

INTERIOR BOARD OF LAND APPEALS

Coastal Oil & Gas Corp.

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COASTAL OIL & GAS CORP.

IBLA 94-309

Decided February 23, 1996

Appeal from a decision of the Deputy State Director Lands and Minerals, New Mexico State Office, Bureau of Land Management, upholding notice of incidents of noncompliance. (NM) SDR 94-005.

Reversed.

1. Oil and Gas Leases: Incidents of Noncompliance

In the absence of an act of noncompliance, it was error for BLM to issue a notice of incidents of noncompliance to an oil and gas operator.

APPEARANCES: Carl F. Baker, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Coastal Oil & Gas Corporation (Coastal) has appealed from a December 10, 1993, decision of the Deputy State Director, Lands and Minerals, New Mexico State Office, Bureau of Land Management (BLM), modifying and upholding as modified issuance of notice of incidents of noncompliance NM 047JED002 (INC) dated October 7, 1993.

As originally issued, the INC reported a major violation under 43 CFR 3162.1 (the general requirements section of regulations governing oil and gas operators) had occurred on lease TXNM 75292 at a place identified as "USA Guerra GUB." The INC explained that "you are instructed to get approval to dispose of produced water, as per Federal Onshore Oil and Gas Order No. 7, no later than [October 27, 1993]."

Coastal appealed the INC to the New Mexico State Director, BLM, complaining that the INC was invalid because Coastal was in compliance with all applicable requirements for disposal of produced water at all sites under BLM jurisdiction on lease TXNM 75292. Coastal also contended that the order said to have been violated, Order No. 7, was not in effect at the time the INC was issued. Finally, Coastal submitted that the site of the alleged violation was not sufficiently identified to permit Coastal to understand what action by the operator was complained of by BLM, and that the violation, if any existed, was not a major violation of the operating rules.

In response to Coastal's appeal, the BLM decision here under review modified the INC by changing the authority cited for issuance of the INC from "Order No. 7" to "NTL-2B," by specifying the location of the cited violation to be on well B-4 on Guerra Gas Unit "B" in lease TXNM 75292, and by changing the category of the cited violation from "major" to "minor." Asserting that the INC was issued in order to obtain additional information concerning a previously approved surface use plan (SUP) for directional wells completed in a Federal resource, the decision explained:

The SUP for Well no. B-4 did not contain the information needed for BLM to approve the [water] disposal method. The information supplied in the SUP is vague regarding the use of State approved disposal facilities. The method used (i.e., lined pit, unlined pit, or subsurface injection) is not mentioned. Therefore the approval of the SUP is inadequate in meeting the requirements of NTL-2B. In cases like this, BLM normally notifies the operator of the missing information by letter rather than by an INC. However, Coastal has drilled numerous Federal wells in this area for which they were required to file for NTL-2B approval. Coastal was aware of the requirement to submit additional information. Therefore, the issuance of an INC was proper.

We agree with Coastal that the gravity assigned the violation (major) is inappropriate in this case. The gravity is reduced to a minor violation. Coastal is not adversely affected by the use of an INC rather than a letter, therefore the violation is upheld.

(Decision at 1, 2). A timely appeal from this decision was filed by Coastal.

Arguing on appeal that the INC was void because it cited a violation that had no basis in fact or law, and was so vague it failed to give notice of the location where the supposed violation had occurred, or the nature of the action complained of, Coastal seeks reversal of the BLM decision that modified and upheld the INC.

The case file reveals that in 1993, Coastal was the operator of the U.S.A. Guerra Gas Unit "B." The unit included both Federal and non-Federal leases and contained three producing wells on October 7, 1993: Wells B-2, B-3, and B-4. All wells were directionally drilled and none was situated on the surface of Federal land, although well B-4 was completed in a Federal lease. Coastal's approved application for permit to drill well B-4 included a SUP, section H.7(c) of which states that "produced waste water will be confined to a storage tank and hauled from the location to a state approved disposal facility."

[1] The decision here under review recognizes that, as Coastal contends, there was a BLM approved method of water disposal at the time the INC was issued (decision at 1, quoted above). The BLM decision nonetheless upheld issuance of the INC, after modifying it in all material respects. In order to support issuance of the INC issued to Coastal under

43 CFR 3163.1, the rule governing issuance of such notices, it must be shown that there was a failure by Coastal to "comply with the regulations in [43 CFR part 3160], the terms of any lease or permit, or the requirements of any notice or order." 43 CFR 3163.1(a). No such failure to comply is documented by the record before us.

As the BLM decision suggests, violations of the operating rules fall into two broad categories; a major violation "means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income." 43 CFR 3160.0-5(j). A minor violation "means noncompliance that does not rise to the level of a major violation." 43 CFR 3160.0-5(l). In either case, there must be some act of "noncompliance" with an obligation arising from oil and gas operations. In this case, as BLM acknowledged, there was no such act; under such circumstances, the INC should have been canceled. See 43 CFR 3163.1(a).

Nonetheless, the BLM decision seems to suggest that it may have been an act of noncompliance for Coastal to fail to anticipate a request from BLM for more information about water disposal at well B-4. Since it was a customary practice of BLM to solicit such supplemental information by letter, however, Coastal, as an operator with previous experience in dealing with BLM in matters of a similar nature, was entitled to rely upon consistent past agency practice in such cases. See generally Squaw Transit Co. v. United States, 574 F.2d 492, 496 (10th Cir. 1978). The consistent past practice of BLM in such cases as this, according to the decision here under review, was to send the operator concerned a letter asking for more details concerning vague or questioned aspects of the operating plan. It was error to substitute an INC for that purpose, principally since it was not authorized by the Departmental regulation governing INC issuance, but also because it was contrary to customary practice of the agency to do so. Upon discovering that there was no known act of noncompliance by Coastal with any law, lease provision, or order, BLM should have canceled the INC. Then, if the desired information had not yet been received, BLM could have requested it in the customary way (the BLM decision indicates the desired information was supplied).

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

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Franklin D. Amess  
Administrative Judge

I concur.

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John H. Kelly  
Administrative Judge