



ATP OIL & GAS CORPORATION

173 IBLA 250

Decided January 4, 2008

**Editor's Note: appeal filed, Civ. No. 08-1514 (ED. LA. April 3, 2008),
aff'd (Aug. 29, 2009), appeal filed (5th Cir. Sept. 29, 2009)**



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

ATP OIL & GAS CORPORATION

IBLA 2007-26

Decided January 4, 2008

Appeal from a decision of the Minerals Management Service denying a request for suspension of operations for Federal offshore oil and gas lease. OMMG-2006-003.

Request for hearing denied; decision affirmed.

1. Oil and Gas Leases: Outer Continental Shelf Oil and Gas Leases: Suspensions

Pursuant to the Outer Continental Shelf Lands Act, a lease will expire at the end of its primary term if oil or gas is not being produced in paying quantities. In order to conduct lease exploration and development activities, the lessee must submit and obtain approval of an exploration and/or development plan and application for permit to drill. The Minerals Management Service does not abuse its discretion in denying a request for a suspension of operations pursuant to 30 C.F.R. § 250.175(a), where the lessee submitted a revised exploration plan 11 days and an application for permit to drill 6 days before the end of the primary lease term, and the record shows that at the time these documents were submitted the lessee had no expectation that it could conduct lease activities before the lease expiration date.

Kerr-McGee Oil & Gas Corp., 172 IBLA 195 (2007), *clarified*.

APPEARANCES: Robert P. Thibault, Esq., Denver, Colorado, for appellant; Richard H. McNeer, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

ATP Oil & Gas Corporation (ATP) appeals from an August 29, 2006, decision of the Regional Supervisor for Production and Development, Minerals Management

Service (MMS), denying ATP's Request for Suspension of Operations (SOO) of lease OCS-G 16662. As a result of this decision, the lease expired. We affirm.

Statement of Law

The Outer Continental Shelf (OCS) encompasses submerged lands seaward of State-owned submerged lands, which extend approximately three miles from the coastline. 43 U.S.C. §§ 1301(a)(2), 1331(a) (2000); *Samedan Oil Corporation*, 173 IBLA 23, 31 (2007). The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1337(b)(4) (2000), authorizes the Secretary of the Interior, through MMS, to sell leases on the OCS permitting lessees to “explore, develop, and produce” oil and gas within the lease area. 43 U.S.C. § 1337(a) (2000).

OCS leases run for an initial term of 5 years, or “not to exceed 10 years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions.” 43 U.S.C. § 1337(b)(2) (2000); 30 C.F.R. § 256.37. The lease shall continue “as long after such initial period as oil or gas is produced from the [lease] in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon.” 43 U.S.C. § 1337(b)(2) (2000); 30 C.F.R. § 250.180(a)(2).¹ Exploration or development activity on an OCS lease must be approved by MMS upon the lessee's submitting of appropriate exploration and development plans. *E.g.*, 43 U.S.C. § 1340(c)(1) (2000) (exploration); 43 U.S.C. § 1351(a) (2000) (development and production); 30 C.F.R. § 250.201 (“What plans and information must I submit before I conduct any activities on my lease . . .?”).

A lessee must submit an exploration plan (EP) for approval by MMS before conducting activities including exploration drilling, well test flaring, installing well protection structures, or temporary well abandonment. 30 C.F.R. § 250.211. Detailed information must be submitted as a part of or accompany an EP, including, *inter alia*, geological and geophysical information, air emissions data, and environmental monitoring information. 30 C.F.R. § 250.212 through § 250.228. The rules also require “a brief discussion of any suspensions of operations that you anticipate may be necessary in the course of conducting your activities under the EP.” 30 C.F.R. § 250.213(f).

The regulations establish a time frame for approval of an EP. First, MMS will determine within 15 working days whether an EP is “submitted,” effectively meaning that it is complete. 30 C.F.R. § 250.231(a). Then, MMS will approve, require modification of, or disapprove the EP within 30 calendar days “after the Regional

¹ All citations are to the 2006 *Code of Federal Regulations*. Some changes were made to these rules in 2007, but they do not apply here.

Supervisor deems your EP submitted under § 250.231, or receives the last amendment to your proposed EP, whichever occurs later.” 30 C.F.R. § 250.233(a); *see also* 30 C.F.R. § 250.234(c).

A lessee must obtain MMS’ approval of an EP, a Development and Production Plan (DPP), or a Development Operations Coordination Document (DOCD), before applying for permission to drill a well (or before sidetracking, bypassing or deepening a well). 30 C.F.R. § 250.410. The rules set forth exacting requirements for the filing of applications for permit to drill (APDs). 30 C.F.R. § 250.411 through § 250.418.

The OCSLA authorizes the Secretary to promulgate regulations relating to lease suspensions, which stop the running of the primary term by a period equivalent to the period of such suspension. 43 U.S.C. § 1334(a)(1)(2000); 30 C.F.R. §§ 250.169(a), 250.180(b), 256.73(a). A lessee may obtain an SOO in the following circumstance:

The Regional Supervisor may grant an SOO when necessary to allow [the lessee] time to begin drilling or other operations when [the lessee is] prevented by reasons beyond [its] control, such as unexpected weather, unavoidable accidents, or drilling rig delays.

30 C.F.R. § 250.175(a). Effective February 10, 2006, MMS issued Notice to Lessees No. (NTL) 2006-G02, providing guidance regarding authority for SOOs.² It stated:

[P]ursuant to 30 CFR 250.175(a), an SOO may be granted to extend the term of a lease when a drilling rig was contracted and scheduled to begin leaseholding operations prior to the lease expiration but due to reasons beyond your control, the rig was delayed. When considering an SOO request based on a rig delay, it is expected that no other rig options are available; therefore, any delay in the rig release date should be short term. It is expected that you have an approved plan (e.g., EP, DPP, etc.) and an approved APD.

NTL 2006-G02 at 1 (underline in original).

Statement of Facts

MMS issued oil and gas lease OCS-G 16662, Mississippi Canyon Area (MC), Block 943, OCS, Gulf of Mexico, Offshore Louisiana, to BHP Petroleum (Gulf of Mexico), Inc. (BHP), effective August 1, 1996. The area subject to this lease is identified as Block 943 or MC 943. The lease had a primary term of 10 years because

² MMS’s authority to issue NTLs is set forth in 30 C.F.R. § 250.103.

it was in an area of unusually deep water. 43 U.S.C. § 1337(b)(2)(B) (2000). In 1999, BHP Billiton Petroleum (Deepwater) submitted for approval an EP for five wells A-E, including four wells on lease OCS-G 16662. The wells were to be drilled by “drillship rig” to a depth of over 4,000 feet. The EP, denominated N-6567, was approved on November 2, 1999. Administrative Record Document page (AR) 87. BHP did not conduct activity on the lease, absent which the lease was due to expire on July 31, 2006. *Id.*

Comments in the record indicate that Hydro Gulf of Mexico, L.L.C. (Hydro Gulf), bought the lease from BHP on April 24, 2006. At some point prior to May 1, 2006, Hydro Gulf submitted a revised EP, R-4305, to MMS. AR 93. ATP claims that it was not approved as of July 2006. Supplemental Statement of Reasons (SSOR) at 8. The record does not document this EP, its filing, or its status. AR 133-136 (MMS printouts showing status of EPs). In an e-mail, however, an MMS employee discussed Hydro Gulf’s revised EP, explaining that the company submitted it to change the location of a well. AR 93.

ATP bought a 75% working interest in the lease and was recorded as the lease owner and operator on May 23, 2006. AR 138. This document shows a transfer of record title to ATP from BHP, not Hydro Gulf. *Id.* At this point, ATP had barely more than 2 months to begin lease operations before the lease would expire. ATP acquired the remaining 25% working interest in the lease on July 24, 2006.³

ATP states that it entered into discussions with Diamond Drilling Company (Diamond) to drill a lease well on April 15, 2006, prior to and in anticipation of acquiring the lease. SSOR at 4. According to a document submitted as Exhibit 7 to ATP’s Notice of Appeal, entitled ATP Background & Summary Activities, Diamond owns the *Ocean Quest* rig; ATP and “Noble” shared use of the rig pursuant to a drilling contract executed in 2005. AR 75, ATP Background & Summary Activities, at 1. This document claims that when Hydro Gulf entered into negotiations for the lease in “1Q 2006” (likely the “first quarter” of 2006), “ATP asked Diamond if the Rig could drill the proposed MC 943 well.” *Id.* According to ATP, Diamond assured ATP that the *Ocean Quest* was capable of drilling a well on the lease to specifications. *Id.*

ATP and Diamond entered into a Domestic Daywork Drilling Contract – Offshore (Daywork Contract) on June 1, 2006, whereby Diamond committed to furnish the *Ocean Quest* to drill offshore wells for ATP during the ensuing 180-day period. Notice of Appeal, Ex. 1, AR 6-37. The Daywork Contract identifies the Gulf of Mexico (GOM) as the operating area, and specifies that the operating base is “TBD-

³ The SSOR implies that ATP acquired 100% of the lease on May 23, but ATP’s Request for SOO, dated July 25, 2006, confirms that ATP acquired a 25% interest in Block 943 on July 24, 2006. *See also* ATP Background & Summary Activities at 1.

Operator.” AR 34, Contract Appendix A. The contract specifies that the rig drills only to a maximum depth of 3,500 feet. *Id.* at Article 503 and Appendix A.

ATP asserts that in early June 2006, Diamond informed ATP that it “withdrew its consent to allow the *Ocean Quest* to drill the well, citing concerns primarily relating to riser handling capability,” but also because of a negative forecast for the approaching storm season. SSOR at 5. In the ATP Background & Summary Activities, ATP stated that “[o]n 1 June 2006 . . . Diamond advised ATP that the Well had gone through a complete review by Diamond. As a result of this review, Diamond was now unwilling to allow the Rig to drill the well.” *Id.* at 1. An e-mail from ATP to MMS on July 14, 2006, confirms that Diamond advised ATP that it would not “allow the rig to drill the proposed well to TD,” or total depth, on “01 June, 2006.” AR 105.⁴

According to the SSOR, in mid-June, ATP asked Diamond if it would let the *Ocean Quest* drill a well in MC 943 “to conductor pipe depth, running casing and temporarily abandoning the well” instead of drilling a well to total depth. SSOR at 5. According to ATP, Diamond agreed to drill a well to be temporarily abandoned using the *Ocean Quest* rig. *Id.* ATP claims that it contacted MMS on June 30, 2006, to determine whether drilling such a well would provide a basis for an SOO. SSOR at 5. No such communications or commitments are documented.

The record reflects communications between ATP and MMS on July 14 and 18, 2006, during which an ATP representative discussed the situation:

This morning (14 July), the drilling contractor has advised ATP that the engineering has been completed with the same results as those previously mentioned; i.e., the rig is [sic] capable of drilling the subject well to total depth on the proposed location in MC 943. *We have been informed that the results of this analysis have been provided to the contractor’s senior management and that an answer will be provided on Monday, 17 July.* In the meantime, the contractor has also advised ATP

⁴ Diamond relayed to ATP that it would not drill a well on Block 943 on June 1, the same date ATP and Diamond entered into the Daywork Contract for drilling in the Gulf for wells not to exceed 3,500 feet. BHP’s 1999 EP sought approval to drill four wells on Lease OCS-G 16662 in excess of 4,200 feet. ATP’s implication that the Daywork Contract served as consent to drill a deep well on Block 943 is refuted by the facts that the contract did not mention the lease or Block 943, and Diamond refused such consent on the date it signed the contract. Moreover, in an e-mail communication to MMS on July 14, 2006, ATP contended that its plan had been to use “a rig ATP had contracted in November, 2005.” AR 105.

that the rig would be allowed to drill the proposed well to conductor casing depth (~1100' BML) at any time during the year.

. . . ATP is requesting that the act of drilling to conductor casing depth and setting pipe be deemed a lease-holding activity. . . .

This request is being made prior to receiving the drilling contractor's answer for using the rig to drill to TD after hurricane season so that ATP can begin the preparatory work required.

AR 105-06, e-mail from Ross Frazer, ATP, to Don Howard, MMS, Friday, July 14, 2006 (italics added). Our emphasis highlights the fact that ATP advised MMS that it had not yet received Diamond's commitment to drill to total depth. This e-mail was sent at 12:42 p.m. Howard replied at 2:02 p.m.: MMS "consider[s] drilling out of drive pipe (spudding) with a rig that is capable of drilling to TD to be a lease holding activity. What you describe is not the scenario we would normally expect" *Id.*

The communications that followed form a basis for ATP's arguments and so we detail them. Responding at 2:38 p.m. to Howard's statement that spudding a well "with a rig that is capable of drilling to TD" would be lease holding, ATP's Frazer claimed: "*The rig is capable of drilling to TD and that was our plan up until early June when the contractor began reconsidering their earlier proposal for MC 943. If they come back to us with a go ahead to drill to TD in nonhurricane season we will do just that.*" AR 104 (emphasis added). At 3:07 p.m., Howard responded: "*Your planned activity is a lease holding activity since the rig is capable and you are drilling and setting the conductor.*" *Id.* (emphasis added). ATP's position at 12:42 p.m. had been that ATP was unsure of Diamond's willingness to drill to total depth, would not get an answer for several days, and was nonetheless proceeding in the absence of an answer to that question. When Howard stated that ATP's ability to spud the well at conductor casing depth depended on availability of a rig capable of drilling to total depth, ATP responded that it was. Howard's response presumed that this was true.

On July 18, 2006, Frazer and Howard resumed communications. ATP's Frazer stated that Diamond "has come back to us *confirming their original analysis and their recent election not to allow the rig to drill our proposed well.*" AR 104, July 18, 2006, e-mail from Frazer to Howard (emphasis added). Frazer presumed that the option of drilling and temporarily abandoning the well remained and asked what ATP's "next step" should be. Howard replied: "*If you have an approved APD then you just need to notify the district of move on. If not, get your APD approved and move on. After on location and about to set and cement conductor get approval to TA. [sic] TA and move off. Finishing the TA process will start your 180 day clock.*" AR 103, July 18, 2006, e-mail from Howard to Frazer (emphasis added). (This 180 days would be the time allowed by 30 C.F.R. § 250.180(d) when a lessee ceases operations on a lease

that has continued beyond the end of its primary term as a result of lease operations.)

ATP asserts that, by letter dated July 18, 2006, Diamond alerted ATP that the lease area's potential for loop currents and tropical storm conditions would prevent it from drilling a well to TD, between 4,300 and 4,500 feet of water. SSOR at 7-8. According to ATP it received this letter on July 24, 2006. *Id.* This letter, AR 123, is the first evidence in the record that Diamond addressed in writing the use of the *Ocean Quest* for deep well drilling. The letter contains several important points. First, it represents that the *Ocean Quest* is a "semisubmersible" rig. AR 123, July 18, 2006, Letter from Diamond to ATP, date-stamped July 24, 2006. Second, the letter explains that the rig could drill in this water depth "only in extremely mild environmental conditions. Given the exposure to potential loop currents and tropical storm conditions, . . . we have concluded that it is not prudent" to drill to 4,300 to 4,500 feet. *Id.* Third, the letter advised ATP that "provided there are no hazards to mooring at the location, we are prepared to move and moor the unit on your site and initiate the well by drilling surface hole, running connector pipe at approximately 1100 feet and cementing it in place. We look forward to hearing from you in this regard." *Id.* Thus, Diamond refused to drill to total depth with the *Ocean Quest*, and was prepared to drill to conductor casing depth (1100') subject to resolving mooring issues. At the time of the letter, ATP and Diamond had no planned date for drilling.

According to the Notice of Appeal, ATP discovered loop currents in the lease area on July 19, 2006, that would "prevent commencement of operations." Notice of Appeal at 2 and Ex. 4 (current maps), AR 63-65. In its SSOR, at 8, ATP claims that this data "indicat[ed] a problem for the proposed drilling area." In any event, by July 24, ATP was aware that loop currents would likely prevent drilling.

On July 20, 2006, the day after ATP's discovery of loop currents, it filed an amendment to the pending EP. ATP explained the need for the revision: Hydro Gulf and BHP, as noted above, had submitted EPs for "a dynamically positioned drillship"; ATP amended the plan "to provide for the use of a semi-submersible drilling unit."⁵ July 20, 2006, EP Amendment at 1. ATP also changed the location for Well A. *Id.* Notwithstanding the loop currents discovered the previous day, ATP requested expedited review of its revised EP because, it represented, operations were set to begin on July 26, 2006. EP at 1. Though MMS rules required "discussion of any

⁵ MMS rules require a lessee/operator to revise the approved EP to change the "type of drilling rig (e.g., jack-up, platform rig, barge, submersible, semisubmersible, or drillship)," and submit the new drill plan to MMS. 30 C.F.R. §§ 250.283(a) and 250.285(a). This requirement was restated in NTL 2006-G15, issued June 12, effective July 12, 2006. AR 150. A revised EP is subject to the same rules with respect to the timing of MMS approval, 30 C.F.R. §§ 250.231 (15 business days) and 250.233 (30 days) as an EP. 30 C.F.R. § 250.285(c).

[SOOs]” anticipated, 30 C.F.R. § 250.213(f), the EP failed to notify MMS of the existence of loop currents which would prevent or pose a problem for drilling.

On July 25, 2006, ATP filed an APD using MMS’s online eWell program. According to ATP, the APD proposed “to set four anchors, jet drive pie in [sic], drill conductor hole and set the casing at approximately 1100 feet BML followed by temporarily abandoning the well” beginning July 29, 2006. SSOR at 8, citing AR 47-60. Perhaps because the APD forms are for drilling wells to total depth, and do not envision applications for temporarily abandoning a well after setting casing a quarter of the distance to depth, it is difficult to read the APD as applying for the option described by ATP. The APD addressed, designed, and depicted the proposed well as one to a total depth of 4,425 feet. See APD, Supplemental APD Information Sheet, AR 49; Well Bore Data Sheet, AR 50; Casing Design, AR 57. An MMS eWell system print-out dated August 16, 2006, lists the APD’s status as “pending,” and notes as “error”: “APDRig: Water too deep for Rig’s rated water depth.” AR 62.

ATP also filed a request for an SOO on July 25, 2006. ATP explained:

ATP has a rig, the Diamond “Ocean Quest”, under contract that has limits to its capability of completing the drilling of the planned well however, ATP plans to utilize the rig to ‘spud’ the well to hold the lease. ATP has presented the proposed plan and received confirmation from Mr. Don Howard, MMS Regional Supervisor that spudding the well would constitute ‘lease hold operations’. Additionally, ATP has submitted a revised exploration plan (REP) which is pending approval but expected to be approved by 26 July 2006 and an APD which has been submitted via e-well at the time of this letter request.

AR 67, Request for SOO at 2. ATP explained that it had the “rig under contract,” that it had been “anticipated to arrive on location” on July 28, that loop currents prevented this, and that the rig had moved on to offshore Block 409 to complete another operation. *Id.* ATP asserted that it could not forecast “timing and location duration,” and asked for a SOO lasting until September 30, 2006. *Id.* at 2; SSOR at 8-9; AR 127-133; AR 66-72.

By letter dated July 27, 2006, in response to telephone communications with MMS, ATP summarized its efforts to solve its problems with the lease.

ATP has the . . . “Ocean Quest” under contract for 180 days. The “Ocean Quest” is a semi-submersible rated to drill in 3,500’ of water. When ATP acquired this lease from Hydro we asked Diamond Offshore to perform a riser and mooring analysis to see if the rig could move to 4,400’ of water. *The engineering study showed that it was possible, but*

the riser tension requirements had the slimmest of safety margins. Diamond Offshore subsequently decided not to allow ATP to perform operations on the Oasis project due to engineering and commercial concerns regarding the riser.

ATP then developed an alternate plan to drill the well using the “Ocean Quest” but only drill the well down to the conductor setting depth (+/- 1,100') which would hold the lease with operations as confirmed by Mr. Don Howard. ATP would eliminate the issues with the drilling riser by doing as much of the drilling as possible prior to being required to run the riser. *Problems then arose with the mooring system during hurricane season.*

AR 114, Letter from ATP to MMS, at 1 (emphasis added). ATP explained its attempt to solve the mooring problems “from two angles,” using either partial mooring (4 mooring lines) or setting “all anchors” (8 lines). “Diamond rejected the minimal mooring approach for two reasons,” which ATP described. *Id.* The complete mooring approach (8 lines) also had “several issues,” which caused ATP to conclude that “[t]rying to perform this work with a small rig during the statistically worst months of hurricane season is not what we believe to be the most prudent thing to do and may result in a later drilling of the well. The mooring analysis will be completed soon and submitted to the district office in conjunction with the APD.” AR 115, July 27, 2006, Letter from ATP to MMS, at 2.

Thus, on the same date it submitted the APD, ATP asked for an SOO. ATP’s explanation was that it had never been able to obtain commitment from Diamond to drill the deep well *or* to find a mooring system that would allow it to drill to “conductor setting depth” before the lease expiration date.

MMS did not approve the SOO, EP, or APD prior to the July 31, 2006, lease expiration date. During the ensuing month, ATP attempted to obtain the services of “BP’s” *Marianas* rig and MMS waited to be advised of some option by which ATP could maintain the lease by drilling. On August 17, 2006, ATP and MMS representatives met to discuss the lease, at ATP’s request. SSOR at 12; AR 86 (meeting minutes). MMS granted ATP another week to contract with BP for use of the *Marianas* to drill the well to total depth, and committed to grant the SOO if ATP was able to contract the *Marianas*. SSOR at 13; SSOR Ex. A, Affidavit of Gregory Roland, ATP, at ¶ 8. ATP’s efforts were unsuccessful.

On August 29, 2006, MMS issued the decision denying the SOO. MMS relied on NTLs 2000-G17 and 2006-GO2, explaining that it was ATP’s responsibility to show that a drilling rig was scheduled to commence operations prior to lease expiration and to have an approved plan (in this case, the EP) and APD. MMS noted that even

“[i]n the absence of loop currents . . . ATP would have been unable to commence drilling operations prior to lease exploration because of its failure to meet regulatory requirements.” Decision at 1.

Appeal

ATP filed a Notice of Appeal. ATP argues that 30 C.F.R. § 250.175(a) grants MMS the authority to issue an SOO when drilling and operations are prevented for reasons beyond the applicant’s control, and that NTL 2006-G02 has recognized that lack of rig availability after Hurricane Katrina would qualify as a reason beyond the applicant’s control for purposes of that rule. SSOR at 16-17. ATP also claims that MMS erred in denying the SOO for a lack of an approved EP or APD, because 30 C.F.R. § 250.175 does not make such prior approval a condition for an SOO. SSOR at 15. ATP claims that the existence of the loop currents, a bad storm season forecast, and drilling rig delays were circumstances beyond its control. SSOR at 16. ATP claims that it did everything in its power to begin drilling before the lease expiration date but was unable to do so. ATP charges that MMS was biased. SSOR at 23-24. ATP points to an e-mail from an MMS employee suggesting to another that ATP was trying to mislead the agency in order to file documents at the last minute. AR at 88, Aug. 17, 2006, e-mail from David Trocquet to Betty Lau.

Alternatively, ATP argues that the circumstances constitute a *de facto* SOO. ATP states that it informed MMS of its attempts to secure a drilling rig from the time of lease purchase until the SOO was denied, and that MMS “approved ATP’s best plan for the TA well.” SSOR at 24. ATP contends that MMS never alerted ATP that an SOO would be denied unless the EP or APD had first been approved. *Id.* at 24. ATP claims that MMS implied an SOO was imminent and that MMS’s eWell system which recorded the APD request “corroborated what MMS representatives were telling ATP.” *Id.* at 25. ATP complains of a delay between an August 9, 2006, telephone message from MMS that the SOO was denied and the final decision letter dated August 29. *Id.* ATP claims that it was never told that there would be a problem securing the SOO and therefore relied on the mistaken belief that it would have time after July 31, 2006, to secure a drilling rig because the lease would be suspended. *Id.* ATP asserts that MMS’s silence regarding the prerequisites for an SOO prior to July 31, 2006, should constitute a *de facto* suspension. ATP submits a Request for Hearing, claiming, at 3, that testimony would permit review of the communications among MMS, ATP, and Diamond, and the facts surrounding the drilling rig.

MMS argues that it properly denied the SOO because ATP had not obtained approval of either an EP or an APD permitting ATP to drill a well before the end of the primary term of the lease. Answer at 1. MMS asserts that the existence of loop currents and the lack of a drilling rig had no effect on the requirement to obtain an approved EP or APD. Answer at 6. MMS explains that, whether or not 30 C.F.R.

§ 250.175(a) explicitly requires an applicant to have either an approved EP or APD prior to receiving an SOO, other regulations plainly require such approvals before lease activity. Answer at 5, citing 30 C.F.R. §§ 250.211, 250.410.

MMS denies bias against ATP, and avers that the cited e-mail had no effect on the agency's decision. Answer at 7 n.5. MMS documents that it has approved 65 of the 69 applications for SOO ATP has filed since 1994, to refute any suggestion of bias against the company. Answer, Ex. 2, Affidavit of Betty Lau at 1.

MMS denies that its actions could have constituted a *de facto* suspension. MMS avers it did not approve ATP's revised EP because ATP failed to address the impact of the mooring lines on certain biologic communities, as required by 30 C.F.R. §§ 250.203 and 250.227. Answer at 2. MMS contends that it never received a completed APD for the well site, because ATP never established a workable mooring plan for a drilling contractor to use. *Id.* at 3, 7. MMS explains that the eWell site defines the term "pending" to mean that an APD is "in the process of being completed by the operator." Answer, Ex. 2 Attachment A, APD/AST/ABP Permit Selection List Page Help at 1. According to MMS, the eWell site makes clear to users that approval of an APD does not occur until after it is listed as "submitted," defined to mean that an APD has "been completed and submitted" to MMS. *Id.* MMS denies the existence of relevant disputed facts or a need for a hearing. Opposition to Request for Hearing.

Analysis

[1] ATP is correct that the relevant rule, 30 C.F.R. § 250.175(a), does not make an approved EP or APD a regulatory prerequisite for obtaining an SOO. As the rule fails to address EPs or APDs at all, it follows that it does not prohibit denial of an SOO for failure to obtain an approved EP or APD. Therefore, the issue is not whether MMS is prohibited from denying an SOO for failure of a lessee to obtain an approved EP or APD, as ATP implies. Rather, the issue is whether MMS abused its discretion by holding that ATP's failure to obtain approval for its EP and APD, in light of the facts of the case, was sufficient reason to deny the SOO. We find that MMS acted within its authority under 30 C.F.R. § 250.175(a).

As a factual matter, ATP did not obtain approval of an EP or APD, and we agree with MMS that ATP failed to act within time constraints evident from the regulations. ATP does not and cannot deny the regulatory structure outlined above. Exploratory lease activity must be approved by MMS. 30 C.F.R. § 250.201. To obtain approval, the EP, or revised EP, must be submitted to MMS. 30 C.F.R. §§ 250.211, 250.285(c). A revised EP must be submitted to change the type of rig to be used. 30 C.F.R. § 250.283. Once an EP or revised EP is submitted, the rules anticipate that MMS will determine within 15 business days whether the EP has been submitted, and will act on it within another 30 days. 30 C.F.R. §§ 250.231, 250.233.

ATP did nothing to comply with the regulations governing EPs until July 20, when it submitted a revised EP. BHP's approved EP was for a drillship rig; the *Ocean Quest* is a semi-submersible rig. Thus, if ATP ever intended to use the *Ocean Quest*, it was on notice that it was required to submit a revised EP. It waited until July 20, almost 2 months after acquiring a lease with an expiration date in 11 days. The contract ATP had with Diamond since 2005, and its discussions with Diamond about use of the rig for Block 943, prevent ATP from claiming ignorance that the *Ocean Quest* was a semi-submersible rig. Nor can it claim ignorance of the timing established for MMS regulatory approval. The rules required an approved revised EP before lease activities could occur, and anticipated 30 days, at a *minimum*, for MMS to approve an EP. We need not speculate why ATP did not quickly submit a revised EP for use of the *Ocean Quest*; it is enough that it did not do so.⁶

Moreover, ATP has no basis for confusion over the need to submit and obtain approval of an APD to drill a well. 30 C.F.R. § 250.410. ATP waited until July 25 to submit an APD contemporaneous with its SOO request. By that date, ATP was not anticipating drilling a well before the lease expired. The SOO request explicitly stated that loop currents prevented the *Ocean Quest* from moving onto Block 943 and that the rig had moved on to Block 409 to complete operations there. Thus, ATP filed its APD on July 25 in order to obtain an SOO, not to actually drill a well before lease expiration. In these circumstances, we do not find MMS abused its discretion by denying the SOO for failure of the lessee to have an approved EP and APD.

ATP argues that MMS could have approved the EP and the APD, and therefore that the timing of approval means that it is, effectively, MMS's fault that the regulatory conditions for obtaining an SOO were not met. Therefore, ATP asks us to find that MMS's inaction constituted a *de facto* suspension. We disagree.

MMS approves EPs and APDs for lease activities. Nothing in the regulatory scheme expects MMS to approve such documents for purposes of extending a lease that would otherwise expire for nondevelopment. To the extent ATP filed these documents at the last minute, expecting MMS to approve plans for a well ATP plainly could not drill before the lease term ended, it was effectively asking MMS to approve the EP and APD so it could obtain an SOO, not for lease activity that in any event it could not perform.

MMS rules make clear that MMS has several weeks to consider and approve the EP. ATP knows this. 30 C.F.R. §§ 250.231, 250.233. ATP reveals its understanding that it was necessary to conduct approved lease activity before the lease expiration date by describing negotiations with Diamond before the purchase of

⁶ We question ATP's failure to inform MMS of a need for an SOO when it filed its revised EP. 30 C.F.R. § 250.213(f). ATP knew by July 19 of the loop currents.

the lease was even effective. SSOR at 4. It was ATP's responsibility to file both the EP and APD early enough before the expiration of the lease to obtain MMS's approval within the time allowed by the regulations. Nothing in the record suggests that MMS took an inordinate amount of time with the filings or allowed ATP to believe that filings with respect to a well ATP did not anticipate could be drilled before the expiration date would nonetheless be approved before then. Neither the EP nor the APD was considered complete and ready for processing at the time of filing. At the time they were filed, ATP knew Diamond would not permit the *Ocean Quest* to drill any well on the lease due to loop currents. SSOR at 7-8.

Thus, we do not find that MMS's action or inaction constitutes a *de facto* suspension. Though we find no case addressing such an argument under the OCSLA, the Board has issued decisions involving lease suspensions pursuant to the Mineral Leasing Act (MLA), 30 U.S.C. § 209 *et seq.* (2000), and confronted similar arguments that the Bureau of Land Management (BLM) was required to grant last-minute suspension requests. We held that lessees are responsible for timely filing plans and permit applications and cannot expect a lease to be suspended to facilitate the belated filing of such documents. In *Nevdak Oil and Gas Exploration, Inc.*, 104 IBLA 133, 137 (1988), we upheld BLM's refusal to grant a lease suspension where an APD was filed 22 days before expiration of a 5-year lease. Though the APD was approved 1 day before the lease expired, drilling was not possible at that point. We stated that this fact was not attributable to any act, omission, or delay by BLM, but rather the process was "begun too late." *Id.* In *Harvey E. Yates Co.*, 156 IBLA 100, 106 (2001), we rejected the suggestion that BLM's approval of an APD 7 days before a lease expiration date, also too late for the work in question to be performed, constituted a *de facto* suspension. We find such precedent equally applicable here; the lessee's responsibility for timely action under an MLA lease is no different from that under an OCSLA lease. We will not hold that MMS's failure to approve an EP filed 11 days before, and an APD filed 6 days before, lease expiration constitutes a *de facto* SOO.

Moreover, we find no basis in 30 C.F.R. § 250.175(a) for concluding that MMS is deprived of the discretion to reject a request for an SOO where the lessee has no approved EP and APD to which a suspension might pertain. The regulatory history of 30 C.F.R. § 250.175(a) makes clear that an SOO was never intended to exempt a lessee from regulatory requirements. 30 C.F.R. §§ 250.211, 250.410.

Prior to 1979, the U.S. Geological Survey (USGS) (MMS's predecessor) could suspend operations that threatened immediate, serious, or significant damage to life, property, leased or other mineral deposits, or the environment. 30 C.F.R. § 250.12(c)(1) (1978). USGS could suspend operations in the interest of conservation, for failure of the lessee to comply with law, lease terms, or regulations, or to facilitate the preparation of an environmental impact statement. 30 C.F.R. § 250.12(d) (1978). Thereafter, OCSLA amendments prompted a restructuring of

OCSLA regulations in 1979. During notice and comment on a proposed rulemaking, commenters proposed that USGS should grant lease suspensions after an EP or DPP had been filed but was still being processed. The Department rejected such comments on the following grounds:

It is the Department's view that it is the lessee's responsibility to assure that comprehensive exploration plans are submitted and carried out early enough in the initial term of a lease to allow for the discovery and delineation of hydrocarbon accumulations, and to prepare and submit a schedule for the expeditious initiation of production.

44 Fed. Reg. 61888 (Oct. 26, 1979).

A 1988 rule revision permitted lease suspensions when reasons beyond the lessee's control prevented operations from continuing. 30 C.F.R. § 250.10(a)(4) (1988). Such reasons included unexpected weather or unavoidable accidents. *Id.* The SOO regulations were later renumbered and restructured in 1999 to separate rules related to SOOs and SOPs. 30 C.F.R. §§ 250.174 (SOPs), 250.175 (SOOs).⁷

Thus, the Department considered a provision granting an SOO to allow additional time for filing and processing an EP in 1979, and rejected it, explaining that it was the lessee's responsibility to file an EP in a timely manner to allow for MMS's approval and for commencement of operations before lease expiration. No change has occurred in this respect.⁸ We find no basis for concluding that MMS

⁷ The regulation, 30 C.F.R. § 250.175, was amended in 2002 and 2005 to permit SOOs when the existence of a salt sheet interferes with identification of a potential hydrocarbon-bearing formation or when a lessee may drill a well below 25,000 feet. 30 C.F.R. § 250.175(b), (c). These changes are of no relevance here.

⁸ In *Kerr-McGee Oil & Gas Corp.*, 172 IBLA 195, 201 (2007), we cited 30 C.F.R. § 250.175(a) for the statement that MMS rules "allow lessees to undertake little or no operations on an OCS lease for up to 180 days for any reason or no reason at all. By the end of that period, however, the lessee must either be engaged in operations on its lease or have at least applied for a SOO/SOP [suspension of production]." In that case, the lessee engaged in lease production for years before ceasing operations. When a lessee stops production operations on a lease that has continued beyond its primary term, 30 C.F.R. § 250.180(d) provides that the "lease will expire unless [the lessee] resume[s] operations or receive[s] an SOO or an SOP from the Regional Supervisor under §§ 250.172, 250.173, 250.174, or 250.175 before the end of the 180th day after [it] stop[s] operations." By this decision we clarify that the quoted language from *Kerr-McGee* meant to construe 30 C.F.R. § 250.180(d), and was not intended to construe 30 C.F.R. § 250.175(a) or to hold that a lessee that has never
(continued...)

abused its discretion by denying an SOO, where, on the facts of record, no EP was filed sufficiently in advance to support a reasonable expectation that, under agency rules, it necessarily would be approved before the lease expired.

MMS reviewed the situation and correctly found that even if weather conditions were ideal and a rig was available to drill the well to total depth, a well could not have been drilled because ATP lacked required approvals to do so. ATP complains that this conclusion was wrong because, if those conditions pertained, MMS would have approved the EP and APD. ATP therefore reasons that MMS's decision was actually based upon weather conditions outside ATP's control.

But the question of whether weather, loop currents, or delay in securing a rig prohibits drilling only arises when the lessee has "a drilling rig [that] was contracted and scheduled to begin leaseholding operations prior to the lease expiration." NTL 2006-G02. We need not speculate whether MMS might have approved the EP and APD, even ones filed so close to a lease expiration date, if ATP had contracted for an appropriate drilling rig and scheduled it to begin leaseholding operations prior to the lease expiration. As shown above this never happened.

The record shows that ATP acquired a lease close to its expiration date, a risky venture. It gambled that the semi-submersible rig it had had under contract since 2005, approved to drill to 3,500 feet, could be pressed to drill a deeper well. ATP attempted repeatedly to obtain a commitment from Diamond for this, but did not succeed. At the time Diamond signed the Daywork Contract, it advised ATP of its refusal to agree to such a plan. Pressed again in mid-July, Diamond refused again. Diamond's first documented agreement even to drill and spud the well at 1,100 feet arrived in ATP's door on July 24, at a time when ATP knew that loop currents would prevent Diamond from moving the rig to Block 943, and that Diamond would only use the rig for the temporary operation when the mooring issue was settled. As late as July 27, ATP advised MMS it had not been able to work out mooring arrangements with Diamond. It follows that ATP never had a contract to drill any well on Block 943. Thus, ATP never had "a drilling rig [that] was contracted and scheduled to begin leaseholding operations prior to the lease expiration." NTL 2006-G02.

Further, we find no evidence of bias. The e-mail comment that ATP finds so offensive merely expresses an opinion on the facts that we have identified from the record; it is those facts that defeat ATP's appeal, not the MMS employee's comments. Moreover, rather than bias, we see MMS as having attempted to keep the lease alive even after it expired by its own terms. But even 30 days after lease expiration, ATP

⁸ (...continued)

engaged in any lease activities is entitled to an additional 180 days after the primary lease term before it must seek an SOO or SOP.

could find no option to conduct lease activities, and so MMS allowed the EP and APD, without the amendment that would have been required, to go unapproved.

Finally, we find no basis upon which to conclude that Don Howard's e-mail communications constituted the approval or basis for *de facto* suspension that ATP attempts to read into it. A set of e-mail communications cannot supplant the approved lease activity that MMS' detailed regulations require. An approved EP and APD were required before any lease activity or operation could be initiated. Notwithstanding ATP's representations to Howard, it never was able to submit a plan for a scheduled operation on the lease, and therefore, whatever the meaning of Howard's final comment, it is irrelevant. Even if it were relevant, however, it seems clear to us that Howard conditioned his communications on the understanding that the rig in question would ultimately be able to drill to total depth, a matter which was never true.⁹

We find no basis upon which to conduct a factual hearing. The record is clear; ATP's intentions in conducting communications with Diamond or MMS cannot obscure the fact that it never was able to contract a schedule to begin leaseholding operations on Block 943 prior to lease expiration.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the request for hearing is denied and the decision appealed from is affirmed.

_____/s/_____
 Lisa Hemmer
 Administrative Judge

I concur:

_____/s/_____
 T. Britt Price
 Administrative Judge

⁹ We make one final point on these exchanges. Electronic mail allows quick and timely communications. Lest MMS and BLM ultimately conclude that they communicate with the public to their detriment, we will not infer commitments that bind MMS, based upon the abbreviated and imprecise exchange of information that is represented here.