

INTERIOR BOARD OF LAND APPEALS

Conley P. Smith Oil Producers

131 IBLA 313 (December 13, 1994)

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CONLEY P. SMITH OIL PRODUCERS

IBLA 90-341

Decided December 13, 1994

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, modifying the category but upholding the assessment for incidents of noncompliance with respect to oil and gas lease WYO-88907. SDR No. WY-89-23.

Affirmed as modified.

1. Rules of Practice: Appeals: Dismissal—Rules of Practice: Appeals: Timely Filing

A party seeking review by the State Director of a notice of violation pursuant to 43 CFR 3165.3(b) must file a request for such review within 20 business days of the date such notice of violation was received. Where, in connection with an appeal involving State Director review of other notices of violation, a party seeks to challenge issuance of a notice of violation for which State Director review was not timely sought, such a challenge must be rejected as not within the Board's jurisdiction.

2. Agency—Estoppel—Notice: Generally—Regulations: Generally

Knowledge acquired by an agent in the course of his activities pursuant to the agency is properly imputed to the principal. Similarly, since all persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, both an agent and the principal are properly charged with knowledge of both the terms and applicability of Onshore Oil and Gas Order No. 2.

3. Administrative Authority: Generally—Oil and Gas Leases: Civil Assessments and Penalties—Oil and Gas Leases: Incidents of Noncompliance

Under the provisions of 43 CFR 3163.1(b)(1), where a notice of an incident of noncompliance has issued for a failure to install well control equipment in accordance with an approved APD, BLM must issue an immediate

assessment in the amount of \$500 per day for each day the violation existed, including days the violation existed prior to discovery, up to a limit of \$5,000.

4. Administrative Authority: Generally—Oil and Gas Leases: Civil Assessments and Penalties—Oil and Gas Leases: Incidents of Noncompliance

Absent the existence of unusual circumstances which might be revealed on a case by case analysis, the exercise of a State Director's discretion under 43 CFR 3163.1(e) in the context of reviewing an assessment for a violation of 43 CFR 3163.1(b)(1), which violation was properly classified as "minor," should result in a reduction of the assessment so that the assessment does not exceed a \$250 daily rate.

APPEARANCES: Robert P. Vernon, Operations Manager, Conley P. Smith Oil Producers, Denver, Colorado, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Conley P. Smith Oil Producers (Conley) has appealed from a decision of the Acting Deputy State Director, Wyoming, Bureau of Land Management, dated April 20, 1990, reducing the category of violation for two incidents of noncompliance (INC) relating to the installation of blowout prevention (BOP) equipment from major to minor but affirming the assessment of \$5,000 for the violations. The facts in this matter are not generally in dispute.

Conley is the operator of lease WYO-88907, which includes the NW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 34, T. 47 N., R. 70 W., sixth principal meridian, Campbell County, Wyoming. This acreage is located in what is known as the Kicker Draw - Minnelusa Field. In 1984, Conley submitted to the Buffalo Resource Area Office (BRA), BLM, an application for a permit to drill a well (APD) within the delineated acreage. Following various amendments required by BLM, the APD for this well, denominated as the DarLyn Federal No. 34-12, was approved effective May 8, 1985, with an estimated total drilling depth of 10,000 feet, targeting the Minnelusa formation. We note, because of its relevance to the instant appeal, that this APD provided for a 2M $\frac{1}{2}$ BOP system consisting of a double ram which included a choke manifold with 2-inch valves and a 2-inch choke line. See 1985 APD, Exh. H. No action was taken under this APD in the ensuing year, however, and, on May 20, 1986, notification was sent that, pursuant to section 8 of the APD, the APD had expired and, therefore, the approval of drilling operations was cancelled.

$\frac{1}{2}$ BOP ratings refer to equipment pressure ratings. Thus, a 2M rating correlates to a working pressure rating of 2,000 pounds per square inch (psi). See Onshore Oil and Gas Order No. 2 at ILX, 53 FR 46805 (Nov. 18, 1988).

On March 13, 1989, appellant's agent, Jerry Keeler, contacted the BRA to inform it that he was in the process of resubmitting the APD which had been approved in 1985 in order to obtain new authorization to drill the DarLyn No. 34-12. Appellant asserts Keeler was informed that, pursuant to Onshore Oil and Gas Order No. 2, 53 FR 46798-46811 (Nov. 18, 1988), which had, *inter alia*, established minimum standards for well-control equipment, a 3M BOP system was required for all wells with a drilling depth of 10,000 feet. Appellant contends that, in reliance upon this information, Keeler retyped the APD and substituted an exhibit (Exh. Z) showing a 3M BOP system, which required use of an annular preventer and 3-inch valves and choke line. The APD also indicated an estimated bottom hole pressure of 4,500 psi. See 1989 APD, Additional Information at 7. 2/ The APD was approved effective May 30, 1989. While appellant admits that it received a copy of the APD as approved, it contends that it never noticed the alteration in the BOP system and further asserts that neither its agent nor BLM ever directed its attention to this change. 3/

The DarLyn No. 34-12 was spudded on June 26, 1989. On July 10, 1989, a BLM inspector visited the site and, upon discovering that a 2M BOP system was in use, issued two INC's relating thereto, one (LG 06189077) for the failure to install an annular preventer and the other (LG 06189078) for the failure to install two 3-inch choke line valves and a 3-inch choke line. Both of these INC's informed Conley that it was being assessed at the rate of \$500 per day for the period from June 28, 1989, 4/ through July 10, 1989, with a cap of \$5,000 for each of these INC's which the inspector classified as major violations. In addition to these two major violations, Conley was also issued two INC's for violations which were

2/ We note that the original APD had shown a pressure gradient of 0.415 psi/foot depth which calculated to a bottom hole pressure (BHP) of 4,175 at a depth of 10,050 feet. In its statement of reasons for appeal, appellant attached a declaration from Keeler in which he had computed the figure used in the APD based on past instructions he had received from BLM offices to use a pressure gradient of 0.435 psi unless instructed otherwise. Use of this gradient would result in an estimated BHP of 4,371 psi, rather than the 4,500 psi figure used in the APD. Keeler attributed this discrepancy to a multiplication error on his part. See SOR Attachment at 2.

3/ We are constrained to point out that the foregoing chronology, which is primarily derived from appellant's SOR, differs in certain important particulars from that presented in the initial SDR proceedings. Thus, appellant had argued that its agent had submitted an APD in 1989 which contained a 2M BOP system and that its agent was then informed that the 2M BOP system was no longer adequate and he was "given" the 3M BOP drawing and told to substitute it for the 2M BOP exhibit. It is clear, however, from the contentions which appellant makes on appeal that its agent never actually submitted an APD in 1989 showing a 2M BOP system. Appellant's argument in the SDR proceeding that BLM should have notified it of the original APD's inadequacy has no basis in fact since, as actually submitted by appellant's agent in 1989, the APD already showed a 3M BOP system.

4/ This date was identified as the drillout date.

deemed to be minor. No assessments were levied with respect to these violations. ^{5/} The well was also ordered shut-in pending correction of the two major violations. These corrections were made the next day. Thereafter, on July 14, 1989, BLM issued a notice of assessment to Conley in the amount of \$10,000.

On July 18, 1989, Conley requested State Director Review (SDR) of the two INC's involved in the assessment, seeking to have them downgraded to minor violations for which no fines would be assessed. The thrust of its argument before the State Director was essentially two-fold. First, adverting to the circumstances set forth above, appellant argued that the violations cited were completely inadvertent and were the result of the failure of either BLM or Conley's agent to directly advise Conley that a 3M BOP system was required in drilling the well. In this regard, Conley noted that, upon being notified of the violations, it immediately rectified them. The second point related to the denomination of the violations as "major." Conley noted that, by definition, a "major" violation was one which "causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income." See 43 CFR 3160.0-5(j). In Conley's view, none of these factors obtained.

Thus, Conley noted that the Kicker Draw - Minnelusa Field had been discovered in 1984 with the completion of the K.D. Federal 33-9 well. While this well had an initial BHP of 3,993 psi, by May 1987 the well had a shut-in (SI) BHP of 1,550 psi and in August 1989 the BHP was calculated to be only 625 psi. Conley noted that three subsequent wells had been completed between December 1984 and May 1985, none with an initial SI BHP greater than 3,997 psi and all of which showed very low BHP at the present time. Conley attributed these low BHP levels to the low permeability of the reservoir rock which required long shut-in periods in order to allow well recharge. All of these wells, Conley pointed out, had been drilled using 2M BOP systems.

Conley argued that, given the low BHP of wells drilled in this field, it was difficult to understand why a 3M system would be required. In particular, Conley noted that it had drilled over 100 wells into the Minnelusa formation near the Gillette area. All of these had used a 2M BOP system and none of them had ever encountered pressure problems. Given the low BHP's evidenced by wells drilled into this formation, Conley challenged the inspector's assertion that the failure to include a high pressure annular BOP system threatened "immediate substantial or adverse impact on public health and safety [or] the environment," and, Conley continued, the violation was properly deemed to be a "minor" violation.

In a decision dated September 12, 1989, the Acting Deputy State Director affirmed the issuance of the INC's as well as the determination

^{5/} These two INC's were issued for the failure to install a remote BOP control on the rig floor (LG 06189079) and for the failure to install a flow sensor or pit level indicator as required by the APD (LG 06189080).

that the violations involved constituted "major" violations within the meaning of 43 CFR 3160.0-5(j). In support of these conclusions, the decision noted that the APD, as approved, clearly called for the installation of a 3M BOP system, a point not contradicted by appellant. The decision also noted that the APD had indicated estimated BHP of 4,500 psi, which would make installation of a 3M system appropriate. While the decision recognized that a copy of the APD which appellant had submitted to the State Office in support of its appeal showed a handwritten change in this figure to 1,500 psi, this was discounted since there was no indication that the APD filed with the BRA had ever been amended to show this abnormally low pressure.

Moreover, the decision pointed out that there was no indication from the data submitted by appellant that the pressure gradients in the formations above the Minnelusa would also be lower than normal and that, according to the APD, five of these formations were at a depth which would still require a 3M system if normal pressure gradients were applicable. Thus, the Acting Deputy State Director concluded that the record clearly established that Conley had not installed the BOP equipment mandated in its APD and also held that Conley had failed to establish that the drilling of the well without the mandated equipment did not constitute a threat of immediate, adverse, and substantial impact on public health and safety. Thus, both the fact of violation and its categorization as "major" were affirmed.

Turning to the question of the amount of the assessment, the decision noted that, while 43 CFR 3163.1(b)(1) appeared to require mandatory retroactive assessment at the rate of \$500 per day, not to exceed a total assessment of \$5,000, it was unclear whether this requirement attached to each identified violation or to the overall failure to install BOP equipment as mandated in the approved APD. Thus, the decision pointed out that there were, arguably, six separate violations relating to the installation of BOP equipment 6/ and that if an assessment was made for each of these violations the total amount assessed would be \$30,000. Recognizing that such an assessment would be clearly excessive given the facts of this case, 7/ the decision concluded that the regulation was properly interpreted as mandating a single automatic assessment for violation of BOP requirements rather than individual assessments for each element of the violation. Accordingly, the decision reduced the amount assessed from \$10,000 to \$5,000. Conley thereupon sought review of this determination before the Board.

6/ Thus, the State Director noted that INCLG 06189078 actually included three separate violations (two 2-inch valves and one 2-inch choke line) and that both of the violations which had been cited as "minor" also related to BOP equipment. Thus, the inspector had actually cited appellant for six different violations of the requirements of its approved APD.

7/ The decision referenced the fact that the civil penalty regulations, which were intended to be punitive in nature, capped assessments for the continued refusal or failure to correct a minor violation at \$30,000. See 43 CFR 3163.2(g)(2).

In its appeal from the September 12, 1989, decision, Conley directed its attention to the decision's conclusion that, given the facts of record, Conley had failed to establish that a 2M system would have been appropriate for BOP purposes. Conley submitted a number of well logs from nearby wells to support its position that a 2M system provided adequate well control and transmitted copies of these submissions to the State Office. By memorandum dated November 22, 1989, the Acting Deputy State Director informed the Office of the Solicitor that the information included might have led to a different conclusion with respect to the necessity of a 3M BOP system had it been included with the APD. The State Office requested that the case be remanded to it so that it might review the submission in greater detail and issue a revised opinion. On December 5, 1989, a formal request for remand was filed with the Board, which was granted by order dated February 6, 1990.

On April 20, 1990, the Acting Deputy State Director issued a revised SDR decision. After reviewing the submissions made by Conley, the decision concluded that the information would have supported approval of a 2M BOP system for the well. The decision noted that the various logs submitted by Conley established that the five formations above the Minnelusa did not contain fluids that could enter the well bore and possibly cause a blowout. Based on this after-the-fact analysis, the decision determined that a 2M system was, in fact, sufficient to handle conditions to total depth. Therefore, the Acting Deputy State Director agreed that the category of violation was properly classified as "minor," since it was not possible to find that the violations threatened to cause an immediate or substantial danger to public health or safety.

Notwithstanding the foregoing analysis, however, the decision on reconsideration reaffirmed the assessment of \$5,000 for the cited violation. In doing so, the decision noted that the applicable regulation, 43 CFR 3163.1(b), established a category of violations which are considered so "serious" as to require an assessment for a violation regardless of the circumstances. These violations include drilling without obtaining an approved APD and drilling without the well control equipment approved in an APD. The decision concluded that there was no necessary congruity between the "serious" violation which required an assessment under 43 CFR 3163.1(b) and the definition of "major" violation set forth at 43 CFR 3160.0-5(j) and, therefore, the fact that a violation was ultimately deemed "minor" did not obviate the requirement that the mandatory assessment must be made. Accordingly, since the failure to install BOP equipment as required in an approved APD entailed a daily assessment of \$500 up to a limit of \$5,000, the decision concluded that \$5,000 was properly assessed. Further finding that appellant's obvious failure to consult the terms and conditions of the approved APD constituted a serious matter of concern, the decision declined to reduce the amount of this assessment. Conley thereupon pursued the instant appeal to this Board.

In its statement of reasons for appeal (SOR), Conley makes two general arguments in support of reversal of the assessment of \$5,000. First, it focuses on the determination of the Acting Deputy State Director to downgrade the category of violation to "minor" and argues that it is being assessed for a minor violation which was corrected within 24 hours the

maximum amount which it could have been assessed for a major violation. Indeed, Conley points out, it is being assessed for using a 2M BOP system which BLM now admits was adequate under the circumstances the same amount it would have been assessed for drilling without any BOP system. Appellant suggests that such a result cannot be justified.

The second prong of its argument is directed to establishing that BLM was at least partially to blame for Conley's violation of the APD because BLM consistently misinformed both Conley and its agent, Keeler, of the basis for its determination that a 3M BOP system was required. Thus, in addition to Keeler's assertion that he was informed that the 3M system was mandated solely on the basis of drilling depth, Conley's Operation Manager, Robert P. Vernon, attests that when, upon being notified on June 10, 1989, that operations had been shut down on the DarLyn No. 34-12, he inquired as to the basis for requiring a 3M BOP system, he was informed that a 3M system was required on all wells in this area with a drilling depth below 9,500 feet. Vernon asserts that, had BLM informed either Keeler or himself of the correct basis for requiring a 3M BOP system, i.e., bottom hole pressure, appellant would have, at that time, furnished the data which ultimately convinced BLM to accept a 2M system as adequate for the DarLyn No. 34-12 well. ^{8/} Based on the foregoing, appellant seeks to have the \$5,000 assessment dismissed.

Finally, appellant also assails the assertion in the SDR decision that "[t]he lack of the proposed flow sensor or pit level indicator reduced the likelihood of early detection of the hole taking a kick." While appellant admits that an INC had been issued for this violation (LG 01689080), it contends that, in reality, the Cyclone rig which it used was equipped with a pit level indicator. Vernon explains that because he had been involved with the 3M BOP problem he had not challenged the INC for this violation since it was classified as minor and no assessment was made for it. Appellant now requests that this violation also be dismissed and removed from the record.

In its answer, BLM notes that since appellant never sought SDR with respect to the INC issued for the pit level indicator violation, it was barred from challenging that INC in this appeal. Insofar as its other allegations were concerned, BLM argues that, while its petroleum engineer, Bob Hartman, has no recollection of the conversation recounted by Keeler, the fact of the matter is that, in the absence of a showing that abnormally low pressures would be encountered during drilling, the information which was allegedly provided would be essentially correct. ^{9/} In any event, BLM

^{8/} While appellant recognizes that the SDR decision had also adverted to the fact that the APD which was submitted for the well showed an estimated BHP of 4,500 psi, which figure would have justified requiring a 3M BOP system, appellant suggests that had it been correctly informed of the basis for requiring a 3M system, this figure would have been timely corrected.

^{9/} Thus, BLM notes that Onshore Oil and Gas Order No. 2 provides that a pressure gradient of 0.22 psi/foot be used to assume a partially evacuated hole. This pressure gradient is multiplied by the total planned drilling

points out that appellant is properly charged with knowledge as to the requirements of Onshore Oil and Gas Order No. 2 and should not be allowed to shift the focus from its own admittedly erroneous declaration in its APD submission that the estimated BHP was 4,500 psi to allegedly inaccurate information which appellant asserts was provided by BLM. Finally, BLM argues that the assessment provided for by 43 CFR 3163.1(b)(1) was not dependent upon a finding that the violation was a "major" violation, within the meaning of 43 CFR 3160.0-5(j), but rather was imposed because of the serious nature of any violation issued for not following an approved APD with respect to required BOP equipment.

[1] Initially we note that, while appellant may not be totally precluded from attempting to establish that no violation actually occurred with respect to the lack of a pit level indicator in the context of attempting to show general compliance with the BOP requirements for a 2M system, appellant is barred from directly litigating the correctness of the issuance of INC LG 06189080 in this appeal. The applicable regulation, 43 CFR 3165.3(b), clearly requires that any challenge to the issuance of an INC must be made within 20 days of receipt of the INC. While appellant did, indeed, timely seek SDR with respect to the two major violations issued, appellant failed to timely appeal either of the INC's which were issued for "minor" violations. Absent such a timely challenge, the Board has no jurisdiction to review issuance of an INC, and Conley's request that the Board dismiss INC LG 06189080 must be denied. See Global Natural Resources Corp., 121 IBLA 286 (1991); Han-San, Inc., 113 IBLA 361 (1990).

[2] The major focal point of this appeal, however, is clearly on the assessment of \$5,000 for failure to install a 3M BOP system. In this regard, we must reject appellant's attempts to justify its failure to comply with its approved APD based on claims of its agent's neglect in informing it of the 3M requirements or assertions that BLM's erroneous justification for imposition of the 3M requirement affirmatively misled it. The fact that Keeler may have failed to timely inform appellant of the fact that a 3M BOP requirement had been imposed in the approved APD is a matter of no moment. Keeler was acting as Conley's agent in this matter and all knowledge which Keeler acquired pursuant to his agency is properly imputed to Conley regardless of whether or not Keeler actually informed Conley of such facts.

Concerning the allegations that BLM misled appellant as to the basis for the imposition of the 3M BOP system, we must point out that conversations which Vernon may have had with BLM employees are simply not germane to this question since, by the time these conversations took place, the violation of the terms of the APD had already occurred. With respect to

fn. 9 (continued)

depth to arrive at a product which is then subtracted from the expected pressures to be encountered during drilling. BLM further notes that if normal pressure gradients are expected for the hole, the anticipated BHP is used for the formation pressure figure. In the instant case, if a standard pressure gradient of 0.435 psi/foot were applicable, any well drilled to a depth of 9,500 feet or deeper would require a 3M system and the information provided to appellant would not have been in error.

the purported conversation between Keeler and Hartman, it is sufficient to note that, inasmuch as Onshore Oil and Gas Order No. 2 was published in the Federal Register, appellant and its agents are properly charged with knowledge as to its terms, including knowledge of the proper basis for determining an appropriate BOP system for any proposed drilling. See Jack Hammer, 114 IBLA 340 (1990). While we do not doubt that, as a matter of fact, Keeler was not aware that the determination of the necessary BOP system was based on pressure considerations and not merely on the anticipated depth of the well, he is, as a matter of law, presumed to have known that such was the case. His actual ignorance, thus, offers no justification for the failure of appellant to timely submit the documentation which was ultimately deemed to establish the acceptability of a 2M BOP system in the drilling of the DarLyn No. 34-12 well.

[3] Appellant's other main argument on appeal goes to the propriety of assessing a penalty in the maximum amount for a violation which BLM, itself, now classifies as minor. BLM's position is that the regulatory language set forth at 43 CFR 3163.1(b)(1) requires a daily assessment for any INC issued based on a failure to install the BOP equipment mandated by an approved APD. Thus, BLM reasons, the fact that the violation does not rise to the level of a "major" violation, as defined by 43 CFR 3160.0-5(j), is irrelevant to the question of the proper assessment for violations issued based on a failure to adhere to approved APD provisions relating to well control equipment. Our own analysis leads us to the conclusion that, so far as the interpretation of 43 CFR 3163.1(b) is concerned, BLM's analysis is substantially correct.

The language of 43 CFR 3163.1(b)(1) is clear. Thus, the regulation provides:

(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:

(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, \$500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed \$5,000 * * *.

This regulation provides that discovery of a violation "shall result" in the "immediate assessment" of "\$500 per day for each day the violation existed, including days the violation existed prior to discovery" up to a limit of \$5,000. This regulation constitutes a determination by the Secretary that certain specified violations are, by their very nature, serious and, consistent with this determination, compels an assessment in the delineated amount. See Northland Royalty Operating Co., 129 IBLA 164 (1994); Jack Corman, 119 IBLA 289 (1991). There is simply no discretion in this regulation which would permit the initial imposition of less than \$500 per day for any violation of an approved APD's provisions relating to

the installation of well control equipment. See, e.g., Northland Royalty Operating Co., 123 IBLA 104 (1992); Magness Petroleum Corp., 113 IBLA 214 (1990); Noel Reynolds, 110 IBLA 74 (1989). Thus, inasmuch as the BRA determined that the violation had existed for 14 days, imposition by it of an assessment in the maximum amount of \$5,000 was not merely authorized, it was required. ^{10/}

[4] This does not end the matter, however. Thus, while the Board has, indeed, repeatedly upheld mandatory assessments issued under 43 CFR 3163.1(b), it has also noted that, under 43 CFR 3163.1(e), the State Director is afforded the discretionary authority, on a case-by-case basis, to reduce the amount of an assessment. A party challenging the failure of the State Director to invoke this authority must show that the State Director's decision was arbitrary or against the weight of the evidence. See Northland Royalty Operating Co., 129 IBLA at 166; Northland Royalty Operating Co., 123 IBLA at 107.

In the instant case, the State Office seemingly considered reducing the amount of the assessment but apparently decided against it based on its view that the failure of appellant to consult and follow the approved APD was a serious matter, as suggested by 43 CFR 3163.1(b). ^{11/} While we do not quibble with that conclusion, neither can we affirm the failure of the Acting Deputy State Director to reduce the amount of the assessment in the instant case.

Critical to our analysis is the fact that, upon reconsideration, the State Office determined that the nature of the violation was correctly categorized as "minor." Having made this determination, we believe that the Acting Deputy State Director should have been guided to reduce the amount of the assessment by the policy judgment implicit in the provisions of 43 CFR 3163.1(a)(2), which limits the daily assessment for failure to abate a "minor" violation to \$250. This represents a policy determination by the Department that the proper penalty for failing to abate "minor" violations is no more than \$250 per day. When read in conjunction with the provisions of 43 CFR 3163.1(b)(1) and 43 CFR 3163.1(e), we believe that, absent the existence of unusual circumstances which might be revealed on a case-by-case analysis, the exercise of a State Director's discretion under 43 CFR 3163.1(e) in the context of reviewing an assessment for a violation of 43 CFR 3163.1(b)(1), which violation is properly classified as "minor," should result in a reduction of the assessment so that the assessment does

^{10/} We do, however, wish to record our agreement with the conclusion of the Acting Deputy State Director in his original SDR decision that the mandatory imposition relates to the totality of the violation and not to each of its components. Thus, only a single daily assessment for violation of BOP system requirements is mandated regardless of how many particular violations related thereto might be deemed to exist.

^{11/} While the SDR decision on reconsideration never explicitly cited the authority granted in 43 CFR 3163.1(e), it did discuss reducing the assessment in paragraph C on page 3 of the decision, declining to do so for the reasons delineated in the text of this decision.

not exceed a \$250 daily rate. We have reviewed the instant appeal closely and find nothing in the record which would constitute the unusual circumstances which might justify rejecting this general rule. In the confines of the instant case, a daily assessment of \$250 for the 14-day period of the violation would result in a maximum assessment of \$3,500.

Appellant, of course, argues that, given the facts of this case, it should receive no assessment. In this regard, however, we think that the considerations to which the Acting Deputy State Director adverted have substantial weight. As we have indicated above, appellant's substantive arguments command little force. The simple fact of the matter is that appellant is properly charged with knowing what its agent has done, what the regulations require, and what its APD contains. It is no answer to state that Conley was, in fact, ignorant of these matters. It had no right to be so ignorant and its ignorance provides no basis for lowering the assessment below the maximum delineated above. Accordingly, while we have determined that the maximum assessment in the instant case is limited to \$3,500, we find that assessment of this amount is amply justified by the record before us.

We note that appellant has requested that we order a fact-finding hearing pursuant to 43 CFR 4.415. But, as is apparent from a review of the record, the relevant facts are not really in dispute. Rather, what is in controversy is the interpretation of 43 CFR 3163.1(b) and the application of 43 CFR 3163.1(e) to the facts of record. A hearing would serve no useful purpose in these circumstances and appellant's request is, accordingly, denied.

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 modified to reduce the assessment from \$5,000 to \$3,500 and, as modified, is affirmed.

James L. Burski
Administrative Judge

I concur.

David L. Hughes
Administrative Judge