

SOMONT OIL CO., INC.

IBLA 85-495

Decided March 24, 1986

Appeal from a decision of the Montana State Office, Bureau of Land Management, affirming a determination of the existence of two incidents of noncompliance, the issuance of notices of noncompliance, and the imposition of assessments for failure to comply with regulations governing the filing of monthly reports of operations. M-48773.

Affirmed in part, vacated in part.

1. Bureau of Land Management--Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance

The Bureau of Land Management may properly issue a notice of an incident of noncompliance with 43 CFR 3162.4-3, requiring the filing of a monthly report of operations for each calendar month, beginning with the month in which drilling operations were initiated.

2. Oil and Gas Leases: Civil Assessments and Penalties--Regulations: Generally

An assessment for failure to file production reports in a timely manner pursuant to 43 CFR 3163.3(h) may be vacated by this Board, in view of the suspension of that regulation and change in Department policy that such assessments should automatically be levied.

APPEARANCES: Charles Jansky, vice president, Somont Oil Company, Inc.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Somont Oil Company, Inc., appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated March 14, 1985, affirming two assessments of \$ 100 each, imposed according to 43 CFR 3163.3(h) for failure to file reports required by 43 CFR 3162.4-3.

In a decision dated February 22, 1985, the Great Falls Resource Area Office, BLM, imposed the assessments for failure to file Monthly Reports of Operations, Form 3160-6 (formerly 9-329), for the months of November and December 1984, for well No. 1 on lease M-48773. The well is located in the SE 1/4 NE 1/4, sec. 31, T. 35 N., R. 2 W., Principal Meridian, Montana.

Three days after the Area Office decision issued, appellant filed the required reports showing no production in November or December.

By letter dated February 27, 1985, appellant requested a technical and procedural review (TPR) of the assessments pursuant to 43 CFR 3165.3. Appellant stated it did not submit monthly reports of operations until January 1985, because it had been unable to conduct operations on this lease until that month, even though the well was completed at the end of October 1984. Appellant emphasized it had consistently tried to comply with all regulations and in the past it had interpreted the regulations to not require reports, without question from BLM. Appellant stated:

We were most anxious to complete a well by the end of October since by so doing we would save the delay rental otherwise due 1 November 1984. And so, in the midst of very poor weather, we did bring in a natural gas driven unit and got one well going for several days at the end of October -- just long enough to put a little fluid in a test tank. (Enclosure 3 is our notification of production dated 30 October 1984). But as the unit had no shelter and the weather got worse, we weren't able to keep the unit running.

(Technical and Procedural Review Request at 1). The case record contains a copy of the letter from appellant to BLM dated October 30, 1984, notifying BLM of the production of about 10 barrels of fluid from well No. 1, of which 90 percent was oil.

On March 14, 1985, the BLM State Office issued a decision in response to appellant's TPR request. This decision stated:

Title 43, Code of Federal Regulations (CFR), Section 3162.4-3 requires that a Monthly Report of Operations be filed for each lease with the Authorized Officer * * * "on or before the tenth day of the second month following the production month . . . beginning with the month in which drilling operations are initiated . . . (emphasis added). A review of the records pertinent to this case indicates the November and December reports, due in the Great Falls office on January 10, 1985, and February 10, 1985, respectively, were not received until February 25, 1985. This was 46 and 15 days after the required filing dates. The Great Falls office has correctly identified the violation per 43 CFR 3162.4-3. They further identified the appropriate assessment per 43 CFR 3163.3(h). We, therefore, find the Great Falls office to be technically and procedurally correct in the assessment made against Somont Oil Company.

[1] The language in 43 CFR 3162.4-3 requires a report for each month "beginning with the month in which drilling operations are initiated." This report is to be "filed * * * on or before the 10th day of the second month following the production month." (Emphasis added). In its statement of reasons, appellant claims it had no production until January 1985, therefore its filings were timely. However, the October 30, 1984, letter from appellant states that production had commenced in October 1984. Thus, appellant

was obligated to file a report for the months of November and December. In its TPR request appellant acknowledged minimal production in October 1984, "enough to put a little fluid in a test tank." No report for November or December 1984 was filed pursuant to 43 CFR 3162.4-3, until after the Area Manager's February 1985 decision. Appellant was required by 43 CFR 3162.4-3 to file the reports and failed to do so. Appellant has not demonstrated that issuance of the incident of noncompliance (INC) by BLM was not technically and procedurally correct. Thus, we must conclude BLM properly issued the INC in accordance with 43 CFR 3162.4-3.

[2] BLM levied an assessment pursuant to 43 CFR 3163.3(h), which provided for assessment of the following liquidated damages: "(h) For failure to maintain records and file required reports, records, samples, or data as required by the regulations in this part and by applicable orders and notices, \$ 100." On March 22, 1985, BLM suspended the use of assessments for noncompliance pursuant to this provision, except where actual loss or damage could be ascertained, stating:

It is the intent of the Bureau to more clearly define the operational requirements of the Federal Oil and Gas Royalty Management Act. While the necessary in-depth analysis of these regulations is occurring, the Bureau, through the exercise of its delegated discretionary authority, is taking interim actions to: (1) Suspend the use of the assessment for noncompliance provisions of 43 CFR 3163.3(c) through (j), except where actual loss or damage can be ascertained.

50 FR 11517 (Mar. 22, 1985).

BLM implemented this suspension in Instruction Memorandum (IM) No. 85-384 (Apr. 16, 1985), as follows:

Enclosed is a copy of the Notice of Intent to propose rulemaking which was published in the Federal Register on March 22, 1985. As stated in this notice, the following actions are hereby taken:

- The assessment for noncompliance provisions under 43 CFR 3163.3(c) through (j) are suspended, except where actual loss or damage can be ascertained.

On January 30, 1986, BLM proposed rules to clarify the operational requirements of the Federal Oil and Gas Royalty Management Act contained in 43 CFR Part 3160 (51 FR 3882 (Jan. 30, 1986)). The proposed rules would eliminate the assessment for the failure to file reports in a timely manner under 43 CFR 3163.3(h). In the preamble to the proposed regulations BLM states: "Assessment under the various Acts authorizing the leasing of minerals would be modified by the proposed rulemaking to eliminate automatic assessments [1/] for noncompliance involving violations of §§ 3163.3(d), (e),

1/ The terms of 43 CFR 3163.1 are sufficiently broad to provide discretionary authority to not levy an assessment. However, BLM's stated policy at the time of issuance of the INC's was to automatically assess pursuant

(g), (h), and (j) of the existing regulations." (Emphasis added.) 51 FR 3887 (Jan. 30, 1986). Therefore, under the proposed rules, a lessee cited for failure to file a periodic report would be given a specified time in which to submit the missing reports. 43 CFR 3163.3(b)(1). Hence, BLM would not automatically assess Somont but would be required to give Somont notice that it had violated the reporting requirements.

We recognize that 43 CFR 3163.3(h) was in effect at the time BLM took its action, and neither the suspension nor the proposed regulations are clearly dispositive herein. They do, however, reflect the Department's present policy concerning the levy of an assessment for failure to comply with the reporting requirements. In the past this Board has applied an amended version of a regulation to a pending matter, if to do so would benefit the affected party, and if there were no countervailing public policy reasons or intervening rights. James E. Strong, 45 IBLA 386 (1980). The rationale for such action is equally appropriate in this case where BLM has evidenced a change in its assessment policy and there are no countervailing regulations, public policy reasons or intervening rights. For that reason, we vacate the decision to levy an assessment pursuant to 43 CFR 3163.3(h).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed in part and vacated in part.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Bruce R. Harris
Administrative Judge.

fn. 1 (continued)
to 43 CFR 3163.3(c)-(j). See IM No. 84-594 (July 14, 1984); IM No. 84-594, Change 3 (Jan. 4, 1985).

