

JACK HAMMER D.B.A. HAMMER OIL CO.

IBLA 88-463

Decided May 22, 1990

Appeal from a decision of the Deputy State Director, New Mexico State Office, Bureau of Land Management, affirming an assessment for drilling an oil well without approval. SDR 88-17 (New Mexico).

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties

Under 43 CFR 3163.1(b)(2) (1987), BLM shall impose an immediate assessment when an oil and gas lessee commences drilling for Federally owned minerals or causes a surface disturbance preliminary thereto without obtaining prior BLM approval. The amount of the assessment, prescribed in the regulation, shall be \$500 for each day that the violation exists, including the days the violation existed prior to its discovery, not to exceed \$5,000.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Donald J. Chaffin, Esq., Ardmore, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Jack Hammer d.b.a. Hammer Oil Company (Hammer Oil) has appealed from a decision of the Deputy State Director, New Mexico State Office, Bureau of Land Management (BLM), dated April 13, 1988, upholding an assessment of \$5,000 for drilling a well without filing an application for a permit to drill (APD).

On March 21, 1988, the Tulsa, Oklahoma, District Office, BLM, issued a decision addressed to Hammer Oil, stating: "Our records show that you drilled your No. 8 Hammer Southern on restricted Indian Lease No. 61492, in sec. 3, T. 2 N., R. 2 W., IM, Garvin County, Oklahoma. You spudded the well, without the prior approval of this office, on November 1, 1987, and completed it as an oil well on December 31, 1987." BLM stated that pursuant to 43 CFR 3163.1(b)(2) (1987) it was imposing an assessment of \$5,000 against Hammer Oil, and that Hammer Oil could request a review of its decision by the State Director in accordance with 43 CFR 3165.3 (1987).

By letter dated April 5, 1988, Hammer Oil requested State Director review of BLM's assessment. Hammer Oil stated that the assessment "was made as a result of [its] admitted failure to comply with 43 CFR 3162.3-1(c), by commencing the drilling of the above referenced well prior to approval of an application for permit to drill the well by the Bureau of Land Management." In seeking review of BLM's assessment, Hammer Oil admitted that it "did not strictly comply with the provisions of the onshore oil and gas operations regulations in a timely manner," but asserts that there are "mitigating circumstances" which "would warrant a finding that a fine is not justified in this case." Those "mitigating circumstances," as described by Hammer Oil, are set forth below:

As you know, the Hammer/Southern No. 8 Well, while drilled on lands \* \* \* included in a restricted Indian lease, was not drilled on lands where a restricted Indian owned any surface interest. Prior to the drilling of this well, [Hammer Oil] had previously drilled their Hammer No. 7 Well in the NE/4 SW/4 of Section 3, Township 2 North, Range 2 West, Garvin County, Oklahoma. The same restricted Indian lease applicable to the No. 8 Well covers a portion of the drilling and spacing unit upon which the No. 7 Well was drilled. However, as the No. 7 Well was not drilled on the lands described in the restricted Indian lease, no compliance with your regulations was required. [Hammer Oil] is a small independent oil company and Mrs. Shirley Vickers, [its] employee who is charged with the responsibility of handling such matters, has no prior experience in dealing with restricted Indian leases. She assumed, incorrectly, that since no special filings were required on the No. 7 well, that the same would be true for the No. 8. Her non-compliance was simply an oversight and certainly not a willful violation of your regulations.

Furthermore, subsequent to being notified of the error, Mrs. Vickers immediately complied with all regulations as is shown by the file materials enclosed for your review. [1/] No damage sought to be prevented by your regulations has occurred as a result of the technical non-compliance by [Hammer Oil]. We are advised that all production facilities have been approved by your field staff.

(Request for State Director Review at 1-2). Further, Hammer Oil explained that "subsequent to the completion of the No. 8 Well, [it] drilled and completed the No. 9 Hammer Well in the NE/4 SE/4 of Section 3, Township 2 North, Range 2 West, Garvin County, Oklahoma," and that "[l]ike the No. 7 Well, the No. 9 Well was drilled on lands not covered by Lease No. 61492, but within an 80-acre drilling and spacing unit which includes a portion of the restricted Indian lease (SE/4 SE/4 of Section 3)." Id. at 2. Again,

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1/ Hammer Oil filed an APD on Feb. 8, 1988, which BLM approved on Feb. 26, 1988.

Hammer Oil notes that it was not required to obtain approval to drill the No. 9 Hammer Well.

In his April 13, 1988, decision, the Deputy State Director upheld the \$5,000 assessment pursuant to 43 CFR 3163.1(b)(2) (1987), and Hammer Oil appealed that decision to the Board. In its statement of reasons (SOR), Hammer Oil argues that BLM misapplied 43 CFR 3163.1(b)(2) (1987) and 3162.3-1(c) (1987) in this case:

A literal reading of those regulations would authorize the imposition of an assessment only in a situation where a well is drilled without approval on Federal or Indian surface or if surface disturbance is caused to Federal or Indian surface prior to obtaining a drilling permit. As previously stated, the Hammer No. 8 Well was not drilled on lands where the Federal Government or any restricted Indian owned an interest in the surface estate. [Emphasis in original.]

(SOR at 3-4). Hammer Oil finds it inconsistent for BLM not to require "prior approval of a drilling permit where the well is drilled on a drilling and spacing unit which includes lands covered by a restricted Indian lease as long as the well is not drilled on those lands." Id.

Secondly, Hammer Oil notes that "the regulations allegedly violated had been in effect for less than one (1) year prior to the commencement of the Hammer No. 8 Well," and that as a "small operator who does not have the benefit of a full time land department," it is "difficult \* \* \* to remain constantly updated upon changes in the rules and regulations of the Bureau of Land Management." Id. at 5.

[1] BLM imposed the assessment against Hammer Oil in accordance with 43 CFR 3163.1(b)(2) (1987), 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 of 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 \* \* \*.

Hammer Oil's argument that this regulation does not apply because the "Hammer No. 8 Well was not drilled on lands where the Federal Government or any restricted Indian owned an interest in the surface estate" (SOR at 3-4) ignores the plain wording of subsection (2), which refers in the alternative to "drilling without approval or for causing surface disturbance

of Federal or Indian surface preliminary to drilling without approval" (emphasis supplied). We reject the notion that the violation of "drilling without approval" is subject to the limitation suggested by Hammer Oil.

As noted by the Board in Noel Reynolds, 110 IBLA 74, 76 (1989), and again in Magness Petroleum Corp., 113 IBLA 214, 216 (1990), 43 CFR 3163.1(b)(2) (1987) "reflects BLM 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.'" In the preamble to the rulemaking, BLM stated that prior approval of such operations "is critical to proper multiple use management of the public lands." 52 FR 5384, 5388 (Feb. 20, 1987). Clearly, excusing Hammer Oil's failure to obtain BLM approval prior to drilling the Hammer No. 8 Well would run contrary to 43 CFR 3163.1(b)(2). See Jack J. Grynberg d.b.a. Grynberg Petroleum Co., 114 IBLA 225, 227-28 (1990).

[2] The fact that Hammer Oil is a "small operator" and finds it "difficult \* \* \* to remain constantly updated upon changes" in the Department's regulations does not relieve it from the assessment imposed for drilling the Hammer No. 8 Well without first obtaining BLM's approval. In response to the appellant's claim in Magness Petroleum Corp., *supra*, that it was "totally unaware" of the regulations, the Board stated:

All persons who deal with the Government are presumed to have knowledge of relevant statutes and regulations. The regulations cited by BLM were published in the Federal Register, and were, therefore, a matter of public record. See 44 U.S.C. § 1507 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Venlease I, 99 IBLA 387, 390-91 (1987). Thus, appellant must be deemed to have had knowledge of the regulatory requirement that BLM approval was necessary prior to drilling the well and that failure to secure such permission could result in an assessment of up to \$5000.

113 IBLA at 217.

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.

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Will A. Irwin  
Administrative Judge

I concur:

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David L. Hughes  
Administrative Judge