

MAPCO OIL & GAS CO.

IBLA 85-205

Decided October 28, 1986

Appeal from a decision of the Area Manager, Bookcliffs Resource Area, Bureau of Land Management, citing issuance of notices of incidents of noncompliance and assessment of damages. U-013792.

Affirmed.

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

BLM may properly issue notices of incidents of noncompliance requiring an oil and gas lessee to remove significant amounts of oil deposited in the emergency and disposal pits on a well site, pursuant to 43 CFR 3162.5-1, and assess a penalty for the violations. The Board will affirm a BLM decision based on judgment where the record substantiates the violations and the appellant fails to provide any countervailing evidence to show the decision is in error.

APPEARANCES: Greg Bechtol, Senior Engineering Technician, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Mapco Oil & Gas Company has appealed from a letter decision of the Area Manager of the Bookcliffs, Utah, Resource Area Office, Bureau of Land Management (BLM), dated November 19, 1984, which cited two notices of incidents of noncompliance (INC's) and assessed a penalty of \$250 for each notice.

On November 8, 1984, a BLM petroleum engineering technician made an inspection of the oil and gas operations at the River Bend Unit well No. 1-14E, located in sec. 14, T. 10 S., R. 19 E., Uintah County, Utah, on oil and gas lease U-013792. He issued two notices of INC's on November 16, 1984, one for significant amounts of oil deposited in the emergency pit, the other for significant amounts of oil deposited in the disposal pit, and cited respectively 43 CFR 3162.5-1 and 3162.1.

BLM issued the letter decision of November 19, 1984, with copies of the INC's, which specified that each violation must be corrected within 20 days.

The record indicates that the violations were abated December 3 and 4, 1984, respectively.

Appellant takes exception to the violations with its appeal, stating:

1. MAPCO Oil & Gas Company requests an appeal in order to define "significant amounts of oil" as cited in both INC's * * *.

2. MAPCO Oil & Gas Company conducts all operations in a manner which protects the mineral resources, other natural resources, and environmental quality. 43 CFR 3162.1 (a)

MAPCO Oil & Gas Company exercises due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements. 43 CFR 3162.1 (b)

3. MAPCO Oil & Gas Company conducts all operations in a manner which ensures the proper handling, measurement, disposition, and site security of leasehold production; which protects other natural resources and environmental quality; which protects life and property; and which results in maximum ultimate economic recovery of oil and gas with minimum waste and with minimum adverse effect on ultimate recovery of other mineral resources. 43 CFR 3162.1.

[1] The Departmental regulations applicable to the management of on-shore oil and gas operations require lessees to "conduct operations in a manner which protects the mineral resources, other natural resources and environmental quality" and to "comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan." 43 CFR 3162.5-1(a); see also 43 CFR 3162.1. In addition, lessees are required to report "[a]ll spills or leakages of oil" and to "exercise due diligence in taking necessary measures, subject to approval by the authorized officer, to control and remove pollutants." 43 CFR 3162.5-1(c). The Board has recognized BLM's authority under these regulations to assure that lessees meet their environmental obligations. Willard Pease Oil & Gas Co., 89 IBLA 236 (1985).

In this instance BLM inspected appellant's well site and cited the violations under appropriate authority. The BLM case summary in the record 1/ contains an explanation of the nature of the violations and the basis for the INC's as follows:

1/ A copy of this case summary was provided appellant by the Board by order of Feb. 13, 1986, and 30 days from its receipt were allowed for a response. No response was received.

NTL-2B, which is the instrument providing the approval for both pits, further states:

Section V General Requirements for Permanent
Surface Pits

Paragraph (4)

"Be kept reasonably free from surface accumulations of liquid hydrocarbons by use of approved skimmer pits, settling tanks, or other suitable equipment;"

* * * * *

Our interpretation of "significant amounts of oil" is directly related to NTL-2B's provision to keep the disposal pits "reasonably free from surface accumulations of hydrocarbons".

NTL-2B, with regard to disposal of produced water into unlined surface pits, requires as conditions of approval:

Section IV - Disposal in Unlined Pits

Applications for approval of unlined surface pits pursuant to exception Nos. 1, 2, 3, or 4 above must include:

Paragraph

(3) Evaporation rate for the area compensated for annual rainfall;

(4) Estimated percolation rate based on the soil characteristics under and adjacent to the pit;

(5) Depth and aerial extent of all useable water (i.e., less than 10,000 ppm total dissolved solids) aquifers in the area.

The inspector's interpretation is based on the provisions provided for in NTL-2B for disposal of produced water into unlined surface pits, which is to allow for both evaporation and percolation to dispose of produced water, considering possible impacts to subsurface useable water as defined.

The BLM inspector concluded that the two disposal pits contained significant quantities of hydrocarbon on the surface, which inhibited natural evaporation of the produced water and found the two pits were not in compliance with the general requirements for permanent surface pits.

The case summary concludes: "'Significant amounts' and 'reasonably free' are subjective and rely on a judgement decision by the inspector. We believe the photographs taken before [exhibits 3 and 4] and after [exhibits 6 and 7] corrective action support the inspector's decision to issue the violation cited." These photographs show the initial conditions found at the lease site and the obvious changes that took place at the time the pits were cleaned out in response to the INC's.

In a case such as this involving a judgmental decision by agency personnel who have special authority or qualifications to make such decisions, the Board normally accords considerable deference to the decision if it is supported by substantial evidence. An appellant may overcome such a decision by a preponderance of the evidence. United States Fish & Wildlife Service, 72 IBLA 218, 221 (1983). In this case the inspector's decision is supported by substantial evidence and appellant has not presented any countervailing evidence that would indicate that the pits were reasonably free of surface accumulations of liquid hydrocarbons, i.e., that there were not significant amounts of oil in the pits at the time of the inspection.

Therefore, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge

