INTERIOR BOARD OF LAND APPEALS

Xanadu Exploration Company

157 IBLA 183 (September 3, 2002)

Title page added by:
ibiadecisions.com

XANADU EXPLORATION COMPANY

IBLA 2002-228 Decided September 3, 2002

Appeal from a decision of the Chief, Financial Management, Royalty Management Program, Minerals Management Service dismissing appeal of an invoice as untimely. MMS-01-0101IND

Motions to dismiss or, in the alternative, for extension of time, denied; Decision reversed.

1. Minerals Management Service: Appeals to Director: Generally -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

A decision dismissing an appeal of an invoice issued by Minerals Management Service as untimely is properly reversed when the invoice was not accompanied by an order in mandatory terms explaining the payor's obligation and providing notice of the right of appeal.

APPEARANCES: Larry D. Sweet, President, for appellant; Howard W. Chalker, Esq., for Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Xanadu Exploration Co. has appealed from a November 7, 2001, decision of the Chief, Financial Management, Royalty Management Program (RMP), Minerals Management Service (MMS), dismissing its appeal (Docket No. MMS-01-0101IND) of "Invoice No. IBIL 06010458" in the amount of $883.25. The appeal was rejected on the ground it was filed after the lapse of the appeal period.

The record discloses that MMS transmitted Invoice No. IBIL 06010458 for $883.25 dated July 5, 2001, to Xanadu. This 10-page invoice bearing the letterhead MMS, RMP, itemized various amounts billed under the heading "INT DUE MMS-UNDERPAID ROY." Appellant received the Invoice on July 9, 2001, as evidenced by the certified mail return receipt card in the file. Thereafter, a

notice of delinquent payment dated August 31, 2001, was sent by MMS to appellant. This was the first document appellant received which referred to the right to appeal, and threatened enforcement action, including possible imposition of civil penalties, to secure payment of the invoice. It further explained that the obligation to pay the bill is not suspended by filing an appeal in the absence of a surety bond. Subsequently, appellant filed an appeal of the notice of delinquent payment with MMS asserting that the royalty obligation is governed by the terms of the lease and that the amounts previously paid by appellant were in excess of the royalty due under the lease terms.

The November 7, 2001, MMS decision dismissing the appeal as untimely was appealed to the Board. In its notice of appeal, Xanadu asserts that the July 5, 2001, invoice was not an "order" for purposes of the appeal regulation at 30 CFR 290.102. Hence, appellant contends the invoice did not constitute an order from which an appeal could be filed under 30 CFR 290.103.

Counsel for MMS has filed a motion to dismiss the appeal or, in the alternative, for an extension of time to answer the appeal. In its motion to dismiss, MMS argues that appellant does not address the timeliness of its appeal. Hence, MMS contends the appeal should be dismissed for failure to assert error in the decision below. Addressing the propriety of its dismissal, MMS asserts that the appeal was untimely because the regulation at 30 CFR 290.105(a) requires that an appeal to the Director, MMS, be filed within 30 days from service of an order. Under the prior appeal regulations containing the same 30-day limit, MMS notes the Board held that an untimely appeal is properly dismissed by MMS, citing Apache Corp., 152 IBLA 30, 33 (2000), and Philips Petroleum Co, 147 IBLA 362, 368 (1999).

The relevant regulations regarding appeals of MMS orders concerning payment of royalties provides that an appeal must be filed within 30 days of service of the order being appealed. 30 CFR 290.105(a). For purposes of the appeal regulations, "order" is defined as "any document issued by the MMS Director, MMS RMP, or a delegated State that contains mandatory or ordering language that requires the recipient to do any of the following for any lease subject to this subpart: * * * pay royalties or other obligations * * *." 30 CFR 290.102. Since it appears from the record that the invoice in this case was received by appellant on July 9 and the appeal was filed October 12, the timeliness issue in this appeal hinges on whether the invoice constitutes an "order" within the meaning of the regulation at 30 CFR 290.102. This is the question which Xanadu argues in its notice of appeal. Accordingly, the motion to dismiss on the basis appellant failed to assert grounds for error in the decision below is properly denied.

In its motion, MMS states that: "It is MMS's practice to attach a cover letter to each invoice. A standard cover letter is attached as Attachment A." Reference to the language of the standard cover letter which MMS has tendered with its motion leaves little doubt that it constitutes an appealable order:

DEMAND FOR PAYMENT
Indian Interest Assessment

The Minerals Management Service (MMS) directs you to pay the enclosed bill for the late payment of royalties assessments, or insufficient estimates. * * *

Payment Instructions
Payments received by MMS after the due date are subject to further interest charges. * * *

Appeal Rights

You have the right to appeal this Demand for Payment if you disagree with its contents [30 CFR 290 (1999)]. Your notice of appeal must be filed with:

Deputy Associate Director for
Royalty Management
Minerals Management Service
Attention: Appeals Coordinator
P.O. Box 173702, MS 3672
Denver, CO 80217-3702

You have 30 days from receipt of this bill to file an appeal. The appeal must include a written justification why MMS should reverse or modify the bill. You may file additional information within 60 days of receipt of this bill if you notify us of your intention in your initial appeal. The time for filing documents relating to your appeal may be extended if you file a written request for extension within 60 days of receipt of this bill at the address noted above.

* * * * * * * *

Failure to Pay

Failure to comply with this order violates 30 CFR § 241.51 (1999), and could result in a notice of noncompliance and a civil penalty. Additionally, MMS may do one or more of the following: (1) demand payment on the lessee of record or lease surety; (2) recommend shutting in the well and canceling the lease; (3) refer

> the debt for administrative offset; (4) report the debt to the Internal Revenue Service for tax refund offset; and (5) report the debt to a credit bureau.

This cover letter, by its terms, constitutes an order to "pay the enclosed bill" which is subject to the right to appeal within 30 days of receipt. Significantly, MMS acknowledges in its motion that: "The record for this case contains Invoice No. IBIL 06010458. The record does not contain the cover letter." In the absence of any evidence that appellant was served with a copy of the standard cover letter, the issue is whether receipt of the MMS invoice or bill without a cover letter constitutes an appealable order.

[1] The absence from a document of a notice advising the recipient of a right to appeal the decision has been found by the Board to militate against dismissal of an appeal as untimely when it is filed in response to a subsequent decision informing the recipient of the right to appeal. Inexco Oil Co., 45 IBLA 377, 383 (1980); see Chevron USA, Inc., 111 IBLA 96, 100 (1989); Mobil Oil Corp., 65 IBLA 295, 301 (1982); cf. Sun Exploration and Production Co., 104 IBLA 178, 183 (1988) (absence from the record of a copy of demand letter precluded a finding that appellant was advised of its appeal rights or that it constituted an appealable order). An appealable order contains "mandatory or ordering language." 30 CFR 290.102. We are unable to find that the invoice, which neither explains the basis for the assessment nor advises the recipient that it is an appealable order, constitutes an appealable order. Accordingly, we reverse the decision dismissing the appeal and remand the case.

We also find it appropriate to deny the motion of MMS, in the alternative, for an extension of time to file a further answer in this appeal. The merits of the assessment challenged by appellant are properly adjudicated by MMS as an initial matter and further pleading before this Board would merely delay resolution of this case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, MMS' motion to dismiss is denied, MMS' alternative motion for extension of time is denied, the MMS decision dismissing the appeal is reversed, and the case is remanded for further consideration.

_____
C. Randall Grant Jr.
Administrative Judge

I concur:

_____
R.W. Mullen
Administrative Judge