

EXXON CO., U.S.A.

IBLA 80-96

Decided February 6, 1980

Appeal from decision of the Geological Survey dismissing appellant's protest concerning development and production plans for oil and gas leasing areas on the outer continental shelf.

Affirmed.

1. Outer Continental Shelf Lands Act: Generally -- Outer Continental Shelf Lands Act: Operating Procedures -- Regulations: Generally -- Regulations: Binding on the Secretary -- Regulations: Force and Effect as Law

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including OCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

APPEARANCES: C. Charles Broome, Esq., Paul W. Wright, Esq., Ann R. Troitino, Esq., Exxon Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Exxon Company, U.S.A., appeals from the October 10, 1979, dismissal, by the Director, Geological Survey, of its protest concerning the preparation of plans of development/production for areas of the Outer Continental Shelf offshore Alabama, Texas, Mississippi, and Louisiana.

Exxon's objections are directed to a letter dated January 29, 1979, by the Oil and Gas Supervisor, Gulf of Mexico Area. This letter

was an instruction, requiring appellant, as a Gulf OCS lessee, to submit, pursuant to 30 CFR 250.34, plans of exploration and of development/production (plans) to the area office. This data was required to be furnished in accordance with the relevant portions of the regulation.

30 CFR 250.34 was modified (44 FR 53686 (Sept. 14, 1979)) and the remaining sections of 30 CFR Part 250 were modified (44 FR 61886 (Oct. 26, 1979)). All these modifications became effective December 13, 1979.

In his October 10 dismissal the Director states that the "new regulations" (30 CFR 250.34, 250.34-1 through 250.34-4) had the effect of replacing the Supervisor's January 29, 1979, instructions. In its statement of reasons to this Board "[a]ppellant submits, however, that (1) revised Section 250.34 contains the identical legal error from which it now appeals; (2) that Appellant is presently aggrieved by the January 29, 1979 Letter Order; and (3) that the present appeal is designed to protect its rights during the interim period of time when appeals of this feature of 30 CFR 250.34 are being prosecuted."

The appeal is also based on section 25 of the 1978 amendments to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 (1976), as amended, 92 Stat. 629 (hereinafter, "Act"). Section 25 provides in relevant part:

Sec. 25. OIL AND GAS DEVELOPMENT AND PRODUCTION. -- (a)(1)  
Prior to development and production pursuant to an oil and gas lease issued after the date of enactment of this section in any area of the Outer Continental Shelf, other than the Gulf of Mexico, or issued or maintained prior to such date of enactment in any area of the Outer Continental Shelf, other than the Gulf of Mexico, with respect to which no oil or gas has been discovered in paying quantities prior to such date of enactment, the lessee shall submit a development and production plan (hereinafter in this section referred to as a "plan") to the Secretary, for approval pursuant to this section.

\* \* \* \* \*

(b) After the date of enactment of this section, no oil and gas lease may be issued pursuant to this Act in any region of the outer Continental Shelf, other than the Gulf of Mexico, unless such lease requires that development and production activities be carried out in accordance with a plan which complies with the requirements of this section.

\* \* \* \* \*

(1) The Secretary may require the provisions of this section to apply to an oil and gas lease issued or maintained under this Act, which is located in that area of the Gulf of Mexico which is adjacent to the State of Florida, as determined pursuant to section 4(a)(2) of this Act.

Appellant states that the Secretary may not, pursuant to section 25, require lessees to submit plans for the Gulf of Mexico which are more comprehensive than required by the old version of 30 CFR 250.34. Appellant cites the new sections 250.34-2(a)(2) and 250.34-3(b)(1)(iv) which provide:

(2) For leases in the western Gulf of Mexico the Director may limit the information that will be required to be included in a development and production plan to those parts of paragraphs (a)(1)(i) through (viii) that are necessary to assure conformance with the Act, other laws, applicable regulations, and lease provisions. In determining the information to be included in a plan, the Director shall consider current and expected operating conditions, together with experience gained during past operations of a similar nature in the are of proposed activities.

\* \* \* \* \*

(iv) For leases in the western Gulf of Mexico, the Director, after consultation with the Office of Coastal Zone Management and the affected State(s) with (an) approved coastal zone management program(s), may limit the amount of information required to be included in an Environmental Report (Development/Production) to those parts of § 250.34-3(b)(1)(i) thru (iii) of this section necessary for the State's review and concurrence with the consistency determination, considering operating conditions, operating experience, and existing facilities in the area of proposed activities.

Appellant contends that the words "may limit" in each of these sections are in conflict with section 25 of the Act because they grant to the Director discretion to choose which or how many of the new requirements may be imposed on Gulf of Mexico lessees. Appellant concedes that as a Gulf of Mexico lessee it will not be exempt from filing plans. It maintains, however, that such plans should be governed by the requirements of 30 CFR 250.34 as it existed before modification. Appellant asks the Board to vacate the January 29 instruction and the October 10 dismissal. It request the Board to "provide for the filing of plans for the Gulf of Mexico consistent with Section 250.34 as it existed prior to January 27, 1978."

[1] The reasons for inclusions of the regulation objected to by appellant are partially explained in 44 FR 53688 (Sept. 14, 1979):

In the proposed rule the Department exempted leases in the western Gulf of Mexico from the requirement that an Environmental Report be submitted with the development and production plan, unless an affected State with an approved coastal zone management program indicates a need for the report to make a coastal zone consistency determination. We have retained this provision. However, we added new paragraphs §§ 250.34-3(a)(1)(iii) and 250.34-3(b)(1)(iv) which specifically allow the Director, after consultation with the Office of Coastal Zone Management and the affected State, to limit the information that will be required to be included in Environmental Reports (Exploration and Development/Production) to that information that is necessary for a State to make a coastal zone consistency determination.

As previously indicated, these provisions became effective on December 13, 1979. Appellant has not shown that the above regulations were improperly implemented or that it was aggrieved in any way by their operation. Appellant is simply asking to be exempt from these provisions. The Board can entertain no such request. We have held numerous times that duly promulgated regulations have the force and effect of law and are binding on the Department. Bernard P. Gencorelli, 43 IBLA 7 (1979); Wilfred Plomis, 34 IBLA 222 (1978). Nor has the Board the authority to declare a Secretary's regulation invalid. Tucker and Snyder Exploration, Inc., 43 IBLA 235 (1979); Donald E. Jordan, 35 IBLA 290 (1978).

Appellant's contention that the regulations are in conflict with the Act are without merit. There is no indication that these regulations have been applied in the case before us so as to work an abridgement of some right due appellant under section 25 of the Act. The explanation (quoted, supra) for the inclusion of the regulations clearly comports with the policy objectives for the amendments to the Act as stated in the legislative history. In any event, if this Board were deemed to have authority to overrule a duly promulgated regulation, such authority could be exercised only where the regulation would be found to be clearly contrary to the express language of the statute. See, e.g., James V. Joyce, 42 IBLA 383 (1979) (concurring opinion, emphasis original). That is not the situation here.

In the circumstances, it would be inappropriate for the Board to accede to appellant's request to provide for the filing of lessees' plans for the Gulf of Mexico consistent with 30 CFR 250.34 as it existed prior to January 27, 1978. Supervision of Outer Continental

Shelf oil and gas leasing operations is initially within the ambit of the Geological Survey within guidelines established by Secretarial regulations.

Therefore, 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.

Frederick Fishman  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

