

TENNECO OIL COMPANY

IBLA 77-431

Decided June 27, 1978

Appeal from a "Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases." NTL-5.

Appeal dismissed.

1. Rules of Practice: Appeals: Generally -- Rules of Practice: Appeals: Dismissal

The publication by the Director, Geological Survey, of a "Notice to Lessees" is not an action appealable to this Board under 30 CFR Part 290, where the "Notice" is a generalized instruction to subordinates of the Geological Survey, and the "Notice," itself, is not self-executing. Specific application of the "Notice" to a lessee is, however, a matter subject to appeal and review within the Board of Land Appeals.

APPEARANCES: John W. Coughlin, Esq., Moran, Reidy & Voorhees, Denver, Colorado, for appellant; Karen A. Shaffer, Esq., Office of the Solicitor, United States Department of the Interior, for the Government.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

By letter of May 26, 1977, Tenneco Oil Company filed a notice of appeal "from the Decision and/or Order of the Director of the United States Geological Survey as contained in Notice to Lessees-5 (NTL-5) promulgated by the Director in the Federal Register, Volume 42, Number 86, Wednesday, May 4, 1977, insofar as said NTL-5 requires a value for royalty purposes to be given and charged on gas disposed of without sale."

By memorandum of June 27, 1977, the Office of the Solicitor, moved that the Board dismiss the appeal. The Solicitor's contention

is that NTL-5 constitutes the final product of a rule-making proceeding, and is thus not subject to direct appeal to the Board. Rather, the Solicitor argues, if and when NTL-5 is applied to appellant, it would have the right of appeal first to the Director, Geological Survey, and, from an adverse decision of the Director, to this Board.

In its statement or reasons in support of its appeal, Tenneco has opposed the motion filed by the Solicitor's office. It argues in essence that the publication of NTL-5 represents final action by the Director, Geological Survey, and adverts to a specific lease W-32357, which it avers would clearly come within the purview of the terms of NTL-5. It concludes that it would serve no useful purpose for the Board to require it to await a decision of an Oil and Gas Supervisor that lease W-32357 is covered by NTL-5, and appeal the application and/or validity of NTL-5 to the Director, Geological Survey, and from thence to the Board, where the Director, through his promulgation of NTL-5, has effectively pre-judged the appeal.

[1] We disagree. The publication of NTL-5 represents instructions to subordinates with the Geological Survey as to methods by which they are to assess value on gas production. To that extent, it is binding upon the subordinate employees of the Geological Survey. It is not, however, binding upon the Director, Geological Survey, when he is reviewing a decision specifically applying the general rule. Nor can it be said that the Director's adjudicative review would be a mere exercise in futility. There are many generalized rules which when adopted seem to adequately and fairly deal with all the myriad and varied factual situations which might conceivably arise, but when applied within the specific construct of an appeal are readily seen to be either unworkable or inadequate. Moreover, a specific appeal can serve to crystalize perceptions on matters which when analyzed in the abstract generate only the most ephemeral concerns. This last consideration is as valid for this Board as it is for the Director, Geological Survey.

Nor can it be said that appellant suffers any real and irreparable injury by requiring that it await specific application of NTL-5 to one of its leases. Any monies which are tendered under protest can readily be refunded should appellant succeed in its appeal either before the Director, Geological Survey, or this Board. Moreover, this appeal is clearly distinguishable from our decision in California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977), wherein this Board permitted various groups to appeal a notice of the California State Director, Bureau of Land Management, published in the Federal Register, which closed various land to off-road vehicular use. The action of the California State Director in that case was self-executing and necessitated no subsequent action on the part either of the State Director or his subordinates

to effectuate a result clearly adverse to the interests of appellants therein. The notice of the State Director was, in effect, final vis-a-vis the interests of the appellants in that case. Here, the publication of NTL-5, in and of itself, in no way injured appellant. The only injury that can occur to appellant is dependent upon subsequent actions by officials of Survey. We believe that the orderly administration of both this Board, and those constituent agencies of the Department whose decisions we review, requires that only appeals which are truly ripe for review be accepted.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed. This action is taken without prejudice to a review of the substantive merits of NTL-5 when this matter is properly brought before the Board.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

