commission. Having received no response from Appellants suggesting either that the matter is not moot or that an exception to the mootness doctrine should apply, the Commission finds the appeal moot.

FINAL ORDER

{¶12} For these reasons, the Commission GRANTS the Director's Motion and DISMISSES the above-captioned appeal.

{¶13} In accordance with Ohio Administrative Code 3746-13-01, the Commission informs the parties:

Any party adversely affected by an order of the commission may appeal to the court of appeals of Franklin County, or, if the appeal arises from an alleged violation of a law or regulation, to the court of appeals of the district in which the violation was alleged to have occurred. The party so appealing shall file with the commission a notice of appeal designating the order from which an appeal is being taken. A copy of such notice shall also be filed by the appellant with the court, and a copy shall be sent by certified mail to the director or other statutory agency. Such notices shall be filed and mailed within thirty days after the date upon which appellant received notice from the commission of the issuance of the order. No appeal bond shall be required to make an appeal effective.

**THE ENVIRONMENTAL REVIEW
APPEALS COMMISSION**

/s/ Melissa M. Shilling*

Melissa M. Shilling, Chair

Entered in the Journal
of the Commission this 8th
day of October 2020.

/s/ Michael G. Verich*

Michael G. Verich, Vice-Chair

/s/ Thomas W. Johnson*

Thomas W. Johnson, Member

* Approved during the Commission's 10-8-20 regularly scheduled meeting

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