

INTERIOR BOARD OF LAND APPEALS

Northland Royalty Operating Co.

129 IBLA 164 (April 21, 1994)

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NORTHLAND ROYALTY OPERATING CO.

IBLA 91-160

Decided April 21, 1994

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, upholding an assessment of \$5,000 for failure to obtain an approved application for permit to drill prior to drilling a well on a Federal oil and gas lease. SDR-922-91-05.

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance

Drilling an oil or gas well on a Federal or Indian lease without prior submission and approval of an application for permit to drill is a violation of the operating regulations at 43 CFR 3162.3-1(c) and, under the regulations governing incidents of noncompliance, an assessment of \$500 per day such violation exists (not to exceed \$5,000) is mandated. 43 CFR 3163.1(b)(2). Prior notice and opportunity to abate such a violation is not a prerequisite to an assessment.

APPEARANCES: Timothy J. Sheehan, Land Manager, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Northland Royalty Operating Company appeals from a January 11, 1991, decision of the Acting Deputy State Director, Montana State Office, Bureau of Land Management (BLM), upholding an assessment in the amount of \$5,000 for failure to submit and obtain prior approval of an Application for Permit to Drill (APD) an oil and gas well. 1/ The assessment was made for failure to obtain an approved APD prior to drilling a gas well on lands in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 28, T. 34 N., R. 2 W., Toole County, Montana, embraced in Federal oil and gas lease M-77568.

The copy of the well completion report filed with the Montana Board of Oil and Gas Conservation discloses that drilling operations commenced

1/ This decision, issued pursuant to appellant's request for State Director Review, affirmed the Dec. 7, 1990, decision of the Great Falls, Montana, Resource Area Office, levying the assessment. See 43 CFR 3165.3(b).

on April 8, 1990, and the well was completed as a gas producer on April 12, 1990. The record contains a letter dated December 7, 1990, from Northland to the BLM Great Falls Resource Area Office indicating that: "During a recent review of our records we discovered a well which has been drilled on [F]ederal land without filing an [APD]." The letter further indicated that an APD would be filed immediately. The BLM Area Manager's decision held that failure to submit and obtain prior approval of an APD is a violation of the regulation at 43 CFR 3162.3-1(c) which, under the terms of the regulation at 43 CFR 3163.1(b)(2), requires an assessment of \$500 per day for each day the violation existed, including days prior to discovery, not to exceed \$5,000. As noted above, the assessment was upheld on State Director review.

On appeal to the Board, Northland explains that its land manager was out of the office due to illness and a junior land man had taken over his responsibilities. Appellant notes the procedure for "checking the master title plat to determine [F]ederal ownership under the drill site was inadvertently overlooked." Appellant, while recognizing the gravity of the violation, denies that it intentionally trespassed on Federal minerals and insists that it did "the utmost to cooperate with BLM staff" in supplying them with the required information after the mistake was identified. Appellant contends that the regulations should not be so strictly enforced against an operator who was acting in good faith and whose violation was not willful.

[1] The requirement of the regulations for submitting to the authorized officer of BLM and obtaining approval of an APD prior to commencement of drilling operations is unequivocal. 43 CFR 3162.3-1(c). The remedies for noncompliance with this requirement are set forth in the regulations at 43 CFR 3163.1(b) as follows:

(b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

* * * * *

(2) For drilling without approval * * *, \$500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed \$5,000.

It is clear from the record that the violation at issue in this appeal existed for more than 10 days and thus the assessment is sustainable. This Board has held that the express language of this regulation reflects the Department's "policy that drilling without approval, or causing sur-face disturbance preliminary to drilling without approval, constitutes an instance of noncompliance 'of such a serious nature as to warrant the imposition of immediate assessments upon discovery.'" Jack Corman, 119 IBLA

289, 293 (1991); Magness Petroleum Corp., 113 IBLA 214, 216 (1990); Noel Reynolds, 110 IBLA 74, 76 (1989); see 52 FR 5387 (Feb. 20, 1987) (BLM noted in the preamble to the final rulemaking that notice to the operator prior to an assessment for failure to obtain an approved APD is not required "due to the serious nature and potential consequences of a breach" of this requirement).

The assessments for incidents of noncompliance are in the nature of liquidated damages for breach of the requirements of the Federal oil and gas lease and the operating regulations and, as such, are properly distinguished from civil penalties assessed in regard to knowing and willful violations. Northland Royalty Operating Co., 123 IBLA 104, 106 (1992); see 52 FR 5387 (Feb. 20, 1987); 43 CFR 3163.2 (civil penalties). Thus, the good faith of the operator is not a defense to the assessment. It is true that the State Director may, on a case by case basis, reduce the amount of an assessment where he gives the reasons for such determination. 43 CFR 3163.1(e). In challenging the BLM decision on State Director review, appellant has referred to its reasons for appeal in another similar incident which was the subject of a decision by the Board, noting that the wells were drilled in the same time period and that the circumstances of the violations were similar. Northland Royalty Operating Co., supra. The decision in that case reflects that notice of 5 major violations and 16 minor violations had been issued by the Great Falls Area Office within the previous 2 years. Northland Royalty Operating Co., 123 IBLA at 105-106. Under the circumstances, we are unable to conclude that the State Director's failure to reduce the assessment was contrary to the weight of the evidence. See generally United States Fish & Wildlife Service, 72 IBLA 218 (1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James L. Burski
Administrative Judge