



CRYSTAL RIVER OIL & GAS, LLC v. BUREAU OF LAND MANAGEMENT

180 IBLA 139

Decided November 5, 2010



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

CRYSTAL RIVER OIL & GAS, LLC
KC RESOURCES, INC.

v.

BUREAU OF LAND MANAGEMENT

IBLA 2010-204

Decided November 5, 2010

Appeal from an order issued by Administrative Law Judge Harvey C. Sweitzer dismissing a request for a hearing on the record of a decision of the Deputy State Director, Energy, Lands, and Minerals, Colorado State Office, Bureau of Land Management, dismissing a request for State Director Review of notices of proposed civil penalties as untimely. CO-2010-02.

Affirmed as modified; motion to dismiss and petition for stay denied as moot.

1. Oil and Gas Leases: Civil Assessments and Penalties--Rules of Practice: Hearings

When a party adversely affected by a BLM decision on State Director Review of a notice of proposed civil penalty requests a hearing on the record, pursuant to 43 C.F.R. § 3165.3(c), and the administrative law judge determines that BLM properly concluded that the request for State Director Review was untimely because it was filed more than 20 business days after receipt of the notice of proposed civil penalty, the proper remedy is affirmation of the BLM decision, not dismissal of the matter.

APPEARANCES: John M. Tanner, Esq., and Adrian P. Castro, Esq., Denver, Colorado, for appellants; Danielle DiMauro, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Crystal River Oil & Gas, LLC and KC Resources, Inc. (collectively, Crystal River) have jointly appealed from and petitioned for a stay of the effect of a July 2,

2010, Order of Administrative Law Judge Harvey C. Sweitzer granting a motion to dismiss filed by the Bureau of Land Management (BLM). BLM sought dismissal of Crystal River's request for a hearing on the record of an April 19, 2010, decision of the Deputy State Director, Energy, Lands, and Minerals, Colorado State Office, BLM, that dismissed its request for State Director Review (SDR) for lack of jurisdiction (No. CO-2010-02).

In his decision, the Deputy State Director concluded that Crystal River's January 15, 2010, request for SDR of two July 31, 2008, Final Notices of Proposed Civil Penalties (2008 Final Notices), issued by the San Juan Public Lands Center (SJPLC), BLM, had not been filed timely under 43 C.F.R. § 3165.3(c), because they were filed more than 20 business days after Crystal River's receipt of the 2008 Final Notices.¹ The Deputy State Director advised Crystal River of its right, pursuant to 43 C.F.R. § 3165.3(c), to request a hearing on the record before an administrative law judge, or, in lieu thereof, to appeal to the Board.² Crystal River requested a hearing before an administrative law judge,³ and BLM forwarded the case to the Hearings Division, Office of Hearings and Appeals, where it received docket number CO-2010-02 and was assigned to Judge Sweitzer. BLM moved to dismiss the case for lack of jurisdiction.

¹ Crystal River received those notices on Aug. 4, 2008, as evidenced by certified mail return receipt cards. Each notice, one for the A.R. Davis No. 1 well, and the other for the A.R. Davis No. 2 well, proposed to assess civil penalties totaling \$30,000 for Notices of Incidents of Noncompliance (INC) with the Department's regulations governing oil and gas operations on Federally-leased lands. Both wells are located in sec. 27, T. 35 N., R. 20 W., New Mexico Principal Meridian, Montezuma County, Colorado, within Federal oil and gas lease COC-022687.

² Section 109(e) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. § 1719(e) (2006), provides that no civil penalty will "be assessed until the person charged with a violation has been given the opportunity for a hearing on the record." See 43 C.F.R. § 3165.3(c). Under the regulations in 43 C.F.R. § 3165.3(c), a party who is adversely affected by a notice of proposed penalty must timely seek SDR, and then a party who is adversely affected by the SDR decision on the proposed penalty may either request a hearing on the record before an administrative law judge or appeal to the Board. Appealing the SDR decision directly to the Board constitutes a waiver of the right to a hearing on the record. 43 C.F.R. § 3165.4(b)(2).

³ In the request, Crystal River sought a reversal of the State Director's "arbitrary refusal" to address the merits of its request for reduction of the civil penalties. Request at 3.

In his Order, Judge Sweitzer independently concluded that the SDR request was untimely, and, therefore, that he had no jurisdiction to entertain Crystal River's argument on the merits. He granted BLM's motion to dismiss.

Herein, we consider whether Judge Sweitzer properly determined that the SDR request was untimely. Because Crystal River has failed to show that Judge Sweitzer erred in making that determination, we uphold it. However, we modify Judge Sweitzer's Order to reflect that the result of his determination should have been affirmation of the SDR decision, rather than dismissal of the matter. Crystal River's petition for a stay is denied as moot, as is BLM's motion to dismiss.⁴

Background

In his Order, Judge Sweitzer details the fact that BLM issued a series of orders and notices, culminating in the 2008 Final Notices, regarding Crystal River's failure to properly plug and abandon the wells.⁵ He noted that, despite being advised of the right to seek SDR on each occasion, Crystal River did not seek SDR of any of the orders or notices, until on January 15, 2010, well after receipt of the 2008 Final Notices, Crystal River "requested a reduction in the dollar amount of civil penalties." Order at 2.

On that date, counsel for Crystal River filed with BLM's SJPLC a letter explaining that their clients had gotten the wells producing "in early 2008," adding that "it appears that the only thing our client did wrong was fail to inform you in a timely fashion that they had gotten the wells producing again, after they incurred considerable expense to do so." Counsel further explained that "all appropriate royalties have been paid," and he stated "[o]ur clients request that the penalties be reduced to a total of \$10,000."

In his April 19, 2010, decision dismissing the letter as an untimely request for SDR, the Deputy State Director stated that SJPLC had forwarded the letter to the

⁴ BLM moves for dismissal of the appeal for lack of jurisdiction to the extent Crystal River seeks review of "the merits of the case." Motion to Dismiss at 4. Given our disposition, we deny that motion as moot.

⁵ In each case, BLM issued two orders or notices, one for each well. On Jan. 30, 2008, BLM ordered the wells to be plugged and abandoned, absent either production or a showing of capability to produce in paying quantities, within 60 days of receipt. On Apr. 2, 2008, BLM issued INCs for failure to comply with the order to plug and abandon, followed by INCs on May 15, 2008, for failure to comply with the first INCs, and assessing liquidated damages. Then, prior to the 2008 Final Notices, BLM issued Notices of Proposed Civil Penalties on June 17, 2008, and on July 2, 2008.

Colorado State Office for SDR because “the authority to reduce civil penalties is reserved to the State Director.”⁶ SDR Decision at 1.

Judge Sweitzer noted that Crystal River’s request “was filed 16 months after expiration of the 20-day deadline for filing a request for SDR,” and concluded that, absent a timely request for SDR of BLM’s 2008 Final Notices, he lacked jurisdiction to entertain “arguments going to the merits of this matter.” Order at 3. Crystal River appealed.

Discussion

[1] Under 43 C.F.R. § 3165.3(c), “[a]ny adversely affected party wishing to contest a notice of proposed civil penalty shall request an administrative review before the State Director under the procedures set forth in paragraph (b) of this section.” Paragraph (b) of 43 C.F.R. § 3165.3 requires that a request for SDR must be filed in writing with the appropriate State Director within 20 business days of the date such notice was received or considered to have been received.

Crystal River argues that nothing in the regulations restricts “an administrative law judge’s jurisdiction over, or review of, State Director review decisions in circumstances where a party failed to comply with the 20 day period in 43 C.F.R. § 3165.3(b).” Statement of Reasons (SOR) at 3. Crystal River is technically correct, *i.e.*, the failure to timely request SDR does not preclude the administrative law judge from reviewing the SDR decision. However, it does not follow, as Crystal River argues, that Crystal River is, therefore, entitled to consideration, in the review of the SDR proceeding, of “the issues of this dispute on the merits.” *Id.* at 4. When the SDR decision dismisses the request as untimely, the administrative law judge’s jurisdiction on review is limited to determining whether or not the request was properly dismissed as untimely.

⁶ Under 43 C.F.R. § 3163.2(h), which implements section 109(g) of FOGPMA, 30 U.S.C. § 1719(g) (2006), the Secretary may compromise or reduce civil penalties on a case-by-case basis. Section 1203 of the *BLM Manual*, titled “Delegation of Authority (Internal),” at Appendix 1, page 61, shows that the BLM State Directors have been delegated the authority to compromise or reduce civil penalties, but that such authority “[c]annot be re-delegated.” However, nothing in that delegation indicates that the State Director’s authority to compromise or reduce civil penalties is limited to SDR proceedings. Therefore, while we address this case on review in the same fashion as the parties and Judge Sweitzer, *i.e.*, as an SDR proceeding, and affirm the ruling of untimeliness, we note that the Jan. 15, 2010, initial filing makes no mention of SDR and reasonably could be construed as a request under 43 C.F.R. § 3163.2(h) to compromise or reduce civil penalties outside the scope of an SDR proceeding.

When a request for SDR is filed more than 20 business days after receipt of the challenged document, the Board has affirmed SDR decisions denying (or dismissing) the request as untimely. *E.g.*, *National Wildlife Federation*, 162 IBLA 263, 266 (2004); *Southern Utah Wilderness Alliance*, 148 IBLA 117, 118-19 (1999); *Han-San, Inc.*, 113 IBLA 361, 362 (1990). Although Judge Sweitzer states, citing *Han-San*, that the Board “has established precedent requiring a timely request for SDR under 43 C.F.R. [Subpart] 3165 before it will assume jurisdiction over an appeal of a State Director’s decision,” he misconstrues that precedent, as well as *Conley P. Smith Oil Producers*, 131 IBLA 313 (1994), which he quotes, in order to justify dismissal of the proceeding.⁷ In neither *Han-San* nor *Smith* did the Board dismiss the appeal.

In *Han-San*, the Board affirmed a decision of the BLM New Mexico Deputy State Director for Mineral Resources dismissing two requests for SDR as untimely filed. *Smith*, on the other hand, involved the timely filing of an SDR request for two INCs issued for major violations of the oil and gas regulations. In the SDR decision, the BLM Acting Wyoming Deputy State Director reduced the violations to minor violations, but upheld the assessments. On appeal of that decision to this Board, the appellant sought review of another INC for the first time by the Board.

That INC involved a minor violation, and it had been issued by BLM at the same time as the INCs for the major violations. However, the Board refused to consider the INC for the minor violation, as a matter of first impression, because no request for SDR of that INC had been timely filed with BLM.

The Board did not decline to assume jurisdiction over an SDR decision in *Smith*; it did assume jurisdiction over the SDR decision addressing the major violations, affirming that decision, but modifying the amount of the assessments.

Thus, based on our precedent, when Judge Sweitzer determined that the SDR request was untimely, he should have affirmed the Deputy State Director’s decision. Instead, he granted BLM’s motion to dismiss because, based on this determination, Crystal River’s “arguments going to the merits of this matter are beyond the jurisdiction of this forum.” Order at 3.

⁷ Following his citation of *Han-San*, Judge Sweitzer quotes *Smith*, 131 IBLA at 320, as follows, at page 3 of his Order:

The applicable regulation, 43 C.F.R. 3165.3(b), clearly requires that any challenge to the issuance of an INC must be made within 20 days of receipt of the INC. . . . Absent such a timely challenge, the Board has no jurisdiction to review issuance of an INC, and Conley’s request that the Board dismiss [the INC] must be denied. *See Global Natural Resources Corp.*, 121 IBLA 286 (1991); *Han-San, Inc.*, 113 IBLA 361 (1990).

Crystal River has failed to demonstrate the timeliness of its January 15, 2010, filing as an SDR request. Therefore, upon properly determining that the SDR request was untimely, Judge Sweitzer should not have dismissed Crystal River's request for a hearing for lack of jurisdiction. Instead, he should have affirmed the Deputy State Director's decision, and we modify his order accordingly.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Sweitzer's order is affirmed, as modified. Crystal River's petition for a stay and BLM's motion to dismiss are denied as moot.

_____/s/_____
Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

_____/s/_____
H. Barry Holt
Chief Administrative Judge