

TEXACO, INC.

IBLA 80-431

Decided December 15, 1980

Appeal from decision of the Director, Geological Survey, dismissing appeal. GS-147-O&G.

Affirmed.

1. Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file a timely notice of appeal in the proper office within 30 days from service of the decision appealed from in order to comply with the requirements of the applicable regulations in 30 CFR 290.

APPEARANCES: J. Christian Wieland, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Texaco, Inc., appeals from a decision of the Director, Geological Survey (Survey), Reston, Virginia, dated November 30, 1979, dismissing its appeal of an order issued by the Acting Area Oil and Gas Supervisor, Casper, Wyoming, requiring Texaco to pay royalties based on the gross proceeds accruing to the lessee.

The Director's decision stated that the order of the Acting Area Oil and Gas Supervisor had been served on appellant on August 17, 1979, and that Texaco's appeal had been filed on September 18, 1979. The Director dismissed the appeal because it was not filed within 30 days after service of the Acting Area Oil and Gas Supervisor's order as required by 30 CFR 290.3.

In its statement of reasons, appellant contends that:

Texaco Inc., mailed its Appeal by Express Mail on September 13, 1979. As the label shows, the package

reached its destination on September 14, 1979. (See attached exhibit which is a copy of the mailing envelope for this Appeal). The Appeal thus reached its destination three days prior to the date on which it could be filed. The statute cannot be frustrated by having a department not accept its mail or pick it up.

The Appeal that was received on September 18, 1979 was one which had also been sent on September 13, 1979, but through the regular mail. Texaco, in good faith, attempted to file within the appropriate time frame.

Title 43, Section 4.411 [1/] provides that when documents need to be filed within a certain time and are not received in the proper office during that time, the delay in filing will be waived if the document is not filed later than ten days after it is required to be filed and it is determined that the document was not [sic] transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it is required to be filed. An envelope of the filing is examined, it will be found that it was postmarked September 13, 1979 within the filing period [sic].

Further, Title 43 Section 4.401 (c)(3) states that "a document will be considered to have been served at the time of personal service, a delivery of a registered or certified letter, or at the return by post office of an undelivered registered or certified letter." The Appeal as a document and the return of the Appeal fits squarely within this exception to the time frame under the appeals procedure.

[1] The governing regulation 30 CFR 290.3(a) provides the procedures for perfecting appeals to the Director, Geological Survey, where it states that: "An appeal to the Director * * * may be taken by filing a notice of appeal in the office of the official issuing the order or decision within 30 days from service of the order or decision." (Emphasis added.)

W. J. Linton, Acting Area and Gas Supervisor, was the official who issued the order from which Texaco, Inc., was appealing to the Director. His address was listed on the order as follows:

Geological Survey
P.O. Box 2859
Casper, Wyoming 82602

1/ The regulation providing the grace period for filing is 43 CFR 4.401(a).

The address on the envelope containing the notice of appeal sent by express mail was W. J. Dinton, Main Post Office, 100 E. "B" Street, Casper, Wyoming 82601. The Post Office returned this document to appellant. This notice of appeal was not filed "in the office of the official issuing the order" as required by regulation 30 CFR 290.3(a).

The appeal was nondeliverable, being addressed to "Dinton," rather than to "Linton" at the street address of the Main Post Office, with no reference to the box number, to the Geological Survey, or to Linton's organizational title.

The other notice of appeal, sent by regular mail, was filed on September 18, 1979. since appellant was served with the order on August 17, 1979, this notice of appeal was not filed within 30 days from service of the order as required by 30 CFR 290.3(a). When a notice of appeal is not filed within the 30-day period, the appeal must be dismissed. Mesa Petroleum Co., 44 IBLA 165 (1979).

Appellant relies on 43 CFR 4.401(a) and 43 CFR 4.401(c)(3) to show that his notice of appeal was timely filed. These regulations, however, are not applicable to appeals to the Director, Geological Survey, but pertain to appeals before the Board of Land Appeals.

Unlike the procedures governing appeals to this Board (43 CFR 4.401(a)), the Survey appeal regulations do not allow a grace period of 10 days beyond the mandatory 30-day time period for filing a notice of appeal. 30 CFR 290.5 authorizes the Director to extend the time for filing any document in connection with an appeal except the notice of appeal. There is no latitude allowed for filing this document. The notice of appeal must be received within the 30-day period. Mesa Petroleum Co., supra at 166.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

