

YATES PETROLEUM CORP.

IBLA 87-48

Decided September 9, 1988

Appeal from a decision of the Director, Minerals Management Service, affirming the assessment of interest charges for the late payment of royalties. MMS-86-0101-O&G.

Affirmed.

1. Oil and Gas Leases: Royalties

MMS properly assesses interest charges for the late payment of royalties found to be due on oil and/or gas produced from a Federal onshore oil and gas lease, where payment is made more than 2 months after the end of the month of production and sale, regardless of whether the lessee had an estimated payment on deposit with MMS within that 2-month period and thereafter which would have been sufficient to have paid the total royalty due.

APPEARANCES: James E. Haas, Esq., Artesia, New Mexico, for Yates Petroleum Corporation; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Yates Petroleum Corporation (Yates) has appealed from a decision of the Director, Minerals Management Service (MMS), dated August 5, 1986, affirming the January 6, 1986, assessment of interest charges totalling \$2,179.52 for the late payment of royalties due on oil and/or gas produced between April 1984 and April 1985 from Federal onshore oil and gas leases.

Yates was originally notified by Invoice No. 11500652, dated January 6, 1986, that it was being assessed interest in the amount of \$2,179.52 for late payment of royalties. On February 12, 1986, Yates filed an appeal with the Director, MMS, objecting to the interest charges. <sup>1/</sup> Yates asserted that the late payment of royalties was due to underpayments by purchasers of oil and gas and that at all times Yates had an estimated royalty payment deposited with MMS such that "MMS has not experienced a production month where the funds on deposit were not more than adequate when compared to the combined actual royalties due and eventual additional royalties due" (Letter to the Director, MMS, dated Feb. 3, 1986, at 1). Yates requested a refund

<sup>1/</sup> The record indicates that Yates paid the assessed interest charges, which were due Feb. 10, 1986, on Jan. 27, 1986, prior to pursuing its appeal.

of the interest charges. Along with its February 1986 letter, Yates submitted a chronological summary which indicated that Yates had an excess amount deposited with MMS of between \$120,000 and \$390,000 at the time of production between September 1984 and April 1985, and that additional production for the months April, June, and September 1984, and January to April 1985 had been reported in June and August 1985.

In its August 1986 decision, the Director, MMS, affirmed the interest assessment. The Director concluded that Yates, which was obligated by its leases and Departmental regulations to make royalty payments, was also properly required to pay interest charges on the late payment of royalties regardless of whether the late payment was caused by a third party. The Director also held that the estimated royalty payment on deposit with MMS could not be used as a "credit" to be drawn upon for late royalty payments, but rather served only to permit Yates to defer reporting and paying royalties for an additional 30 days. The Director explained:

Royalty payors have been given an option of making an advance deposit for the purpose of allowing them to report and pay royalties 60 days following the month of production instead of the normal 30-day requirement. The estimated payment rolls forward each subsequent month to allow an additional 30-day period to report the actual numbers for the next month.

(Decision at 2). Yates has appealed from the Director's August 1986 decision.

In its statement of reasons (SOR) for its appeal, appellant disputes MMS' policy of not using the estimated royalty payment on deposit with MMS as a credit for late royalty payments, alleging that it discourages the overpayment, if not encourages the underpayment, of estimated royalties in contravention of the statutory purpose of ensuring in accordance with 30 U.S.C. | 1701(b)(3) (1982), "prompt and proper collection and disbursement of oil and gas revenues owed to the United States." 2/ Appellant contends that this practice is arbitrary and capricious and without support in Departmental regulations. Appellant also argues that MMS' invoice did not properly notify appellant of the basis for the actual interest charges because the charges were reported at the lease, rather than the well, level. Appellant contends that the assessments set forth in the invoice were "not identified by accounting identification number, product code or selling arrangement" (SOR at 2). It requests that the Director's August 1986 decision be reversed and the interest charges refunded.

2/ Yates asserts that, "[w]ith the exception of the assessments for the production months of April, 1984 and June, 1984, estimated royalties were paid in a sufficient amount to satisfy actual royalty obligations incurred and subsequent adjustments thereto and on a timely basis for the months in which the interest and penalties are assessed" (SOR at 1-2). This apparently represents a shift in the position Yates took in its appeal to the Director, MMS. Therein, it maintained that estimated royalties were sufficient "[f]or the entire production period covered" (Letter to the Director, MMS, dated Feb. 3, 1986, at 1).

In its answer, MMS challenges appellant's perception of the proper purpose of an estimated royalty payment, explaining that it is simply not available as a credit to be drawn upon where appellant revises its required royalty payment for a particular month more than 60 days after the month of production because the estimated payment rolls forward upon actual payment of royalties due for that month made within the 60-day period. <sup>3/</sup> Thus, for example, MMS states that a lessee may make an estimated royalty payment for January production in February, whereupon the lessee will have until the end of March to make the actual payment. Upon making the actual payment in March, however, MMS asserts the estimated royalty payment rolls forward 1 month, thereby constituting the estimated payment for February production. If it is subsequently determined that the lessee owes additional royalties for January production, MMS states that the estimated payment is no longer available to cover that late payment, and interest charges are properly assessed. MMS contends that appellant was clearly on notice that this was MMS' policy regarding estimated royalty payments. Finally, MMS contends that appellant was provided adequate notice regarding the basis for each assessed interest charge: "Each assessment \* \* \* refers to the individual entry under the AID/Product Code and Selling Arrangement for the particular month. Thus, Yates may easily determine the error by reference to its original report" <sup>4/</sup> (Answer at 5-6).

<sup>3/</sup> Appellant apparently misinterprets MMS's position regarding the estimated payment procedure. At page 3 of its SOR, appellant states:

"Appellant made estimated royalty payments for the various items assessed on a timely basis and in fact initially tendered an amount greater than the royalty actually owed notwithstanding future adjustments thereto. The Service takes the position that the sums tendered are credited to the appropriate accounts for the accounting period for which they are tendered. Then any surplus or excess over the actual royalty due as subsequently demonstrated by 2014 reports [Report of Sales and Royalty Remittance Form MMS-2014] is 'rolled over' to subsequent reporting periods."

However, as explained by MMS, the estimated payment system involves a one time estimated payment in which the entire estimated payment rolls forward following the payment of actual royalty due. MMS states:

"[F]or January production, royalty payments would be due by the end of February. However, to accommodate lessees who do not have the necessary data by that time, MMS allows the lessee to make a one time estimated payment. The estimated payment then rolls forward to become the estimate for February production."

Answer at 3; see MMS Oil and Gas Payor Handbook, Vol. II-Form MMS-2014, 3-113 (1986).

<sup>4/</sup> Appellant has challenged MMS' assertion that appellant was properly notified of the basis for each assessment by reference to the "AID/Product Code and Selling Arrangement." However, the individual assessments on MMS' invoice are referenced according to that code and presumably may be cross-referenced with appellant's original reports. Appellant has not established that this is not the case or that this did not constitute adequate notice. Accordingly, we conclude that appellant was properly notified regarding the assessment.

Royalty payments for oil and gas produced from a Federal lease are "due at the end of the month following the month during which the oil and gas is produced and sold." 30 CFR 218.50(a). Thus, royalty payments made after the end of the month following the month of production and sale (hereinafter production month) are late and subject to the accrual of a late-payment charge, in accordance with 30 CFR 218.54. See 30 CFR 218.51(e)(2). <sup>5/</sup> However, 30 CFR 218.51(e)(2) provides that "[e]xceptions to this late-payment charge may be granted when estimated payments on mineral production have previously been made in accordance with MMS instructions to the payor." See also 30 CFR 218.102(a). The MMS Oil and Gas Payor Handbook provides information on making estimated royalty payments.

[1] Section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. | 1721(a) (1982), specifically provides, in the case of oil and gas leases, that "where royalty payments are not received \* \* \* on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments." Departmental regulation 30 CFR 218.54 implements this statutory provision. Moreover, this Board has held that the Government has the authority, independent of any specific grant thereof, to make a unilateral determination of interest owed. Peabody Coal Co., 72 IBLA 337, 348 (1983); Atlantic Richfield Co., 21 IBLA 98, 111, 82 I.D. 316, 322 (1975). However, appellant does not challenge MMS' authority to assess interest charges for the late payment of royalties; rather, it contends that it should not have been assessed interest charges for the late payment of royalties because its estimated royalty payments were at all times, except for possibly April 1984 and June 1984 (see note 2, supra), sufficient to cover the actual royalty then due, including additional royalty subsequently determined to be due.

Counsel for MMS provides a clear and cogent explanation of why appellant's contention is incorrect:

Each production month is accounted for separately by MMS. If royalty is not paid by the end of the month following the production month (or 2 months in the case where an estimate is on file), then interest is due. Therefore, just as interest is due when an actual payment exceeds an estimate (since the incremental royalties in excess of the estimate were made more than 1 month after the production month), any upward revisions to the actual payment requires payment of interest from the date royalties were due (the end of the second month following the production month).

The fact that Yates' estimated payment is retained by MMS does not relieve it of the interest payment obligations. At the time that the actual payment for production month one is made, the estimate for that month automatically rolls forward to meet the

<sup>5/</sup> Section 218.51(e)(2) of 30 CFR refers to the calculation of a "late-payment charge in accordance with 30 CFR 218.54." That section provides for an interest charge on late payments. Therefore, references to late-payment charges actually mean interest charges calculated pursuant to 30 CFR 218.54.

royalty payment obligation for production month two which is due at that time. Hence, it is not available any longer to pay royalties due for production month one. Any late payment of royalties for month one \* \* \* therefore incurs an interest payment obligation.

(Answer at 4).

The principal purpose of allowing an estimated payment is to provide the payor with an additional month within which to make actual royalty payments which will be considered timely. Submission of an estimated payment does not establish credit upon which the payor may draw any time a payment is late. When actual payment is made, the estimated payment rolls forward to satisfy the royalty obligation for the next month.

Accordingly, we conclude that the Director, MMS, properly affirmed the assessment of interest charges totalling \$2,179.52 for the late payment of royalties due on oil and/or gas produced between April 1984 and April 1985.

MMS's estimated payment system is not contrary to the policy expressed in FOGRMA to ensure the prompt and proper collection of royalty. The threat of a late payment charge when royalty is not accurately reported and timely paid is in line with the purposes of the statute. Such a charge should be an incentive to lessees to avoid situations where they owe additional royalties by virtue of retroactive adjustments in past due royalty. To the extent that an estimated payment is found to be under the amount actually determined to be due, as MMS points out, a lessee will be liable for that deficiency, as well as a separate late payment charge. That charge should also be a disincentive to underpay estimated royalties.

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

I concur:

Will A. Irwin  
Administrative Judge