

JOSEPH B. GOULD

IBLA 90-168

Decided August 9, 1991

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, affirming the issuance of a \$500 assessment for failure to comply with certain notices of incidents of noncompliance (SDR-90-02).

Affirmed.

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

Under 43 CFR 3163.1(a)(2), BLM may properly assess an oil and gas operator \$500 for failure to comply timely with notices of incidents of noncompliance requiring the removal of oil from water disposal pits.

APPEARANCES: Joseph B. Gould, Las Vegas, Nevada, pro se; Margaret C. Miller, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Joseph B. Gould has appealed from a decision of the Deputy State Director, Mineral Resources, New Mexico State Office, Bureau of Land Management (BLM), dated December 11, 1989, affirming the issuance of an October 19, 1989, decision of the Farmington Resource Area Manager assessing Gould \$500, pursuant to 43 CFR 3163.1(a)(2), for failure to comply with certain notices of incidents of noncompliance (INC).

On September 6, 1989, Marko Kecman of the Farmington Resource Area Office, BLM, inspected the Phillips Nos. 32-1 through 32-7, and 32-9 wells on lease SF-079549 in Rio Arriba County, New Mexico, and issued eight INC's (NMO1989MK-068 through NM01989MK-075), citing Gould for a violation of 43 CFR 3162.7-1(b) in each case because Kecman found oil in water disposal pits. 1/ Each INC required that the operator remove oil from the pits

1/ 43 CFR 3162.7-1(b) provides in relevant part that "[i]n the absence of prior approval from the authorized officer, no oil should go to a pit except in an emergency. Each such occurrence must be reported to the authorized officer and the oil promptly recovered in accordance with applicable orders and notices."

by September 30, 1989. Gould did not seek review of the issuance of the INC's. 2/

On October 10, 1989, Kecman again inspected the well sites and found that the violations had not been abated. On October 19, 1989, BLM assessed Gould \$500, stating: "[Y]ou are being assessed \$250 for failure to comply with 'Notices of Incidence [sic] of Noncompliance' Nos. NM01989MK-068 and -069. All eight notices must be complied with, but assessments for minor violations are limited to two per inspection, a \$500.00 ceiling being applied." 3/

Gould sought State Director Review (SDR) in accordance with 43 CFR 3165.3(b). On December 11, 1989, the Deputy State Director issued his decision affirming the Farmington Resource Area Manager's decision and finding that no oil was removed from the pits prior to expiration of the abatement period; that neither Gould nor his agent contacted the Resource Area Office concerning the INC's until after the expiration of the abatement period; and that all the violations were corrected between October 24 and 29, 1989, more than 20 days after the abatement period. 4/

In his statement of reasons on appeal, Gould asserts that prior to the expiration period he did, in fact, notify the Farmington Resource Area Office that he was having difficulty finding a contractor to clean the pits. He further argues that the violations were corrected within 20 days after the end of the abatement period, which, he asserts, is evidence that he should have been offered an extension of the abatement period. In its answer, BLM claims that it can find no evidence that Gould contacted either its Farmington or Albuquerque offices regarding his difficulties in meeting the September 30, 1989, compliance deadline. In addition, BLM charges

2/ In a previous Board case, Conley P. Smith Oil Producer, 110 IBLA 92 (1989), involving the issuance of INC's when oil was found in an emergency pit, we stated that 43 CFR 3162.5-1(c), which provides that when oil or other substances are spilled or leaked, the lessee is to exercise "due diligence in taking necessary measures, subject to approval by the authorized officer, to control and remove pollutants," rather than 43 CFR 3162.7-1(b), was the more appropriate regulation to cite under the circumstances of that case. In this case, there was no challenge to the issuance of the INC's. The issue in this case is the assessment of \$500, which was the subject of the Oct. 19, 1989, Area Manager's decision.

3/ The Area Manager did not cite any authority for his statement that "assessments for minor violations are limited to two per inspection."

4/ In his decision, the Deputy State Director explained: "The [Area Manager's] decision assessed Gould \$500, pursuant to 43 CFR 3163.1(a)(2), for failure to comply with eight (8) Notices of Noncompliance (INC). Each assessment was for \$250, with a maximum of two per inspection, per lease, per same compliance." The Deputy State Director did not provide any citation to authority regarding the limitation of assessments.

that compliance after a deadline, rather than constituting evidence that an extension of time should have been granted, is, absent an extension, prima facie evidence of lack of compliance with the requirement.

Both of Gould's arguments on appeal must be rejected. He has failed to provide any evidence that he contacted BLM prior to the expiration of the abatement period to inform it that he was experiencing difficulties in arranging for removal of the oil. Even if he could show that he communicated with BLM before the expiration of the abatement period, there is no evidence that BLM extended the time for abatement.

[1] 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). 5/ Gould does not allege timely compliance with BLM's order to remove the oil from the water pit; rather, he asserts that clean up of the oil within a reasonable time after the deadline for compliance constituted a good faith effort to comply with the BLM order. Gould's request that the assessment be reversed must be rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

5/ Under 43 CFR 3163.1(a)(2), Gould could have been assessed a total of \$2,000 for the eight INC's. However, it is apparent, based on the statements made in the decisions of the Area Manager and the Deputy State Director, that BLM has a policy limiting the assessment in a situation such as that presented in this case to \$500.