

NORTHLAND ROYALTY OPERATING CO.

IBLA 90-459

Decided May 14, 1992

Appeal from a decision of the Acting Deputy State Director, Division of Mineral Resources, Montana State Office, Bureau of Land Management, affirming an assessment for drilling without an approved application for permit to drill. SDR 922-90-06.

Affirmed.

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

The Board will not overturn a BLM decision that an assessment for drilling a well without prior approval pursuant to 43 CFR 3163.1(e) (1989) should not be waived or reduced if the operator fails to demonstrate that the decision was arbitrary or that it was not supported by the evidence.

APPEARANCES: Timothy J. Sheehan, Land Manager, Northland Royalty Operating Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Northland Royalty Operating Company (Northland) has appealed from a June 22, 1990, decision of the Acting Deputy State Director, Division of Mineral Resources, Montana State Office, Bureau of Land Management (BLM), affirming an assessment of \$5,000 levied by the Acting Area Manager, Great Falls Resource Area, Montana, BLM, for drilling without an approved application for a permit to drill (APD).

Northland admits that it failed to obtain an approved APD for the Lundin No. 4-4 gas well, situated in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 4, T. 33 N., R. 2 W., Principal Meridian, Toole County, Montana. ^{1/} According to Northland, the well was initially spudded on April 7, 1990. By the following day the well had been drilled to a total depth of 1,565 feet, the drill hole fully cased and cemented, and the well tested for initial production of 369 thousand cubic feet of gas per day. The well was completed on April 12, 1990. BLM discovered its existence on May 11, 1990.

^{1/} The NW $\frac{1}{4}$ NW $\frac{1}{4}$ of sec. 4, which had been patented with oil and gas reserved to the United States, was subject to Federal oil and gas lease M-27079A.

In a letter dated May 15, 1990, the Acting Area Manager notified Northland that it violated 43 CFR 3162.3-1(c) when it drilled the Lundin No. 4-4 well without prior BLM approval. 2/ He then levied a \$500 per day assessment for a period of 10 days, or a total of \$5,000 (the maximum amount allowed under the regulation), for the violation. As a basis for his action he noted that completion operations had taken 6 days and the infraction was not discovered for an additional 29 days. 3/

On May 30, 1990, Northland sought State Director review of the Acting Area Manager's decision and assessment, pursuant to 43 CFR 3165.3(b). At its request, an oral presentation was made at the State Office on June 19, 1990. 4/ Northland's primary assertion was that it drilled the Lundin No. 4-4 well not knowing that the oil and gas was Federally owned. It explained that it had erroneously believed that the oil and gas was in private ownership, having failed to cross-check the location of the well against the applicable master title plat. 5/ Admitting the violation, Northland sought waiver or reduction of the \$5,000 assessment pursuant to 43 CFR 3163.1(e), basing its request on the unintentional nature of the violation, its prompt efforts to abate the violation, its belief that it had "never been cited for any other serious infraction" of Federal regulations, and the fact that it generally had a good working relationship with BLM.

In his June 1990 decision, the Acting Deputy State Director held that the Acting Area Manager had correctly cited Northland for drilling without prior approval, in violation of 43 CFR 3162.3-1(c). Addressing Northland's request for waiver or reduction of the \$5,000 assessment levied pursuant to 43 CFR 3163.1(b)(2), he concluded: "After reviewing Northland's compliance record we do not feel that the assessment should be reduced or waived" (Decision at 2). He stated specifically that Northland operates 11 communitization agreements and one lease in the Great Falls Resource Area, and that notices of 5 major violations (not including the violation under appeal) and 16 minor violations had been issued by the Area Office over

2/ The regulation provides: "The operator shall submit to the authorized officer for approval an [APD] for each well. No drilling operations * * * may be commenced prior to the authorized officer's approval of the permit." 43 CFR 3162.3-1(c).

3/ The Acting Area Manager also directed Northland to submit a completed APD and related documents within 30 days. The documents were submitted on May 30, 1990.

4/ Equipment problems prevented recording Northland's oral presentation. However, Northland does not assert that any prejudice has occurred. It appears that, for the most part, Northland's presentation consisted of a written statement which was read into the record. That statement, which is in the case file, serves the purpose of commemorating the oral presentation. See Jack Corman, 119 IBLA 289, 291 n.4 (1991).

5/ Northland had obtained State approval for drilling the well. On May 4, 1988, the State approved drilling a well in the S½ NW¼ sec. 4 (patented with no reservation of oil and gas). That well was not drilled, and on Apr. 5, 1990, the State approved drilling the well at its present location.

the preceding 2 years. Northland has appealed from the Acting Deputy State Director's decision.

In its statement of reasons for appeal (SOR), Northland contends that the assessment imposed by BLM is "excessive and unfair" because it had mistakenly obtained State approval and did not knowingly drill for Federal oil and gas without prior BLM approval, and because the Federal interest in any gas produced and sold from the Lundin No. 4-4 gas well is "relatively small" (SOR at 1). Northland states its belief that it is being "penalized for successfully drilling and producing previously unproductive minerals which will generate revenue for the Federal government" and may protect Federally leased oil and gas from drainage. 6/ Id.

There is no question that Northland violated 43 CFR 3162.3-1(c), which provides: "The operator shall submit to the authorized officer for approval an [APD] for each well. No drilling operations * * * may be commenced prior to the authorized officer's approval of the permit." Under 43 CFR 3163.1(b), immediate assessments are to be levied upon discovery of named serious violations. The assessment to be levied for "drilling without approval" is "\$500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed \$5,000." 43 CFR 3163.1(b)(2).

An assessment for drilling without prior approval and the other violations listed in 43 CFR 3163.1 is liquidated damages for the administrative and other costs incurred as a result of the violation, and is not a penalty. 7/ See 52 FR 5387 (Feb. 20, 1987) ("uniform estimates for the damages sustained"); M. John Kennedy, 102 IBLA 396, 399 (1988). Northland was not penalized for drilling the well. The assessment was levied because it had failed to file and gain approval of its APD before drilling the well. The well was spudded on April 7, 1990, and BLM discovered its existence on May 11, 1990. The violation persisted for more than 10 days and \$5,000 could therefore properly be assessed. 43 CFR 3163.1(b)(2).

There is some latitude afforded when considering the amount to be assessed. The regulation at 43 CFR 3163.1(e) provides that, "[o]n a case-by-case basis, the State Director may compromise or reduce assessments." There is no strict standard for when an assessment can be compromised or reduced in either the regulation or the preamble to final rulemaking, and the action taken by the State Director is discretionary. See 52 FR 5388 (Feb. 20, 1987).

6/ Northland specifically referred to the oil and gas underlying Federal lease M-27079, rather than lease M-27079A, as that which might be subject to drainage. See SOR at 2.

7/ It was explained in the preamble to prior rulemaking that an assessment is intended to be "compensation to the United States for damages to resources or existing improvements and the added administrative cost to the United States caused by reason of a * * * failure to comply with the regulations * * * and the resultant need for regulatory action to obtain a correction of the deficiency." 49 FR 37361 (Sept. 21, 1984).

The Acting Deputy State Director exercised his discretionary authority by choosing not to reduce the amount of the assessment. Northland challenges that decision on appeal. This Board will afford considerable deference to the party exercising discretionary authority when the exercise appears to be reasonable and supported by the evidence. See Fancher Oil Co., 121 IBLA 397, 402 (1991); see generally United States Lines, Inc. v. Federal Maritime Commission, 584 F.2d 519, 526 (D.C. Cir. 1978). Thus, the question presented by this appeal is whether the decision is reasonable and supported by the evidence. Northland's contentions will be analyzed in this light.

The fact that a well will generate revenue for the United States or may protect Federal oil and gas from drainage by another well does not justify waiver or reduction of the assessment levied for the failure to get an approved APD. The ultimate benefits that may flow to the United States cannot be used as an offset against costs incurred because the well was drilled without a permit. Similarly, the fact that the United States' royalty interest may be relatively small has no relationship to the purpose for levying an assessment. The royalty interest and drilling without a permit are not interdependent. If the well were dry and generated no royalty income the assessment would be proper. BLM has incurred administrative expenses and other costs as a direct result of Northland's failure to obtain prior approval. It is entitled to damages, and the applicable regulation provides for liquidated damages when a well is drilled without prior approval, regardless of any ultimate benefit the United States may realize from the well.

It also does not matter that Northland did not knowingly intercept Federal oil and gas. When intent is not necessary to establish a violation, the lack of intent does not mitigate or excuse the violation or limit the liability for damages. See Jack Hammer, 114 IBLA 340, 341, 343 (1990); Benson-Montin-Greer Drilling Corp., 92 IBLA 92, 97 (1986). In any event, there is no evidence that Northland attempted to properly inform itself of the true facts at any time prior to BLM's discovery of the well. ^{8/} As the Acting Area Manager noted in his May 1990 letter, the violation was discovered by BLM on May 11, 1990, almost a month after the well was completed. Similarly, corrective action taken subsequent to being told that there was a violation does not, in and of itself, justify the waiver or reduction of an assessment for the damage. See Mont Rouge, Inc., 90 IBLA 3, 5 (1985).

Northland argues that there should be a provision for permitting a party "who has made a mistake in good faith to correct or remedy the problem before being assessed a fine" (SOR at 2). Northland overlooks the fact that drilling without prior approval, like the other two listed violations, is considered of such a serious nature that it warrants imposition of an immediate assessment upon discovery. See 43 CFR 3163.1(b). When promulgating that regulation, the Department expressly

^{8/} Northland specifically attributed this lack of knowledge to the inattention of its employees due to the press of other business and the absence of its supervising employee, due to the illness. See "Oral Presentation" at 2.

eschewed allowing an opportunity for abatement prior to assessment because of the "serious nature and potential consequences of a breach" of a clear and widely known requirement. 52 FR 5387 (Feb. 20, 1987); see Jack Corman, *supra* at 293. The regulation is binding on the Department. Neither the State Director nor this Board can provide an opportunity to abate in lieu of assessment. See Veola Rasmussen, 109 IBLA 106, 110 (1989).

The stated basis for the Acting Deputy State Director's decision that the assessment amount should not be waived or reduced was Northland's record of compliance. At page 2 of his decision he states that "[o]ver the past 2 years Northland has been issued 5 major violations * * * and 16 minor violations." ^{9/} Northland suggests that the violations noted in the decision had been committed by a prior operator. It states: "Since we purchased this field of some 70+ wells, we have inherited many noncompliances from the previous operator." The violation for drilling without a permit occurred on April 7, 1990. Five of the violations noted by the Acting Deputy State Director occurred within 3 months of that date, and all but one occurred within 15 months of that date. On appeal Northland does not contend that the violations noted in the decision were not attributable to it, and we have no basis for concluding that the Acting Deputy State Director erred when doing so. In the absence of any evidence to the contrary, we must conclude that Northland has not established that the Acting Deputy State Director erred when considering Northland's record of compliance.

Northland has failed to present any evidence which would establish that the Acting Deputy State Director's June 1990 decision to not waive or reduce the assessment of \$5,000 for Northland's drilling of the Lundin No. 4-4 well without prior BLM approval is arbitrary or that it is not supported by the evidence, and we deem it appropriate to affirm that decision.

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:

David L. Hughes
Administrative Judge

^{9/} When referring to Northland's compliance record, the Acting Deputy State Director made specific reference to "Enclosure 4." That enclosure, dated June 19, 1990, is entitled "INCS [Incidents of Noncompliance] - Northland Royalty Operating Company." It appears true that Northland has not been cited for "any other serious infraction," as set forth in 43 CFR 3163.1(b) ("Oral Presentation" at 3).

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