

INTERIOR BOARD OF LAND APPEALS

Chevron U.S.A., Inc.

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CHEVRON U.S.A. INC.

IBLA 89-363

Decided January 13, 1994

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, affirming as modified an assessment of the Kemmerer Resource Area. SDR No. WY-89-11.

Vacated and remanded.

1. National Environmental Policy Act of 1969: Environmental Statements--Oil and Gas Leases: Drilling--Oil and Gas Leases: Incidents of Noncompliance--Oil and Gas Leases: Unit and Cooperative Agreements

A decision assessing an operator \$2,500 for failure to file an APD with BLM shall be vacated where the well at issue is a development well directionally drilled from unitized fee lands and completed in unitized Federal lands, and the operator has received an approved APD from the appropriate State body.

APPEARANCES: W. M. Balkovatz, Esq., Denver, Colorado, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

Chevron U.S.A. Inc. has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 13, 1989, affirming a notice of incidents of noncompliance (INC) issued by the Kemmerer Resource Area. This INC, dated February 10, 1989, recited that Chevron had violated 43 CFR 3162.3-1(c), which requires an operator to submit to BLM for approval an application for permit to drill (APD) for each well. 1/

The Kemmerer Resource Area characterized Chevron's violation as "major" and levied an assessment of \$5,000 pursuant to 43 CFR 3163.1(b)(2). Upon State Director Review (SDR) of the INC, the Wyoming State Office held that Chevron had, in fact, violated 43 CFR 3162.3-1(c) by drilling well #12-5A into Federal lease WYW-34526 without Federal approval. In contrast to the

1/ This regulation reads: "The operator shall submit to the authorized officer for approval an Application for Permit to Drill for each well. No drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the authorized officer's approval of the permit."

Resource Area, however, the State Office characterized Chevron's violation as "minor" and reduced appellant's assessment by half.

The facts here are not in dispute. Well #12-5A is a directional well that Chevron drilled from fee lands in sec. 5, T. 15 N., R. 119 W., sixth principal meridian. Chevron completed this well in sec. 6, a Federal tract, where it encountered producing intervals in the Nugget formation. Both secs. 5 and 6 are within a participating area of the Federally approved and supervised Painter Reservoir unit.

Prior to spudding well #12-5A in January 1988, Chevron filed an APD with the Wyoming Oil and Gas Commission. This APD was approved by the State on November 23, 1987, and identified the proposed production zone as within sec. 5, unitized fee land. In the APD, Chevron described well #12-5A as a developmental well. A copy of this State-approved APD was provided to the Kemmerer Resource Area.

BLM first learned that well #12-5A had been completed in sec. 6, unitized Federal land, upon receipt of appellant's completion report. This report, dated December 5, 1988, indicated that the well had reached total depth in September 1988 in sec. 6. Well completion had occurred in November 1988, Chevron reported, and the top production interval was reached in sec. 6.

In the State Office decision, BLM reasoned that Chevron should have submitted an APD for BLM's approval because Chevron should have known that well #12-5A would be crossing a lease boundary from fee lands to BLM lands. Approval of an APD is for all aspects of drilling, BLM held, and not simply to safeguard against surface damage.

In its statement of reasons, appellant argues that neither the regulations, the APD forms, nor Onshore Oil and Gas Order No. 1 supports BLM's view that a Federal APD was required in the instant case. Both the State and Federal APD forms require the applicant to identify the depth and location of the proposed production zone, but neither requires identification of the bottomhole location nor the depth and location of perforations within the proposed production zone.

Appellant also finds fault in BLM's decision because it overlooks the impact of the unitization of secs. 5 and 6. Under unit operations, Chevron explains, unitized leases are treated for operational purposes as one lease. Bottomhole location and the location of the bit and perforated intervals are irrelevant in these circumstances, appellant states.

[1] It is not surprising that neither the regulations nor Onshore Oil and Gas Order No. 1 specifically addresses the instant facts. Regulations set forth at 43 CFR Part 3160 detail the duties required of an operator of a Federal onshore oil and gas lease. All operations conducted on a Federal oil and gas lease are subject to the regulations of this part. 43 CFR 3161.1(a). Certain regulations within 43 CFR Part 3160 also apply beyond Federal lease boundaries, as set forth at 43 CFR 3161.1(b):

Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary. [2/] [Emphasis added.]

Like the regulations, Onshore Oil and Gas Order No. 1, 48 FR 48916, 48921-22 (Oct. 21, 1983), focuses primarily on operations occurring on Federal leases. It describes, inter alia, the components of a complete APD. When drilling occurs on unitized fee lands, the order provides: "For proposed operations on a committed State [or] fee tract in a Federally supervised unit or communitized tract, the operator shall furnish a copy of the approved State permit to the authorized officer of BLM which will be accepted for record purposes." Had Chevron's well #12-5A not penetrated Federal lease WYW-34526, it appears from our reading of this order that BLM was prepared to defer to the State's expertise any technical review of this well, notwithstanding that Federal minerals would have been produced therefrom.

This Board has recognized on a number of occasions that 43 CFR 3163.1(b) regards drilling without approval as a violation of such a serious nature that imposition of immediate assessments is warranted upon discovery. See, e.g., Jack Hammer, 114 IBLA 340, 343 (1990), and Noel Reynolds, 110 IBLA 74, 78 (1989). In Magness Petroleum Corp., 113 IBLA 214, 216 (1990), we noted that the Department regarded prior approval of drilling operations to be "critical to proper multiple use management of the public lands."

In each of the cases cited above, the Board affirmed BLM's imposition of an assessment for drilling without approval. None of these cases, however, involved unitized lands or a directional well. Closer to the instant facts here is M.J. Harvey, Jr., 109 IBLA 31 (1989), where the Board affirmed BLM's consent to a proposal by Shell Western E&P Inc. to drill a directional well through Federal lands leased to Harvey. Shell's well originated on lands belonging to the State of Michigan, passed through Harvey's Federal lease, and bottomed on fee lands leased to Shell. Of importance to us here is the fact that BLM appears not to have required Shell to file an APD,

2/ Responding to comments that the effect of the regulations should not be extended to cover operations on private or fee lands within units and communitized areas, the Assistant Secretary stated at 52 FR 5384, 5386 (Feb. 20, 1987):

"The fact that Federal or Indian lands are committed to agreements for the purpose of drilling and development of those lands in the most beneficial manner is all that is needed to establish the responsibility of the Bureau of Land Management to ensure that the intent of the Federal Oil and Gas Royalty Management Act and other mineral leasing laws as to royalty accountability is carried out on those lands."

even though Shell's well bore would penetrate Federal lands. Of interest also is the fact that Shell had received a permit to drill from the State of Michigan.

Because Harvey had not been issued at the time of BLM's SDR, we vacate the decision of the Wyoming State Office to allow it to reconsider its actions in light of this decision. Moreover, the State Office should consider the effect of approval of an APD for a development well. The Department Manual makes clear at 516 DM 6, Appendix 5.4D(2)(d), that APD approval for exploratory drilling is categorically excluded from environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332 (1988). Such is not the case for a development well, such as Chevron's #12-5A. See decision of Secretary Lujan, dated June 25, 1991, upon review of Michael Gold (On Reconsideration), 115 IBLA 218 (1990). Substantial NEPA responsibilities might attend the holding of the Wyoming State Office in the present case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is vacated and remanded for reconsideration.

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James L. Byrnes  
Chief Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge