

CHASE ENERGY, INC.

IBLA 89-8

Decided June 18, 1990

Appeal from that part of a decision of the New Mexico State Office, Bureau of Land Management, upholding a determination that Chase Energy, Inc., had failed to comply with a written order and imposing an assessment for the failure to comply. NM 14-20-603-2027 (SDR-88-27).

Affirmed.

1. Administrative Authority: Generally--Appeals: Jurisdiction--Board of Land Appeals--Oil and Gas  
Leases: Civil Assessments and Penalties--Public  
Lands: Administration--Regulations: Generally--Regulations: Applicability

Imposition of an assessment to compel compliance with regulations implementing the Mineral Leasing Act is an exercise of the Department's regulatory power which is not stayed by the filing of a bankruptcy petition by an oil and gas lessee or operator.

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

It is proper for BLM to issue a written order directing clean up of oil-contaminated soil from a well site. It may also assess the operator \$250 pursuant to 43 CFR 3163.1(a)(2) for failure to comply with that written order.

APPEARANCES: B. J. Baggett, Esq., Farmington, New Mexico, for appellant; Margaret C. Miller, 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 MULLEN

Chase Energy, Inc. (Chase), has appealed from an August 22, 1988, decision of the New Mexico Deputy State Director, Bureau of Land Management (BLM), upholding the Farmington Resource Area (FRA) Manager's determination that Chase had failed to comply with a written order to clean up oil-contaminated soil at a well-site on lease NM 14-20-603-2027, and imposition of a \$250 assessment for failure to comply.

Chase is the operator of the No. 15 Deb well located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , sec. 36, T. 30 N., R. 17 W., New Mexico Principal Meridian, San Juan County, New Mexico, under lease NM 14-20-603-2027. On March 10, 1988, BLM sent Chase a letter outlining several minor problems observed during a February 11, 1988, inspection of the No. 15 Deb well, and directing Chase to: (1) clean up the soil where oil had spilled near the wellhead; and (2) repair the stuffing box to prevent additional leaks. This work was to be completed within 21 calendar days from the date Chase received the letter. The letter contained a statement noting that each requirement was a written order of the authorized officer and failure to comply within the specified timeframe would result in the imposition of an assessment pursuant to 43 CFR 3163.1(a). In addition to the cleanup and repair noted above, BLM directed Chase to have a representative sign and date a statement of compliance set out at the end of the letter to signify when the corrective action was completed and return the signed copy to BLM.

No notice of completion was returned by Chase and, by letter dated July 11, 1988, the FRA Manager notified Chase that, pursuant to 43 CFR 3163.1(a)(2), he was imposing a \$250 assessment for Chase's failure to comply with each of the directives contained in the March 10 written order, for a total of \$500. <sup>1/</sup> Chase was granted an additional 30 days to come into full compliance with the March 10 order, and the Manager indicated that failure to do so within the specified time could result in liability for civil penalties under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (1982).

Chase requested State Director Review (SDR) of the July 11, 1988, letters. It described the actions it had taken to repair the stuffing box and noted that operating personnel had been constantly cleaning up around wellheads because of leaking rubbers in the stuffing boxes. Chase admitted that the well was leaking again, but stated that it was scheduled for further repairs. Chase noted that it was in bankruptcy and suggested that this factor should be considered. Chase requested that the assessments be rescinded.

In his August 22, 1988, decision, the Deputy State Director, Mineral Resources, concluded that Chase performed certain of the corrective action directed by the second July 11 letter but had apparently failed to convey that information to BLM, noting that "[t]he operator need only notify the FRA that they have complied" (SDR Decision at 2). He then discussed the violations noted in the March 10, 1988, letter, concluding that there was sufficient evidence that Chase had repaired the leaking stuffing box to "suspend" the \$250 assessment for failure to repair the stuffing box leak. He found, however, that Chase had "failed to remove all the oil soaked soil as illustrated by a photo taken July 27, 1988. There is nothing in the

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<sup>1/</sup> Two letters were sent by the FRA office on July 11. Both were apparently appealed to the State Office. The second letter is not the subject of this appeal.

record to indicate that [Chase] complied with this order" (SDR Decision at 2). Accordingly, he upheld the \$250 assessment for failure to comply with the written order to clean up the oil-contaminated soil.

In its statement of reasons for appeal (SOR), Chase challenges the SDR decision upholding the assessment for noncompliance with the written order to clean up the oil-contaminated soil. Chase states three primary reasons for its appeal. First, it contends that it complied with the written order to clean up the oil-contaminated soil. It alleges that its contract pumper advised Chase that the area around the wellhead was cleaned up after Chase received the March 1988 letter. Chase explains that, on two occasions since March 10, 1988, it has unsuccessfully attempted to fish a broken rod from the tubing, and that on each occasion the pulling job has been messy, causing some oil to spill. It asserts that it has cleaned the oily soil on two occasions, and speculates that when it again attempts to recover the broken rod, more oil will spill. Chase believes that this is a normal part of operations, and an operator should not be subjected to an assessment for attempting to rework wells.

Second, Chase argues that the BLM orders violate the automatic stay provisions of the Federal Bankruptcy Act, 11 U.S.C. § 362 (1982). It contends that there has been no determination that these orders are exempt from an automatic stay because they are proceedings to enforce the Government's police or regulatory power. Chase further asserts that only the bankruptcy court has the authority to determine whether BLM orders fall within this exemption.

Finally, Chase contends that the FRA orders constitute unlawful interference with its day-to-day operations and create difficulties with its scheduling of work. It asserts that the FRA is attempting to set Chase's daily work schedule by placing unlawful time constraints on the performance of various functions in spite of the fact that neither its lease nor any law authorizes BLM to substitute its judgment for that of the operator on matters relating to the conduct of lease operations. Chase alleges that "[a] normal amount of oil will be on the ground around any well during workover attempts" and objects to BLM's "constant harrassment [sic] because [it does] not now have the funds to do all the work [it] feel[s] should be done" (SOR at 2). 2/

In its response, counsel for BLM does not address each issue raised by Chase, but requests that action on this appeal be suspended until the bankruptcy court rules on the propriety of BLM's cleanup orders. We will consider this bankruptcy issue first.

[1] Pursuant to 11 U.S.C. § 362(a) (1982), the filing of a bankruptcy petition stays many judicial and administrative actions. However, an

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2/ In its SOR, Chase also refers to an Aug. 5, 1988, Notice of Incidents of Noncompliance (INC) requiring it to repair a leak at the well and to clean up pools of oil and oil-stained soil around the wellhead. However, this INC is not in issue in this appeal.

exemption from the automatic stay for "the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power" can be found at 11 U.S.C. § 362(b)(4) (1982). Thus, if the BLM action now under review constitutes the commencement or continuation of a proceeding by a Governmental unit to enforce its regulatory power, it was not automatically stayed when Chase filed a bankruptcy petition. In prior cases we have held that the imposition of an assessment to compel compliance with regulations implementing the Mineral Leasing Act is an exercise of the Department's regulatory power. Chase Energy, Inc., 113 IBLA 69, 73 (1990); Cherry Hill Development v. Office of Surface Mining Reclamation and Enforcement, 108 IBLA 92, 93 (1989); see also S. Rep. No. 989, 95th Cong., 2d Sess. 52, reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5838; Penn Terra Ltd. v. Department of Environmental Resources, 733 F.2d 267, 274 n. 7 (3rd Cir. 1984). Therefore, this proceeding is exempted from the automatic stay, and the Government motion to suspend is denied.

[2] The Departmental regulations applicable to the management of onshore oil and gas operations mandate that operators "conduct operations in a manner which protects the mineral resources, other natural resources and environmental quality" and "comply with the pertinent orders of the authorized officer." 43 CFR 3162.5-1(a). In addition, operators must report "[a]ll spills or leakages of oil" and "exercise due diligence in taking necessary measures, subject to approval by the authorized officer, to control and remove pollutants." 43 CFR 3162.5-1(c). The regulations confer broad authority upon BLM to issue orders, including orders "to govern specific lease operations" (43 CFR 3161.2), and require operators to comply with those orders. 43 CFR 3162.1(a). Thus BLM clearly has the authority under the regulations to order an operator to clean up oil-contaminated soil within a specified timeframe. Mapco Oil and Gas Co., 94 IBLA 158, 159 (1986); Willard Pease Oil and Gas Co., 89 IBLA 236, 238-39 (1985); see also William Perlman, 96 IBLA 181, 184-85 (1987). We, therefore, reject Chase's argument that BLM's orders were unauthorized and unlawfully interfered with its lease operations. 3/

Under 43 CFR 3163.1(a)(2), if the violation is minor, BLM may levy an assessment of \$250 for failure to comply with an order of the authorized officer within the time allowed. See Celeste C. Grynberg, 106 IBLA 387, 392 (1989), and cases cited therein; Dalport Oil Corp., 104 IBLA 327, 329 (1988). On appeal to the State Office and on appeal to this Board, Chase alleges compliance with BLM's order to clean up the oil-saturated soil, and that the July 1988 photographs depict a new incident of spilled oil.

3/ BLM's orders did not specify the regulatory basis for its actions. This failure does not automatically negate the validity of the orders, but we believe it advisable for BLM to identify with specificity the basis for its action, including a citation to the appropriate requirement being violated, when issuing notices and orders under 43 CFR Subpart 3162. See William Perlman, 96 IBLA 327, 332 n.5 (1987).

The March 10, 1988, letter, ordering Chase to clean up the oil- contaminated soil included instructions to sign, date, and return to BLM the provided certification of completion form when the required work had been performed. The record contains no evidence that Chase signed and returned the form as requested. Chase's failure to return the form certifying its compliance leads to the assumption that it did not timely comply with the order. Under these circumstances, the party challenging BLM's determination that the oil was not cleaned up within the abatement period has the burden to prove by a preponderance of the evidence that BLM's determination is wrong. See William Perlman, supra at 188; Yates Petroleum Corp., 91 IBLA 252, 258 (1986).

Chase alleges that the spill had been cleaned up. However, it has submitted nothing to support this allegation, and there is nothing in the record, other than its simple statements in its SOR, to support a finding that it did clean up the oily soil. These unsubstantiated assertions are insufficient to support a finding that Chase complied with BLM's order in a timely manner or that the oily soil pictured in the July 1988 photographs represents a new oil leak. Chase has failed to meet its burden.

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.

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R. W. Mullen  
Administrative Judge

I concur:

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James L. Byrnes  
Administrative Judge