

INTERIOR BOARD OF LAND APPEALS

Meridian Oil, Inc.

147 IBLA 211 (January 20, 1999)

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MERIDIAN OIL, INC.

IBLA 95-365

Decided January 20, 1999

Appeal from a decision of the Deputy State Director, New Mexico State Office, Bureau of Land Management, upholding a civil penalty assessment for failure to notify the authorized officer of the date when well production began. SDR 95-09.

Reversed.

1. Oil and Gas Leases: Generally—Oil and Gas Leases: Civil Assessments and Penalties

A BLM decision affirming that a failure to notify the authorized officer of the date on which well production began, as required by 43 C.F.R. § 3162.4-1(c), was a knowing or willful violation, and upholding a civil penalty imposed under 43 C.F.R. § 3163.2(e)(2) will be reversed when it was a first-time violation of a requirement of which BLM acknowledged specific notice may be appropriate.

APPEARANCES: Sally S. McDonald, Esq., Assistant General Counsel, Meridian Oil, Inc., Houston, Texas, for Appellant; Margaret Miller Brown, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Meridian Oil, Inc. (Meridian), has appealed a March 1, 1995, decision by the Deputy State Director, New Mexico State Office, Bureau of Land Management (BLM), upholding a civil penalty of \$20,000 imposed by BLM's Tulsa District Office for Meridian's failure to submit notice of commencement of production from well No. 1-19 T&S.

On January 9, 1995, the District Manager issued a letter stating the Tulsa District Office had reviewed its records and determined that Meridian had failed to notify it orally or in writing within 5 business days, as required by 43 C.F.R. § 3162.4-1(c), that the well had been placed

in production on July 4, 1990. <sup>1/</sup> He assessed \$20,000 (\$1,000 per day for 20 days) under 43 C.F.R. § 3163.2(e)(2). He advised Meridian of its right to seek State Director review (SDR) under 43 C.F.R. § 3165.3(b).

The civil penalty regulation in 43 C.F.R. § 3163.2(e)(2) provides that a person shall be liable for a civil penalty of "up to \$10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if [the person] \* \* \* [k]nowingly or willfully fails to notify the authorized officer \* \* \* not later than the 5th business day after any well begins production on which royalty is due." (Emphasis supplied.)

In its January 25, 1995, letter seeking SDR, Meridian stated that it had "no excuse for the lack of notification." Meridian explained that "unlike our Farmington, New Mexico office which deals with BLM on a daily basis," it had only a handful of leases in Oklahoma and was not well acquainted with BLM's rules and regulations. "The statute we have violated is one we were unaware of until receipt of [the Tulsa District Manager's January 9, 1995] letter," Meridian stated. (Request for SDR at 1.)

We immediately took steps to identify any wells drilled in the last few years under which we own leases from BLM. Out of seventy or eighty wells, we have identified three additional wells with similar circumstances. On January 23, 1995, Form 3160-5 for all four of the wells were sent to [the Tulsa District Manager].

Id. Meridian stated it was "well aware that ignorance of the law is no excuse," but requested BLM to waive the fine.

In his March 1, 1995, decision upholding the \$20,000 civil penalty the Deputy State Director stated that the Tulsa District Manager's action was based on a finding that Meridian's violation was knowing and willful because Meridian had "demonstrated plain indifference and intentionally disregarded the Federal rule requiring prompt notice of production start-up." (Decision at 2.) The Deputy State Director noted that a knowing or willful violation under the definition in 43 C.F.R. § 3160.0-5(e) is "something more than mere inadvertence or an honest mistake." Id. The Deputy

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<sup>1/</sup> Meridian's well No. 1-19 T&S was completed on a private lease and placed in production on July 4, 1990. Production from the completion formation is communitized under Agreement MC-820 (OKNM74607), approved Mar. 10, 1981. Federal Lease OK NM 36172 shares in the production by allocation from all of the communitized formations in this Agreement.

43 C.F.R. § 3162.4-2(c) provides:

"Not later than the 5th business day after any well begins production on which royalty is due anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off production for more than 90 days, the operator shall notify the authorized officer by letter or sundry notice, Form 3160-5, or orally to be followed by a letter or sundry notice, of the date on which such production has begun or resumed."

State Director stated that Meridian was an operator of hundreds of other Federal wells, and that it was "reasonable to assume that Meridian knows full well the Federal oil and gas operating regulations at issue in this case." Id. He concluded:

Meridian Oil, Inc., staffs their offices with persons trained for regulatory compliance duties, as evidenced by their request for review. We assume that Meridian neglected to train their regulatory compliance staff responsible for Federal wells in Oklahoma. This leads us to believe that Meridian did not pay fitting attention to regulatory needs in Oklahoma as they do in New Mexico and elsewhere. Failure to pay fitting attention is evidence of intentional disregard. Based on their arguments concerning the lack of a meaningful number of wells in Oklahoma, we further conclude that Meridian felt the Federal wells were not important enough, and it did not matter enough to provide adequate information to their Oklahoma staff. This lack of concern is evidence of plain indifference. Based on the evidence described above, we conclude that Meridian knowingly and willfully failed to comply with the requirement at issue in this case.

Id.

In its statement of reasons for appeal (SOR) Meridian asserts that its failure to submit a start-up notice was "inadvertent" and "an honest mistake" and that it "had no intent to knowingly and willfully act in contravention of" any BLM regulations. (SOR at 2.) Meridian explains that it

maintains completely decentralized operational offices in the various areas of the United States in which [its] leasehold estates are located. Each operational office has an exploration and production staff which proposes and develops prospects solely for its geographic area. Each regional office is also responsible for making necessary filings with the [BLM] and most other jurisdictional authorities. The Well was drilled and is operated by Meridian's regional office in Houston, Texas which, to date, has drilled and operated very few Federally supervised wells.

Id. Meridian maintains that

the last thing [it] would do is be "indifferent" to our Federal wells. Meridian's regional office in Houston merely failed to comply with one Federal regulation and, once it was brought to our attention, we immediately complied with the regulation for the Well, and brought forth three additional instances that came to our attention.

Id. Meridian states that there was no pattern of noncompliance, no injury to the public, and no benefit to Meridian from its failure to file the report. It asserts that no penalty is warranted under these circumstances.

[1] The definition in 43 C.F.R. § 3160.0-5(e) provides that "knowingly or willfully" means

a violation that constitutes the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of the law, regulations, orders, or terms of the lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistakes or mere inadvertency. Conduct that is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

When BLM proposed this definition it stated that Federal oil and gas lessees and operators are charged with the responsibility for being knowledgeable of the rules that regulate their operations. However, for some requirements, BLM stated,

such as the fifth business day notice of new or resumed production required by section 102(b)(3) of the Federal Oil and Gas Royalty Management Act, \* \* \* it may be appropriate to give further, specific notice to lessees and operators. In cases where such actual notice is given, any subsequent or continued violations in that respect necessarily will be construed as having been "knowingly or willfully" committed.

51 F.R. 3882, 3883 (Jan. 30, 1986).

As proposed, the rule stated that "a failure to act in the case of a required duty, with disregard of or indifference as to whether that behavior is lawful," would be sufficient for a knowing or willful violation. 51 F.R. 3888 (Jan. 30, 1986). It amended this proposed language "to qualify both 'indifference' [adding 'plain'] and 'disregard' [adding 'reckless'] in order to reflect common judicial use of these standards." 52 F.R. 5384, 5385 (Feb. 20, 1987). In doing so, it referred to the U.S. Supreme Court's decision in United States v. Illinois Central Railroad Co., 303 U.S. 239 (1938). Id.

We recently considered that decision in the context of deciding that filing inaccurate information in a grazing report was not willful conduct. Baltzor Cattle Co. v. Bureau of Land Management, 141 IBLA 10, 21-22 (1997). We noted that intent was not required to show willfulness in that case,

as it is not under 43 C.F.R. § 3160.0-5(e). We quoted the language from the Court's opinion in Illinois Central that willfully "means purposely or obstinately and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements," 303 U.S. at 243, and added that gross negligence may also support a finding that conduct is willful. We concluded that Baltzor's conduct was not a willful violation under Illinois Central. 141 IBLA at 22.

When we have considered whether other conduct, e.g., trespass, is willful we have stated that "[t]he U.S. Supreme Court has held that, in civil cases, evidence of knowledge that a violation is occurring or a reckless disregard for whether a violation is occurring is essential to a finding of willfulness in the commission of that violation. See Trans World Airlines v. Thurston, 469 U.S. 111, 126-27 (1985)." CM Concepts of Nevada, 126 IBLA 134, 137 (1993); Richard Connie Nielson v. Bureau of Land Management, 125 IBLA 353, 363-64 (1993); Frehner Construction Co., 124 IBLA 310, 313 (1992). In Marathon Oil Co. v. Minerals Management Service, 106 IBLA 104, 95 I.D. 265 (1988), we noted that the Court in Trans World Airlines "declined to uphold an assessment of punitive damages merely on a finding that the charged party knew of the existence of the Act and of its potential applicability to its actions." 106 IBLA at 124, 95 IBLA at 276. See also Frehner Construction Co., *supra* at 314: "Mere knowledge that specific behavior is regulated by a statute or regulation (i.e., that the statute or regulation is 'in the picture') does not support a finding that the violation was willfully committed."

Marathon was a case, like this one, involving a civil penalty under section 109(c) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1719(c) (1994). In that case, we found Marathon willfully failed to make a royalty payment because it "chose to ignore the explicit warning contained in [an] order of the Assistant Secretary that the effect of the decision was not stayed pending appeal. The testimony established that the failure to comply with this order was a conscious decision made at the highest levels of the corporation." 106 IBLA at 128, 95 I.D. at 279. We found Marathon's conduct constituted reckless disregard of whether compliance with the order was required by law. Id.

In our view, under the circumstances of this case Meridian's failure to notify BLM not later than the 5th business day after well No. 1-19 T&S began production does not rise to the level of a knowing or willful violation. Although it is of course presumed to know the applicable law, Federal Crop Insurance Co. v. Merrill, 332 U.S. 380 (1947), Meridian had not been given actual notice of a requirement of which BLM acknowledged it may be appropriate to give specific notice. It was a first-time violation by the corporation's regional office in Texas that was understandably inexperienced in complying with Federal law, not conduct considered and maintained by the management of the corporation after being warned. Although we appreciate the importance of the notification requirement in

section 102(b)(3) of the Federal Oil and Gas Royalty Management Act and in 43 C.F.R. § 3162.4-1(c), we cannot find plain indifference to or reckless disregard of the law and regulations under these facts.

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's March 1, 1995, decision is reversed.

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Will A. Irwin  
Administrative Judge

I concur.

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Gail M. Frazier  
Administrative Judge