

INTERIOR BOARD OF LAND APPEALS

K2 America Corporation

163 IBLA 199 (October 12, 2004)

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K2 AMERICA CORPORATION

IBLA 2002-165

Decided October 12, 2004

Appeal from a decision issued by the Deputy State Director, Mineral Resources, Montana State Office, Bureau of Land Management, affirming an assessment levied for drilling a gas well on Tribal Lease No. 14002513262 without a permit. SDR No. 922-02-02.

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties

Drilling a gas well on a Federal or Indian oil and gas lease without obtaining the prior approval of BLM is a violation of 43 CFR 3162.3-1(c), and, under 43 CFR 3163.1(b)(2), BLM is required to impose an assessment of \$500 a day for each day the violation exists, including the days the violation existed prior to discovery, not to exceed \$5,000.

APPEARANCES: Michael C. Erickson, Manager, Regulatory Affairs, K2 America Corporation.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

K2 America Corporation (K2 America) has appealed a November 21, 2001, decision issued by the Deputy State Director, Mineral Resources, Montana State Office, Bureau of Land Management (BLM), affirming an assessment of \$2,500 issued by BLM's Great Falls (Montana) Oil and Gas Field Station (Great Falls Field Station) for drilling Palmer Bow Island Well #3-16 on Tribal Lease No. 142002513262 without prior BLM approval.

K2 America had permission to drill the Palmer Bow Island #10-2 wellsite on the NW 1/4 of the NE 1/4, sec. 3, T. 32 N., R. 6 W., which is on the Blackfoot

reservation. Through an inadvertent error, on October 18, 2001, K2 America began drilling at the Palmer Bow Island #3-16 wellsite, located in the SE 1/4 of the SE 1/4, sec 3, T. 32 N., R. 6 W., which was under the jurisdiction of BLM. Upon discovery of this error on October 22, 2001, K2 America's agent met with BLM, advised BLM of the error, filed an Application for Permit to Drill (APD) for the Palmer Bow Island #3-16 well, and ceased drilling operations. The APD was approved within 24 hours from the date of notice and K2 America was allowed to complete the Palmer Bow Island #3-16 well.

On October 22, 2001, the date that BLM was notified of the error, the Supervisor, Great Falls Field Station, issued a "Written Notice of Incident of Noncompliance, Shut-down Order, and Immediate Assessment" (Notice and Assessment) for drilling the well without an APD. In his notice, the Field Station Supervisor advised K2 America that, pursuant to 43 CFR 3162.3-1(c), the operator is required to submit an APD for each well in the development of Indian minerals, and that K2 America's failure to do so resulted in the imposition of an assessment of \$2,500, in accordance with 43 CFR 3163.1(b)(2).

On November 15, 2001, K2 America requested State Director review of the Notice and Assessment pursuant to 43 CFR 3165.3(b). In its request, K2 America set out the facts regarding the error in the placement of the well noted above, stated that the incident had adversely impacted it because the shutdown order caused it to lose 14.5 hours of drilling time and added rig time costs of \$5,800. Noting that there had been an honest mistake, its financial losses, and the fact that the well had been inspected by state representatives and had passed inspection 3 times before the shutdown order, K2 America asked the State Director to reconsider the assessment of \$2,500.

On November 21, 2001, the Deputy State Director, Mineral Resources, issued the decision on appeal denying K2 America's request and upholding the assessment of \$2,500. After setting out the facts of the case, the Deputy State Director explained the importance of filing and gaining approval of an APD, noting that, while K2 America's failure to obtain permission may have been the result of an honest mistake, that did not change the fact that a serious violation had occurred.

[1] Under 43 CFR 3162.3-1(c), an operator must submit an APD for each well, and no drilling operations or preliminary surface disturbance may be commenced prior to BLM's approval of the APD. BLM imposed the assessment against K2 America in accordance with 43 CFR 3163.1(b)(2) which 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:

* * * *

(2) For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, \$500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed \$5,000 * * *.

As the Board stated in Jack Corman, 119 IBLA 289, 293 (1991), Magness Petroleum Corp., 113 IBLA 214, 216 (1990), and Noel Reynolds, 110 IBLA 74, 76 (1989), 43 CFR 3163.1(b)(2) states the Department's "policy that drilling without approval, or causing surface disturbance preliminary to drilling without approval, constitutes an instance of noncompliance 'of such a serious nature as to warrant the imposition of immediate assessments upon discovery.'" See also Jack Hammer, 114 IBLA 340, 343 (1990). In the preamble to the rulemaking, BLM explained that prior approval "is critical to proper multiple use management of the public lands." 52 FR 5384, 5388 (Feb. 20, 1987).

Due to the seriousness of disturbing the surface and/or drilling without prior BLM approval, the regulatory scheme provides for the imposition of an immediate assessment without notice or an opportunity to abate. Jack Corman, *supra*; Magness Petroleum Corp., *supra*; Noel Reynolds, *supra*. See 52 FR at 5387. One who, through inadvertence, or ignorance, enters onto a Federal or Indian lease and conducts oil and gas operations without authorization is subject to the oil and gas operating regulations and may be assessed for violations of those regulations. Jack Corman, *supra* at 294.

K2 America's financial losses resulting from its having been required to cease operations until the APD was approved have no bearing on the validity of the assessment for drilling without prior approval. Due to the serious nature of the violation, the Department has determined by regulation that such action mandates an assessment of a particular amount.

Accordingly, 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.

R.W. Mullen
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge