

PENNZOIL OIL AND GAS, INC.
PENNZOIL PRODUCING CO.

IBLA 81-724

Decided February 4, 1982

Appeal from decision of the Acting Chief, Conservation Division, Geological Survey, dismissing an appeal from letter decisions of the Oil and Gas Supervisor, Gulf of Mexico Area, increasing royalty base for liquid production from outer continental shelf oil and gas leases. OCS-G 2372, OCS-G 2426, and OCS-G 2739.

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 timely a notice of appeal in the proper office within 30 days from service of the decision appealed from in accordance with 30 CFR 290.3(a).

APPEARANCES: Debra L. Bruce, Esq., Houston, Texas, for appellant; John H. Kelly, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Geological Survey.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Pennzoil Oil and Gas, Inc., and Pennzoil Producing Company have appealed from a decision of the Acting Chief, Conservation Division, Geological Survey (Survey), dated February 13, 1981, dismissing an appeal from letter decisions of the Oil and Gas Supervisor, Gulf of Mexico Area, dated November 16, 1979, increasing the royalty base for liquid production from outer continental shelf (OCS) oil and gas leases, OCS-G 2372, OCS-G 2426, and OCS-G 2739. ^{1/} The basis for the February 1981 decision was appellants' failure to appeal timely the November 1979 letter decisions pursuant to 30 CFR 290.3.

^{1/} These letter decisions were addressed "jointly to Pennzoil Company (lease operator) and Pennzoil's eight co-lessees." Memorandum from Deputy Conservation Manager, Gulf of Mexico OCS Region, to Deputy Division Chief, Offshore Minerals Regulation, dated Dec. 2, 1980, at 2.

The November 1979 letter decisions provided that:

Based on our analysis of applicable sales contracts we hereby increase the royalty base for liquid production * * *.

Retroactive to the date of first production, liquid product value for the purpose of computing royalty is determined, in accordance with 30 CFR 250.64, to be equal to the greater of (1) the sum of * * * cents * * * per barrel and Amoco's posted price * * * or (2) gross proceeds from sale including the selling price and all surcharges paid by buyer to producer for gathering, transporting, loading, unloading, handling, and terminalling.

Please report on Form 9-153, Lessee's Monthly Report of Sales and Royalty, the royalty adjustments required by the increase in royalty base, and mail the adjusted reports to this office marked for the attention of Audit Section (AC-5).

A memorandum from Deputy Conservation Manager, Gulf of Mexico OCS Region, to Deputy Division Chief, Offshore Minerals Regulation, dated December 2, 1980, indicates that copies of these letter decisions were sent certified mail, return receipt requested, and received by appellants on November 19, 1979. 2/

By letter dated September 26, 1980, and received on October 2, 1980, appellants appealed to the Director, Survey, from the November 1979 letter decisions. 3/ Appellants contended that they were not required

2/ This memorandum discussed appellants' appeal of the Nov. 1979 letter decisions:

"The appeal refers to our royalty valuation of crude oil and condensate produced from three leases: OCS-G 2372, 2426, and 2739 (High Island Blocks A-489, A-340, and A-339, respectively). Lease OCS-G 2372 began producing on February 21, 1979; the other two leases began producing on April 20, 1979.

"As each lease entered into continuous production status, we issued to Pennzoil a tentative determination of royalty value (pending Pennzoil's filing with our office copies of lessees' sales contracts as required by 30 CFR 250.47), such tentative value being equal to the price posted by Amoco Production Company for crude oil and condensate of the gravity delivered, with the stipulation that if Pennzoil should receive a price higher than Amoco's posted price, royalty would then be based on that higher price.

"After receiving copies of contracts covering the lessees' disposition of liquid production from the three specified leases, we issued a final royalty valuation and reporting order which was made retroactive to each lease's first production date and which, therefore, superseded the initial, tentative order."

3/ The appeals were decided by the Acting Chief, Conservation Division, Survey, in accordance with authority delegated by the Director, Survey. 45 FR 16570 (Mar. 14, 1980).

to report "monies received for gathering, handling, terminalling or transporting hydrocarbons to the nearest market or pay royalty on such monies received." They also requested suspension of the effect of the decisions during the pendency of the appeal. 4/

Appellants have renewed their arguments on appeal to the Board. In addition, they contend that they are "not subject to the requirement of 30 CFR 290.3 * * * because the Requests are not final orders of an officer of the Conservation Division."

[1] The regulations in 30 CFR Part 290 govern the appeals procedures with respect to Survey decisions. The right of appeal is extended as follows:

Any party to a case adversely affected by a final order or decision of an officer of the Conservation Division of the Geological Survey shall have a right to appeal to the Director, Geological Survey, unless the decision was approved by the Secretary or the Director prior to promulgation.

30 CFR 290.2. 30 CFR 290.3(a) provides that: "An appeal to the Director, Geological Survey, 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.) Failure to file a notice of appeal within the 30-day time period following service will result in dismissal of the appeal. Texaco, Inc., 51 IBLA 243 (1980); Mesa Petroleum Co., 44 IBLA 165 (1979).

The question for decision is whether the November 1979 letter decisions were appealable orders or decisions within the meaning of 30 CFR 290.2. We hold that they were. The decisions bear all of the indicia of a "final" decision. They state that "we hereby increase the royalty base for liquid production." Furthermore, appellants are instructed to report royalty adjustments based on this increase, in accordance with the results of the "greater" of two computational methods. The decisions left nothing unresolved regarding computation of the royalty base and must be termed "final." Cf. Shell Oil Co., 52 IBLA 74 (1981) (Survey order not considered final where Survey indicated a willingness to discuss its position and a conference was scheduled for that purpose). 5/

4/ In view of our decision herein, the question of suspension is moot.

5/ In Shell Oil Co., supra at 77, we quoted the U.S. Supreme Court's decision in Catlin v. United States, 324 U.S. 229, 233 (1945), to the effect that: "A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."

Accordingly, appellants were required to file a notice of appeal within 30 days of service of the decisions. As the appeal was not filed until October 2, 1980, it is properly dismissed. 6/

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.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

6/ We note that any apparent confusion which may have existed concerning the finality of the letter decisions of the Oil and Gas Supervisor might have been avoided by the inclusion of language in the decisions informing the recipients of their appeal rights. We recommend that such language be included in future decisions.

