

Appeal from a decision of the Montana State Office, Bureau of Land Management, upholding determination of noncompliance and assessment of liquidated damages.

Affirmed in part; vacated in part.

1. Oil and Gas Leases: Generally

BLM may properly determine the failure to submit timely a monthly report of operations is an incident of noncompliance under 43 CFR 3162.4-3.

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

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

APPEARANCES: Shelly Gipson, drilling and production secretary, Burton/Hawks, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Burton/Hawks, Inc., has appealed from a decision of the Montana State Office Bureau of Land Management (BLM), dated January 24, 1985, upholding the assessment of \$100 in liquidated damages for an incident of noncompliance involving the Federal 6-33 well, situated in the SE 1/4 NW 1/4 sec. 33, T. 34 N., R. 2 W., principal meridian, Montana, which is subject to Communitization Agreement NCR-500, under which appellant is the designated operator.

By letter dated January 7, 1985, the Area Manager, Great Falls Resource Area, BLM, notified appellant it was being assessed \$100 pursuant to 43 CFR 3163.3(h) for failure to submit timely its monthly report of operations (Form 3160-6) for October 1984 with respect to the Federal 6-33 well. On January 17, 1985, appellant requested BLM to waive the assessment. Appellant

explained it had not been able to file a report of operations for October 1984 because it had not received a gas volume statement indicating gas production for that month. When it did not receive a statement for November 1984, it promptly determined the well had been shut in during the month of September 1984 and submitted the required reports for October and November 1984. Appellant's letter was treated as a request for a technical and procedural review made pursuant to 43 CFR 3165.3.

In its January 1985 decision, BLM concluded the Area Manager had correctly identified the violation and assessed \$100 for appellant's failure to submit its October 1984 report of operations in a timely manner. Pursuant to 43 CFR 3162.4-3, the report was to be filed with BLM on or before December 10, 1984. The report was received by BLM on January 9, 1985, 30 days after the required filing date. BLM stated the assessment was consistent with 43 CFR 3163.3(h), and it could not consider appellant's good faith efforts. In its notice of appeal, appellant refers to its January 1985 letter for explanation of its appeal. We will treat the letter as appellant's statement of reasons for the appeal.

[1] The applicable regulation, 43 CFR 3162.4-3, provides in relevant part that a separate monthly report of operations for each Federal lease 'shall be filed * * * with the authorized officer on or before the 10th day of the second month following the production month * * * each month until the lease is terminated or until omission of the report is authorized by the authorized officer.' 1/ An assessment of liquidated damages may be levied for certain incidents of noncompliance, including the 'failure to * * * file required reports * * * as required by the regulations in this part [43 CFR Part 3160-- Onshore Oil and Gas Operations].' 43 CFR 3163.3(h). The designated liquidated damages for failure to file reports in a timely manner is \$100. Id. We find appellant failed to file a report of operations for October 1984, on or before December 10, 1984, and BLM properly determined such failure was an incident of noncompliance with 43 CFR 3162.4-3. 2/

1/ 43 CFR 3162.4-3 also provides that an extension of time may be granted by the authorized officer for the filing of the required reports. However, in the present case, no extension was requested by appellant or granted.

2/ Appellant asserts that it in good faith attempted to comply with the requirement to submit monthly reports. We have indicated good faith is a proper consideration in determining whether there has been an incident of noncompliance where an effort has been made to comply. See Chinook Resources, Inc., 85 IBLA 5 (1985). However, in that case there was a clear effort at compliance within the specified time period. In the present case, appellant states that it did not attempt to obtain the records on production from the Federal 6-33 well for October 1984 until after it received the November 1984 production reports. Thus, rather than acting in November, appellant waited until December 1984 to obtain the October 1984 records and comply with 43 CFR 3162.4-3. Under these circumstances, we conclude BLM's determination of noncompliance was proper.

[2] In reference to the question of the assessment, we note on March 22, 1985, BLM suspended assessment for noncompliance pursuant to 43 CFR 3163.3(h), except where actual loss or damage could be ascertained. 50 FR 11517 (Mar. 22, 1985). This suspension was implemented by BLM Instruction Memorandum No. 85-384 (Apr. 16, 1985) which provided in relevant part:

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.

BLM's proposed rulemaking was published on January 30, 1986, at 51 FR 3882, and would eliminate automatic assessments for failure to file reports in a timely manner under 43 CFR 3163.3(h). In Yates Petroleum Corp., 91 IBLA 252 (1985), we considered the effect of the proposed rule on assessments for noncompliance under 43 CFR 3163.3(h) and stated at pages 263, 264:

The proposed rules would eliminate the assessment for failure to * * * 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 for noncompliance involving violations of §§ 3163.3(d), (e), (g), (h), and (j) of the existing regulations.' (Emphasis added.) 51 FR 3887 (Jan. 30, 1986). Therefore, under the proposed rules BLM would not automatically assess Yates but would be required to give Yates 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 identification and the reporting requirements. In the past this Board has applied the present BLM policy to a pending matter if to do so would benefit the affected party, and if there were no countervailing laws, public policy reasons, or intervening rights. Somont Oil Co., Inc., 91 IBLA 137 (1986). For that reason, we vacate the decision to levy assessments pursuant to * * * 43 CFR 3163.3(h). [Footnote omitted.]

We conclude our holding in Yates is applicable to the present case, and therefore vacate that part of BLM's decision of January 24, 1985, which upheld an assessment of \$100 levied pursuant to 43 CFR 3163.3(h).

*183 Accordingly, 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 in part and vacated in part.

John H. Kelly
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge

D.