

INTERIOR BOARD OF LAND APPEALS

Shogun Oil Ltd.

136 IBLA 209 (August 19, 1996)

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SHOGUN OIL LTD.

IBLA 94-207

Decided August 19, 1996

Appeal from a decision of the Utah Deputy State Director, Mineral Resources, Bureau of Land Management, upholding a notice of proposed civil penalties for failing to plug and abandon two wells. SDR UT 94-02.

Affirmed.

1. Rules of Practice: Appeals: Dismissal—Rules of Practice: Appeals: Statement of Reasons

The Department's rules of practice require that an appellant's statement of reasons affirmatively point out error in the appealed decision. While the failure to submit an adequate statement of reasons subjects an appeal to summary dismissal, dismissal is not mandatory and each case will be reviewed to determine whether it should be considered on its merits.

2. Oil and Gas Leases: Civil Assessments and Penalties—Oil and Gas Leases: Incidents of Noncompliance

A notice of incidents of noncompliance may be issued and an assessment may be levied pursuant to 43 CFR 3163.1(a) for failure to comply with a written order to plug and abandon a well. When the notice establishes a further time to initiate plugging procedures and the operator fails to comply, BLM may properly impose civil penalties in accordance with 43 CFR 3163.2(b).

APPEARANCES: H. K. Elrod, Chief Operating Officer, for Shogun Oil Limited, Salt Lake City, Utah.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Shogun Oil Limited (Shogun) has appealed from a November 12, 1993, decision by the Utah Deputy State Director, Mineral Resources, Bureau of Land Management (BLM), upholding an October 13, 1993, notice of proposed civil penalties issued by BLM's Vernal District Office (VDO) for failure to plug and abandon two wells, #1-12B6 and #1-31C5.

On April 20, 1993, the Bureau of Indian Affairs (BIA) sent Shogun a certified letter which stated that it was "a follow up letter to the Ute Tribe's certified letter sent to you on March 15, 1993, regarding Shogun's failure to comply with the requirements of the Operating Agreement." ^{1/} In the April 20, 1993, letter, BIA cited various provisions of the agreement and, inter alia, directed Shogun to plug and abandon the wells in question within 90 days of receipt of the letter. It informed Shogun that failure to do so would result in seizure of Shogun's bond and cancellation of the agreement.

On May 10, 1993, VDO approved, subject to certain stipulations, sundry notices of intent to plug and abandon the above-identified wells. VDO directed Shogun to diligently pursue plugging and abandonment of the wells by July 15, 1993. VDO notified Shogun of its right to seek State Director review pursuant to 43 CFR 3165.3. Shogun did not seek such review.

On July 21, 1993, a VDO inspector visited the well sites and issued a notice of incidences of noncompliance (INC) for each well stating that plugging and abandonment had not been undertaken and directing Shogun to begin plugging and abandonment procedures within 30 days of receipt of the notices. Shogun received the notices on July 23, 1993. On August 23, 1993, the VDO inspector returned to the well sites and, on August 24, 1993, issued two further INC's, pursuant to 43 CFR 3162.1(a), assessing Shogun \$250 per INC for failure to comply with the July 21, 1993, INC's and advising Shogun that unless plugging and abandonment procedures were initiated within 20 days, civil penalties would be incurred under 43 CFR 3163.1(d) and 43 CFR 3163.2.

On August 24, 1996, the INC's and a bill for collection of \$500 were sent by certified mail to Shogun's last address of record with BLM and were returned to BLM unclaimed on September 16, 1993. The record reflects that a Shogun representative informed the VDO inspector in a September 17, 1993, telephone conversation that the Shogun address was correct and requested that the documents be remailed. BLM remailed the documents and they were received by Shogun on September 21, 1993. ^{2/}

^{1/} Shogun and the Ute Indian Tribe entered into the referenced Operating Agreement, No. 14-20-H62-4501, dated Sept. 5, 1989, under which Shogun agreed to be the operator of various oil and gas interests of the Tribe, including the wells in question. Article 5.2 of that agreement outlined the parties' responsibilities regarding abandonment of wells.

^{2/} Under 43 CFR 1810.2(b), remailing the documents was unnecessary to complete service because when BLM utilizes the mail for delivery of communications, the person "will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him."

Shogun took no action in response to the August 24, 1993, INCs. Therefore, on October 13, 1993, BLM issued a notice of proposed civil penalties, levying, in accordance with the regulations at 43 CFR 3163.2(g) (iii), an amount of \$50 per day per violation, starting September 21, 1993. BLM further explained that the penalty of \$100 per day would accrue for each day the violations remained uncorrected through 40 days, and that "[o]n the 41st day, if the violation is still uncorrected, the amount of penalty becomes \$1,000 per day retroactive to September 21, 1993, through a maximum of 60 days." (Emphasis in original.)^{3/} BLM informed Shogun of its right to request State Director review of the notice. On November 3, 1993, Shogun did so.

In its request for State Director review, Shogun stated that its "official title is 'agent for' the Ute Indian Tribe, not operator" (Request at 1). It stated that it "respectfully submits that if we had the cash on deposit, we could indeed plug the wells." Id. at 2. It asserted that at an October 19, 1993, meeting between Shogun, BIA, the Ute Indian Tribe, and Uintah Oil and Gas Company (Uintah), Uintah offered "to take over operations on these two wells" and that "[a] verbal agreement was tendered that plugging operations be suspended to allow time for an agreement with Uintah, pending Tribal Council approval." Id.

Shogun characterized itself as a "victim" not in control of the wells, but responsible for complying with the operating agreement and answering to "three different governing bodies." Id. In view of these circumstances, Shogun requested that it not be assessed civil penalties.

In his November 12, 1993, decision, the Deputy State Director noted that Shogun did not dispute the fact that it failed to initiate plugging and abandonment procedures on the wells. With regard to Shogun's claim that it was only the agent for the Ute Indian Tribe, he concluded that "Shogun, as operator of record, had full authorization and clear direction to plug the wells" (Decision at 2). He found no evidence that verbal approval had been granted at the October 19, 1993, meeting to suspend plugging operations. In fact, he stated that "[t]here is documentation of a phone conversation on October 20, 1993, between BLM and the Ute Tribe indicating that the Tribe still wanted the wells plugged." Id. He upheld the issuance of the notice of proposed civil penalties.

As its statement of reasons, Shogun has resubmitted its November 13, 1993, letter seeking State Director review. In a cover letter, Shogun

^{3/} Under 43 CFR 3163.2(g)(iii), the initial proposed penalty for a minor violation is to be "at the rate of \$50 per day beginning with the date of the second notice." 43 CFR 3163.2(b) specifies that where a violation is not corrected within 40 days of notice, the operator may become liable for a civil penalty of up to \$5,000 per violation per day, not to exceed a maximum of 60 days. Under 43 CFR 3163.3(j), lease cancellation procedures are appropriate where a violation continues beyond 60 days.

merely asserts that the Deputy State Director's decision is "adverse and incorrect." Shogun complains that the decision only considered "points of law," and did not address "pertinent causes which forced the mitigating circumstances which led to our being out of compliance." It states that "this unfair decision" will result in loss of its bonding and loss of its Ute Indian Tribe well interests.

[1] The Board's rules of practice require the filing of a statement of reasons for appeal. 43 CFR 4.412. Such a statement is one which affirmatively points out error in the decision from which the appeal is taken. In Re Eastside Salvage Timber Sale, 128 IBLA 114, 116 (1993); J.W. Weaver, 124 IBLA 29, 31 (1992). Where a statement of reasons fails to present new issues and fails to point out how the decision from which the appeal purports to be taken erroneously decided the issues before it, an appeal is subject to dismissal because the failure to file an adequate statement may be treated the same as the failure to file any statement. See Burton A. & Mary H. McGregor, 119 IBLA 95, 98 (1991); 43 CFR 4.402 and 4.412(c). However, dismissal of an appeal for deficiencies in the statement of reasons is within the discretion of the Board and each case will be examined individually to determine the appropriateness of a dismissal. Mustang Fuel Corp., 134 IBLA 1, 4 (1996).

In this case, Shogun has submitted, as its statement of reasons, the same document it filed requesting State Director review. In similar circumstances, the Board has affirmed the BLM decision when the statement of reasons presented on appeal to the Board merely repeated arguments raised before the decisionmaker below, and failed to present any new issues or point out any error in the challenged decision, which had comprehensively addressed the issues raised. In Re Eastside Salvage Timber Sale, supra; Oregon Natural Resources Council, 122 IBLA 65, 67 (1992).

[2] While we decline to dismiss this appeal, we have reviewed the record in this case and the Deputy State Director's affirmance of VDO's notice of proposed civil penalties and find that his decision is in accord with the applicable regulations and supported by the record.

The 1989 Operating Agreement between Shogun and the Ute Indian Tribe clearly designates Shogun as "operator," and Shogun is identified in that capacity on lease documents and on plugging and abandonment specifications. Shogun clearly was responsible for complying with plugging and abandonment requirements, and it was properly served with INC's when it failed to do so. See Celeste C. Grynberg, 106 IBLA 387, 391 (1989).

In May 1993 BLM approved notices of intent to abandon filed by Shogun and informed Shogun that initiation and diligent pursuit of plugging and abandonment were to take place by July 15, 1993. Shogun did not file any objection with BLM to this deadline for initiation of such activities. Upon failure timely to commence those activities, Shogun was served with INC's on July 23, 1993. Shogun did not correct the violations and BLM

issued further INC's assessing \$250 per violation, on August 24, 1993. Shogun received this assessment on September 21, 1993, but took no action to comply. There is no evidence that Shogun ever sought an extension of the compliance period established in the INC's or that, during that time, it raised with BLM any circumstances which would have reasonably precluded its compliance. Following expiration of the second compliance period, BLM properly issued its notice of proposed civil penalties in October 1993. See William Perlman, 96 IBLA 327, 331-32 (1987). BLM's levying of penalties comports with the regulations and was properly affirmed by the Deputy State Director.

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.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge