

TENNECO OIL CO.

IBLA 79-506

Decided February 20, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, holding that oil and gas lease W-28302 terminated by operation of law and denying reinstatement of that lease.

Affirmed.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

A noncompetitive oil and gas lease on which there is no well capable of production automatically terminates by operation of law where the rental payment by the lessee on or before the due date is deficient by more than \$10 or 5 percent.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

The Department of the Interior has no authority to reinstate a terminated oil and gas lease where the full rental has not been paid within 20 days after the date of termination.

APPEARANCES: John W. Coughlin, Esq., Kutak, Rock, and Huie, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Tenneco Oil Company has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), holding that oil and gas lease W-28302 terminated by operation of law on May 1, 1979, when a rental payment of \$374.50 was due but only \$347.50 had been received. This partial payment was received on March 12, 1979, well in advance of the due date. Full payment of the rental, however, was not received until June 28, 1979.

[1] A noncompetitive oil and gas lease on which there is no well capable of production terminates by operation of law and not by the action of a Government official when the partial payment by the lessee on or before the due date is deficient by more than \$10 or 5 percent. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(b). The deficiency in appellant's rental payment cannot be considered nominal under the governing regulation, 43 CFR 3108.2-1(b). See Reichhold Energy Corp., 40 IBLA 134, 137 (1979).

[2] Appellant contends that the lease should be reinstated because it acted with reasonable diligence, but made an obvious typographical error. This reason does not afford a basis for reinstating the lease in this case. The applicable statutory provision, 30 U.S.C. § 188(c) (1976), authorizes this Department to reinstate a terminated lease only if the full amount of the rental due has been tendered within 20 days after the anniversary date. Because the full rental payment was not submitted until almost 3 months after the anniversary date, the Department is without authority to reinstate the subject lease. Reichhold Energy Corp., *supra*.

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.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

