

EXXON COMPANY, U.S.A.

IBLA 87-734

Decided June 19, 1990

Appeal from a decision of the Assistant Director, Minerals Management Service, denying in part and granting in part an appeal of the assessment of interest charges for the late payment of royalties. MMS-85-0309-O&G, MMS-86-0104-OCS, MMS-86-0147-OCS, MMS-86-0387-OCS.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Royalties--Oil and Gas Leases: Offers to Lease: Royalties: Interest--Oil and Gas Leases: Offers to Lease: Payments

Pursuant to the lease terms and the applicable regulation, 30 CFR 218.50, royalty payments are required to be made by the last day of the month following production. Late payment charges will be assessed where payments are made after the due date. However, the regulations found at 43 CFR 218.102(a) and 218.150(b) establish exceptions to late payment charges for royalty payments made after the end of the month following the month in which the oil and gas is produced and sold where the payor has filed estimated payments in accordance with the instructions in the MMS Oil and Gas Payor Handbook. Where a payor fails to provide estimated payments at the lease level and fails to identify estimated payments by specific product codes on the MMS-2014 form, MMS properly assesses late payment charges. This charge is appropriate even though the total amount of all the estimated payments made by the payor for its leases exceeds the total amount of royalties due for all of the payor's leases, including those for which no estimated payment has been established.

APPEARANCES: Salvatore J. Casamassima, Esq., Houston, Texas, for Exxon Company, U.S.A.; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Exxon Company, U.S.A. (Exxon), has appealed from a June 1, 1987, decision of the Assistant Director for Program Review, Minerals Management Service (MMS), denying in part and granting in part its appeal of

the assessment of \$85,726.59 in interest charges for the late payment of royalties due on oil and/or gas produced from several Federal onshore and offshore oil and gas leases.

The Royalty Management Program (RMP), MMS, issued a series of invoices notifying Exxon that it owed interest for the late payment of royalties for certain Federal onshore and offshore leases. By Invoice Nos. 09500187 and 09500188 dated October 31, 1985, Invoice No. 12500187 dated January 15, 1986, Invoice No. 01600191 dated May 2, 1986, and Invoice No. 07500186 dated September 3, 1985, MMS assessed Exxon \$307,873.90 in late payment charges, of which Exxon challenged \$85,726.59. The decision at issue consolidated the five appeals before the Director, because the issues involved in the appeals were essentially the same. The appeals are summarized as follows:

<u>Invoice Number</u>	<u>Invoice Amount</u>	<u>Appealed Amount</u>	<u>Appeals Docket Number</u>
Bill 09500187	\$135,690.80		\$ 7,365.26 MMS-85-0309-O&G
Bill 09500188	60,721.34	3,052.55	MMS-85-0309-O&G
Bill 12500187	59,343.96	47,738.23	MMS-86-0104-OCS
Bill 01600191	4,963.25		4,348.65 MMS-86-0387-OCS
Bill 07500186	<u>47,154.55</u>		<u>23,221.90</u> MMS-86-0147-OCS
		\$307,873.90	\$85,726.59

In reviewing these appeals, RMP applied the policy set forth by the Director, MMS, on June 19, 1986, in his decision granting two other appeals of Exxon which involved issues identical to those in these appeals. 1/ The Assistant Director, in issuing the decision on appeal concluded that RMP's

1/ The decision at issue refers to the policy set forth by the MMS Director on June 19, 1986; it explains: "That policy is to grant payors/lessees an additional month in which to pay actual royalties if an estimate is on file on at least one gas and/or oil product code within an AID for each specific sales month. In those instances where oil and gas products are produced from the same lease (AID), each product type must have an estimate in order to receive a 1-month extension on the royalty payment due date. An estimate for an oil product does not extend the due date for gas products and vice versa." (Decision at 3).

A notice, captioned "Assessment Charges for Late Royalty Payments Under Federal Oil and Gas Leases Availability of Guidelines," announcing the policy was published in the Federal Register on July 24, 1986, 51 FR 26607. In its statement of reasons, Exxon states that it "also challenges the narrowness of the Director's policy guidelines upon which the Assistant Director's decision is based," arguing that the same logic should be extended to missing entries at lease level for estimated disbursements to MMS. We disagree. The guidelines apply where the "payor at least correctly identifies the lease for which an estimated payment is made." See Appeal Category 2 of the Guidelines- "APPEALS INVOLVING LATE PAYMENTS -- OIL AND GAS LEASES" pages 6-7.

revised findings were consistent with current MMS policies regarding estimated payments and granted Exxon's appeal as to \$54,251.29 but denied the appeals with respect to \$31,084.38. The basis for the decision is contained in the analysis section of the decision which states:

The MMS Royalty Management Program Office (RMP), in the field report prepared for this appeal in accordance with 30 CFR 290.3(b), states that the subject late payment charges were assessed because the actual royalties were paid after their respective 1- and 2-month due dates and not because of an insufficiency in Exxon's estimated payments. In the case of these invoices, the lateness was caused by the absence of estimated payments on several leases for certain sales months, and the failure to identify estimates to specific product codes on Appellant's Form MMS-2014.

Because Exxon did not have estimates on certain leases established on time, it was not granted an additional month in which to report and pay actual royalties for its nonestimated lines within that Accounting Identification Number (AID). [2/] As a result, the MMS exception processing system generated bills for late payment interest for the nonestimated items based on the failure of Exxon to report and pay by the end of the month next following the month of production. Of the interest assessed, \$31,084.38 was on royalties paid on leases for which an estimate had not been established on the lease for the sales month reported and paid.

Upon review of these appeals, the RMP also applied the policy set forth by the MMS Director on June 19, 1986. That policy is to grant payors/lessees an additional month in which to pay actual royalties if an estimate is on file on at least one gas and/or oil product code within an AID for each specific sales month. In those instances where oil and gas products are produced from the same lease (AID), each product type must have an estimate in order to receive a 1-month extension on the royalty payment due date. An estimate for an oil product does not extend the due date for gas products and vice versa.

As a result of RMP recalculations, the subject late payment charges were reduced by \$54,251.29. For the balance of \$390.92, Exxon had estimates on the leases for gas products, but failed to establish estimates for the oil products. Royalties were therefore due for the oil products by the end of the month following

2/ An AID or accounting identification number "is assigned by MMS and consists of a 10-digit lease number followed by a three-digit revenue source code. * * * The AID number is provided by MMS on a Payor Confirmation Report (PCR) after a payor submits appropriate data on a Payor Information Form (PIF)." 2 Payor Handbook § 2.3.3 (1986).

the month of production, but Exxon paid the royalties 2 months after, or 1 month late. [Emphasis in original.]

(Decision at 2-3). This appeal followed.

In its statement of reasons (SOR), Exxon acknowledges that there is no dispute regarding the facts of this case. Exxon, however, maintains that it made reporting errors which resulted in there being no entry at lease level and at product code level. The thrust of Exxon's argument is that its payments were not late, because its total estimated payments on deposit with MMS were sufficient to cover the entire amount of royalty due on all of its leases. Exxon explains its position as follows:

In the appeal at hand Exxon made some clerical reporting errors which resulted in there being no entry made at the lease level for the estimated disbursed to the MMS [sic]. For similar clerical errors occurring at the product code level, the Director held that interest assessment penalties were inappropriate. Exxon believes that such penalties are equally inappropriate for the same error made at the lease level and that the product versus lease level distinction is arbitrary and unfounded.

* * * Exxon's failure to report an estimate at the lease level triggered the MMS' computerized exception processing system which withheld the additional month normally granted to report and pay actual royalties. At all times, however, Exxon, as a payor, had sufficient estimated payments for all of its leases on account with the MMS. The MMS was never short the total amount of money which Exxon ultimately owed the MMS when the reporting errors were corrected. Consequently, the MMS was never deprived of the time value of the royalty money to which it was entitled. * * *

At the heart of this appeal is the appropriateness of the penalties imposed by the MMS from Exxon's alleged deviation from MMS reporting policy contained in the Payor Handbook. [Emphasis in original.]

In its answer, MMS argues that the assessment of late payment was proper because Exxon's payments were late:

MMS properly assessed the late payment charges for those leases where Exxon failed to establish any estimated payments yet paid its royalties after the end of the month following the production month.

* * * * *

The individual lease establishes the royalty obligation and states the payments are due the month following the month of production. With regard to the \$31,084.38 in late payment charges, Exxon did not make royalty payments to the MMS for the leases at

issue until after the last day of the month following the production month. There was not an estimated payment on file for these leases to extend the payment due date to a two-month cycle. Therefore, royalty payments for the leases at issue were late and it was proper for MMS to assess the late payment charges.

[1] Standard onshore and offshore Federal oil and gas leases as well as 30 CFR 218.50(a) establish that royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold. Section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1721(a) (1982), specifically provides that "where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments * * *." The regulation implementing this statutory provision also requires the assessment of interest on late payments or underpayments. 30 CFR 218.54. Additionally, the Board has held that the Government has the authority, independent of any specific grant thereof, to make a unilateral determination of interest owed. See Yates Petroleum Corp., 104 IBLA 173, 176 (1988); Peabody Coal Co., 72 IBLA 337, 348 (1983); Atlantic Richfield Co., 21 IBLA 98, 111, 82 I.D. 316, 322 (1975). Exxon does not challenge MMS' authority to assess late payment charges; rather, it asserts that it should not have been assessed interest because its total estimated royalty payments were at all times sufficient to cover the royalties due on all its leases, including those for which it had failed to establish estimated royalty payments.

The relevant regulations for estimated payments for offshore leases are found at 30 CFR 218.150(b) and for onshore leases at 30 CFR § 218.102(a). Both regulations state: "Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the payor."

The instructions provided by MMS for making estimated payments are contained in its Payor Handbook. Qualifier A, page 3.070-2, 12/84, states: "The estimated payment must be made against a specific AID and MMS assigned product code and selling arrangement number. Estimated payments are only reported once." Qualifier B, page 3.070-2, 12/84, states: "Estimated payments are primarily used for gas product codes. If a payor would like to make an estimated payment for oil product codes, written approval must be granted by the Lessee Contact Branch of the Minerals Management Service (MMS) at the Lakewood Accounting Center." It is clear from the instructions in the Payor Handbook that MMS requires that an estimated royalty payment be made at lease level for both products for the royalty payment due date to be extended 1 month. The Payor Handbook also explains that the establishment of an estimated payment delays the payment of the actual royalties due until the end of the second month following the month the production is sold. See Shell Offshore, Inc., 113 IBLA 226, 231, 97 I.D. 74, 76 (1990), Yates Petroleum Corp., *supra*.

This Board has affirmed the necessity of careful compliance with MMS procedures for estimated payments in order to avoid the assessment of

interest for late payment of royalties. Shell Offshore, Inc., *supra* at 232, 97 I.D. at 77; Yates Petroleum Corp., *supra*. While it is clear that Exxon understands the process of obtaining an additional month in which to pay its royalties, it challenges the basis for assessing late payment charges where there are sufficient funds on deposit with MMS to cover royalty due on all leases, including those for which no estimated payments were established. In line with this argument, Exxon improperly characterizes the assessed interest in these appeals as a penalty.

Section 111(a) of FOGRMA, 30 U.S.C. § 1721(a), states:

In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of Title 26.

MMS interprets this provision to require the Secretary to assess late payment charges where, as here, no estimated payment is established on the date royalty payment is due. The implementing regulation 30 CFR 218.54(a) provides: "An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due." As MMS points out in its answer, the royalty due date is recited in the individual leases:

[T]he lease which binds the lessee to pay royalty is a separate contract and the royalty provisions of one lease may vary from those of another. The standard offshore lease states:

When paid in value, royalties on production shall be due and payable monthly on the last day of the month next following the month in which production is obtained.

The standard federal onshore lease states:

When paid in value, such royalties on production shall be due and payable monthly on the last day of the calendar month next following the calendar month in which produced.

The individual lease establishes the royalty obligation and states that payments are due the month following the month of production. [Footnote omitted.]

In Yates Production Corp., *supra*, we affirmed MMS' decision assessing interest for late payment of royalties where the appellant similarly argued that the late payment charge was inappropriate since it had estimated payments on deposit sufficient to cover total royalty due. Therein, we said at 177:

The principal purpose of allowing an estimated payment is to provide the payor with an additional month within which to make actual royalty payments which will be considered timely. Submission of an estimated payment does not establish credit upon which

the payor may draw any time a payment is late. When actual payment is made, the estimated payment rolls forward to satisfy the royalty obligation for the next month.

* * * * *

MMS's estimated payment system is not contrary to the policy expressed in FOGRMA to ensure the prompt and proper collection of royalty. The threat of a late payment charge when royalty is not accurately reported and timely paid is in line with the purposes of the statute. Such a charge should be an incentive to lessees to avoid situations where they owe additional royalties by virtue of retroactive adjustments in past due royalty. To the extent that an estimated payment is found to be under the amount actually determined to be due, as MMS points out, a lessee will be liable for that deficiency, as well as a separate late payment charge. That charge should also be a disincentive to underpay estimated royalties.

Accordingly, we conclude that MMS properly assessed late payment charges where Exxon failed to establish any estimated payments and paid its royalties after the end of the month following production.

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.

Gail M. Frazier
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge