

DALPORT OIL CORP.

IBLA 87-214

Decided September 21, 1988

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, affirming a finding of noncompliance and the imposition of an assessment for failure to comply with a written order directing that a storage tank valve be sealed by November 10, 1986. NM-31263.

Affirmed.

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

BLM may properly cite an oil and gas lessee for an incident of noncompliance with regulatory requirements upon a showing of a failure to effectively seal a valve as required by 43 CFR 3162.7-4.

2. Notice: Generally--Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance--Regulations: Generally

An assessment made pursuant to 43 CFR 3163.3(a) (1986) may be levied where an operator has failed to comply with a written order or instruction of an authorized BLM officer.

APPEARANCES: Leon M. Lampert, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Dalport Oil Corporation (Dalport) appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 12, 1986, affirming an Incident of Noncompliance (INC) and an assessment of liquidated damages for failure to comply with a written order of a BLM officer.

On November 6, 1986, an authorized officer of BLM, operating out of the Roswell Resource Area Office conducted an inspection of storage tank 7-9110 situated in the SW<sup>^</sup>SW<sup>^</sup> sec. 9, T. 15 S., R. 30 E., New Mexico Principal Meridian, and located on appellant's oil and gas lease NM-31263. In the course of his inspection he observed appellant's failure to effectively

seal a load valve on a sales tank in the production phase, which is a violation of 43 CFR 3162.7-4. Upon his return to the office, he telephoned Dalport, advised it of the violation and the period allowed for abatement. A notice of an INC was then issued and sent to Dalport by certified mail. The INC specified that the valve was to be sealed by November 10, 1986.

A followup inspection of appellant's storage tank on November 10, 1986, revealed that appellant had not yet taken corrective action, and a Federal seal was placed on the valve. A second INC notice was then issued citing Dalport with violation of 43 CFR 3163.3(a), for failure to comply with written instructions. In the "remarks" section of the second INC notice, the inspector stated "[I]ease inspected 11/6/86 & referred via phone to Lampert. He assured prompt compliance. On 11/10/86 the tank remained ineffectively sealed. Placed Federal seals on tank. Ran into pumper on a Graham lease @ 1PM about 8 miles north." The second notice called for corrective action to be completed within 48 hours of receipt.

On November 14, 1986, Dalport requested a technical and procedural review of the INC pursuant to 43 CFR 3165.3 (1986). Appellant explained that its agent was prepared to correct the violation cited in the INC on November 10, 1986, but the agent found that BLM had sealed the valve prior to his arrival at the tank (Letter of Nov. 12, 1986, from Dalport to BLM).

The New Mexico State Office, BLM, issued its December 12, 1986, decision after conducting its technical and procedural review. In the December 12, 1986, decision BLM stated:

The record shows that Dalport was notified of the violation on November 6, 1986, and an inspection on November 10, 1986, revealed the sealing device was not installed, at which point the BLM inspector installed a Government seal on the sales valve that was still unsealed.

Current New Mexico guidelines for correction time allowed for this type of violation is three days. Although the notice allowed only 48 hours, the [Roswell Resource Area] office effectively allowed 4 days for correction of this violation. [1/] Thus, the violation and assessment are upheld.

(Dec. 12, 1986, Decision at 1.)

In its statement of reasons on appeal appellant does not dispute that the valve was ineffectively sealed but contends that, because oil field supply houses were not open on Saturday, November 8, or Sunday, November 9, it did not have 3 days to correct the violation. Appellant contends that 3 full working days, exclusive of Saturday and Sunday, should have been

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<sup>1/</sup> The Nov. 6 INC notice called for completion of corrective action by Nov. 10, a period of 4 days, not 48 hours as stated in the BLM decision.

allowed for correction of the violation, thereby extending the deadline to Tuesday, November 11, 1986.

[1] The current regulations at 43 CFR 3162.7-4 detail the Department's minimum site security on Federal oil and gas leases. The regulations define appropriate valves as those "valves in a particular piping system, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation." 43 CFR 3162.7-4(a). The regulations further require that "[a]ll lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during \* \* \* production and sales operations." 43 CFR 3162.7-4(b)(1).

There is no question of the importance of sealing valves during the production phase of a well. A failure to do so exposes a well to theft and inaccurate reporting of production, either of which can result in a loss of royalty revenues. Given the gravity of the potential harm, immediate action to correct the incident of noncompliance is called for.

[2] The BLM State Office decision upheld the issuance of the second INC and the imposition of a \$250 liquidated damages assessment levied against appellant pursuant to 43 CFR 3162.3(a) (1986), for failure to comply with a written order of the authorized officer. 2/ Generally, where a lessee fails to comply with a written order of an authorized BLM officer within the specified time, BLM is entitled to assess liquidated damages. Mont Rouge, Inc., 90 IBLA 3 (1985); Willard Pease Oil & Gas Co., 89 IBLA 236 (1985).

The regulations provide that an officer may issue an oral order "confirmed in writing \* \* \* within 10 working days from issuance thereof." 43 CFR 3161.2. The reason for this provision is obvious. When immediate action is called for, it is unreasonable to require BLM to delay the corrective action pending delivery of a written order. The statements by appellant clearly acknowledge the receipt of the telephone notice, and, while the return receipt card which accompanied the November 6, 1986, INC notice does not show the date of delivery to Dalport, it bears a date stamp which indicates that it was returned to the Roswell, New Mexico, BLM office on November 17, 1986. There is no evidence that the written confirmation of the oral notice was not received within the 10-day period.

On appeal appellant contends it was not afforded 3 full working days to correct the violation before the Government placed a seal on its storage tank and issued the second INC. The applicable regulation, 43 CFR 3163.1, does not specify the length of time a lessee is to be given for correction of a violation, but provides that a lessee will be given a reasonable period of time to take corrective action. 3/ Appellant does not contend

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2/ The current version of the regulation can be found at 43 CFR 3163.2(a).

3/ A handwritten note on the face of the INC in the record states that the second INC was corrected on Nov. 20, 1986. We cannot ascertain how BLM arrived at this date as the date corrective action was taken. It may be

that the time specified in the oral notice was not the same as that specified in the INC. If appellant was unable to complete the corrective action within the specified period, it was incumbent upon it to advise BLM that more time was required and seek an extension. There is no evidence that appellant attempted to do so.

From our review of the record, we are satisfied that BLM did not err in finding the subject violation of Departmental minimum-site security requirements for appellant's failure to effectively seal a load valve on an oil storage tank. See Hardy Salt Co., 96 IBLA 39 (1987). We further find that appellant has failed to demonstrate that the time specified for compliance was inherently unreasonable, given the gravity of the failure and the corrective action to be taken, nor has appellant shown that additional time for compliance was sought but unreasonably denied. Accordingly, we find that the issuance of the INC's and the levy of an assessment pursuant to 43 CFR 3163.3(a) (1986) was appropriate.

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.

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R. W. Mullen  
Administrative Judge

I concur:

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Bruce R. Harris  
Administrative Judge

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fn. 3 (continued)

that it was the intent of BLM that Dalport replace the Federal seal with one of its own. However, this requirement was not clear on the face of the second INC notice and we find nothing in the record to place Dalport on notice that this action was required. The first INC notice called for the valve to be effectively sealed, and the valve was effectively sealed on Nov. 10 when the Federal seal was attached. If Dalport was to replace the existing seal, that requirement should have been clearly stated on the notice.