

INTERNATIONAL ENERGY COMPANY

IBLA 73-434

Decided February 12, 1974

Appeal from decision of the Colorado State Office, Bureau of Land Management, terminating coal prospecting permit C 10387 for failure to pay the annual rental on or before the anniversary date.

Affirmed.

Coal Leases and Permits: Generally--Coal Leases and Permits: Permits--Coal Leases and Permits: Rentals

Under 43 CFR 3511.4-2(b), a coal prospecting permit automatically terminates by its own terms and in accordance with the regulations where the permittee fails to pay the annual rental on or before the anniversary date of the permit.

A coal prospecting permit rental payment, late because of alleged change in corporation ownership and shipment of files to new headquarters, is properly rejected and the permit terminated under 43 CFR 3511.4-2(b).

APPEARANCES: Robert O. Franklin, President, International Energy Company, of Dallas, Texas, for appellant.

OPINION BY MR. GOSS

International Energy Company has appealed to the Board from a decision of the Colorado State Office, Bureau of Land Management, dated May 22, 1973, which notified the company of the termination of coal prospecting permit C 10387 for failure to pay timely the annual rental.

Permit C 10387 was issued to the Arex Corporation effective May 1, 1970, and assigned to appellant effective July 1, 1971. The rental was due on or before May 1, 1973. It was not received until May 7. The Geological Survey reports permittee did no prospecting work on the lands.

Appellant contends that the delay in transmittal of the rental was caused by a change in the working control of International Energy Company. In April 1973, the company's records and files were moved from Denver, Colorado, to a new headquarters in Dallas, Texas, and the rental check was sent as soon as the new management received the files. Appellant asserts that the delay was justifiable and requests reinstatement of the canceled permit.

Departmental regulation 43 CFR 3511.4-2(b), 1/ governing terminations and expirations of prospecting permits for nonpayment of rental, provides that a prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit. The permit herein thus automatically terminated when the rental was not received on May 1, 1973. Notice of the requirement for a timely payment of the annual rental is embodied in the terms of the permit in sections 5 and 11. 2/

Requests for acceptance of late payment of permit rentals have been denied. Western Standard Corporation, 14 IBLA 45 (1973). Appellant herein asserts that the BLM Wyoming State Office reinstated six of appellant's oil and gas leases which had been terminated because payment was late due to the same corporate move. The Wyoming State Office found the late payments to be justifiable under 30 U.S.C. § 188 (1970) and 43 CFR 3108.2-1(c)(2). Section 188

1/ 43 CFR 3511.4-2(b) reads in part:

"(b) Terminations and expirations for nonpayment of rental. (1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit. * * *"

2/ Sections 5 and 11 of the permit read in part:

"Sec. 5. Rental. Permittee must pay an annual rental of 25 cents per acre, or fraction thereof, but not less than \$20 per year. The annual rental payment shall be made on or before the anniversary date of the permit.

"Sec. 11. Termination or cancellation. (a) This permit shall terminate automatically upon failure of the permittee to pay the rental on or before the anniversary date thereof, except that if the time for payment falls upon any day in which the appropriate land office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. * * *"

and the regulation, however, pertain only to oil and gas leasing and are not applicable here. ^{3/} Appellant has not set forth any other legal basis for relief.

Therefore, 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 State Office is affirmed.

Joseph W. Goss, Member

We concur:

Douglas E. Henriques, Member

Joan B. Thompson, Member

^{3/} Even if section 188 and 43 CFR 3108.2-1(c)(2) were applicable, the recent holding in Columbia Gas Transmission Corporation, 13 IBLA 243 (1973), would negate the Board overruling the Colorado State Office to reinstate the permit. In Columbia at 244-45 the Board considered whether a corporate move which caused late payment of an oil and gas lease rental would be a sufficient justification for reinstatement:

"* * * It is true, of course, that any generalized restructuring of a company will create management problems. A result of this realization, however, should be increased vigilance to prevent precisely the sort of error which occurred here, improper programming. This is not a case in which events totally beyond the control of a company occurred leading to a failure to exercise reasonable diligence. Rather, the difficulties which ensued were the direct result of conscious action on the part of the appellant, the possible adverse consequences of which it should have been aware and taken adequate steps to prevent. As we have stated previously:

`Companies are not held to a higher standard of diligence by the mere fact of their corporate structure. But by the same token, they cannot hide behind the bulk and complexity of their organizations, so as to make "justifiable" for them actions which would not be held to be justifiable for individual lessees.' Monturah Company, 10 IBLA 347, 348 (1973). Therefore, we find that the Eastern States Office correctly refused to grant reinstatement."

