

CELESTE C. GRYNBERG
(D/B/A GRYNBERG PETROLEUM CO.)

IBLA 87-83, 87-84

Decided January 23, 1989

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, affirming assessment for incidents of noncompliance. TPR-86-18 and TPR-86-19 (New Mexico).

Affirmed.

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

BLM may properly assess a designated operator \$250 pursuant to 43 CFR 3163.3(a) (1986) for failure to comply, within a designated abatement period, with a written order to abide by stipulations governing abandonment of a lease well, regardless of whether the failure to comply might be attributable to a "de facto" operator of the well.

APPEARANCES: Susan Stone, Land Manager, Grynberg Petroleum Company, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Celeste C. Grynberg, doing business as Grynberg Petroleum Company (Grynberg), 1/ has appealed from two decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated September 22, 1986, affirming two assessments of \$250 for failure to abate separate incidents of noncompliance at the Celsius Federal No. 1 (TPR-86-18) and Baliff Federal No. 1 (TPR-86-19) wells situated, respectively, on Federal oil and gas leases NM-18846 and NM-12693. Because of the identical nature of the legal and factual issues involved, we have consolidated the appeals.

On April 24, 1986, the Roswell Resource Area Office, New Mexico, BLM, issued two Notices of Incidents of Noncompliance (INC's) citing Celeste C. Grynberg, who was specifically identified as the "operator," with violating

1/ Celeste Grynberg and Jack J. Grynberg evidently both do business as Grynberg Petroleum Company. The INC's at issue here specifically name Celeste Grynberg as "operator," and (as discussed below) she was also officially designated as "operator" for both leases.

43 CFR 3162.3-4 by failing to comply fully with "Surface Abandonment Stipulations." Although, as discussed below, it is not clear from the record exactly what these stipulations provided, they apparently required the surface location of oil and gas drilling operations to be cleaned and leveled, and the drill pad and access road to be ripped, reseeded, and protected from vehicular traffic. One INC (6 SAM 173) concerned the Celsius Federal site; the other (6 SAM 174) concerned the Baliff Federal site. The INC's each required the operator to comply with the stipulations and clean up the areas within 30 days of receipt. Also, as to the Baliff well, Grynberg was directed to mark the correct name and lease number over the well.

However, it appears that these INC's were not properly mailed to Grynberg. The INC's indicate that they were sent to Celeste C. Grynberg, 4000 N. Big Spring, Suite 109, Midland, Texas. The record contains an August 27, 1986, letter from the Jubilee Energy Corporation (Jubilee) to Grynberg which indicates, in its letterhead, that the Midland, Texas, address is that of Jubilee, not Grynberg.

On June 4, 1986, the Roswell Resource Area Office issued two other INC's with respect to the Celsius (6 SAM 202) and Baliff (6 SAM 203) wells. These INC's, which were mailed to Grynberg's correct address, were marked "2nd Notice" and essentially duplicated the INC's issued in April. They again required Grynberg to comply with the abandonment stipulations and clean the areas, establishing a new deadline of July 4, 1986. 2/ This deadline was not met, and the record shows that BLM's inspector followed up with a telephone call to Grynberg on July 15, 1986, and was advised that "Mr. Grynberg is out of the country and he is the one that will give the order to clear the locations." 3/

On August 11, 1986, the Roswell Resource Area Office issued yet another two INC's again requiring Grynberg to comply with the abandonment stipulations by September 9, 1986, and notifying her that she was being assessed \$250 for each INC, pursuant to 43 CFR 3163.3(a) (1986), for failing to comply with written orders, to-wit the April and June 1986 INC's. By letter dated August 25, 1986, Grynberg requested a technical and procedural review by the New Mexico State Director, BLM, regarding the assessments. In that letter, Grynberg requested that the assessments be waived in view of the fact that there had been "some disagreement between the operators [Grynberg and Jubilee Energy Corp.] as to whose responsibility it [was] to take corrective action on these wells."

In its September 1986 decisions, the New Mexico State Office, BLM, affirmed the assessment of \$250 each for the two INC's with written orders,

2/ The INC's indicate that they were sent to Grynberg's correct address in Denver, Colorado. Although there are no certified mail receipt cards in the record proving that she received them, Grynberg has not asserted that she did not.

3/ Presumably, "Mr. Grynberg" is Jack J. Grynberg. See note 1, supra.

because "BLM records show Grynberg as the designated operator for the subject well[s] and therefore responsible for compliance with BLM orders and instructions pursuant to 43 CFR 3162.3(b)[(1986)]." BLM further required Grynberg to pay the \$250 assessments and comply with the abandonment stipulations within 30 days of the date of the decision. Grynberg has appealed from BLM's September 1986 decisions.

In her statement of reasons for appeal, appellant contends that the \$250 assessments should be waived "because of the confusion surrounding the issue of responsibility for the lease[s] and well[s] and because once Grynberg accepted responsibility the corrective action as specified in the [INC's] was implemented immediately." Appellant explains that she initially was of the impression that Jubilee, "co-operator" of the Celsius Federal No. 1 and Baliff Federal No. 1 wells, had complied with the abandonment stipulations and that, when she became aware that Jubilee had not complied, she tried to work out a "solution" with Jubilee. Appellant further explains that, when Jubilee refused to accept responsibility for compliance, she assumed responsibility and immediately implemented the corrective action. ^{4/}

Before considering this matter, we are compelled to note that the record submitted to us by BLM in support of its decision is substantially deficient. First, it does not contain all documents necessary for us to be able to confirm what specific requirements for restoration of the wellsite upon abandonment applied at the time the INC's were issued. Specifically, it does not contain copies of the leases or drilling permits for these leases and wells. ^{5/} It also lacks proof that the INC's were received by Grynberg. Second, the record contains nothing whatsoever (other than the

^{4/} The record contains documents submitted by Grynberg which confirm the existence of a dispute as to cleanup responsibilities between Grynberg Petroleum Company and Jubilee. Jack J. Grynberg, in a letter to the working interest owners in the Celsius Federal No. 1 and Baliff Federal No. 1 wells, advised these parties that BLM had required that the wells be cleaned up by Sept. 9, but alluded to "disputes" with Jubilee, which was identified as "the defacto operator." In this letter, Mr. Grynberg requested the working interest owners to send money for cleaning up the wellsites to Jubilee, thus suggesting that he considered Jubilee to be responsible for the cleanup. Further, in an Aug. 15, 1986, letter to Jubilee, Mr. Grynberg stated that he was enclosing a check in the amount of \$462.42 "to cover [Grynberg Petroleum Company's] share of the cost of properly abandoning, restoring the surface and paying the non-compliance penalties" with respect to the Celsius Federal No. 1 and Baliff Federal No. 1 wells. However, on Aug. 29, 1986, Jubilee returned Mr. Grynberg's check, evidently to indicate that it was not responsible for cleaning up the site, stating that "[s]ince Celeste C. Grynberg is the operator of record for the Baliff and Celsius wells, Jubilee Energy is in the opinion it is Grynberg's responsibility to handle [BLM]."

^{5/} The record does contain a copy of "standard" abandonment stipulations for oil and gas activities in the Roswell, New Mexico, area, which were evidently sent to Grynberg on Apr. 15, 1985, in connection with the Celsius Federal Well. It also contains undated "special approval stipulations" that were evidently attached to the drilling permit issued for the Celsius

INC's themselves) describing the condition of the wellsites at the time the INC's were issued. Specifically, it does not contain any inspection reports (or other written descriptions of the site) or photographs of the site as of the date the INC's were issued. The INC's simply make the conclusory statement that the abandonment stipulations had not been "completed." Thus, we have no basis to determine that the conditions cited in the INC's actually existed. Third, despite the fact that BLM's decision imposed liability on Grynberg because she was the "designated operator" for the subject wells, the record did not originally contain copies of the "Designation of Operator" forms.

BLM is reminded of its obligations to maintain a complete case record and to forward that record to this Board when an appeal is filed. See Mobil Oil Exploration & Producing Southeast, Inc., 90 IBLA 173, 177 (1986). BLM is also reminded that, absent a record supporting its decision, the Board normally will set aside BLM's decision and remand the matter to be readjudicated where an appellant disputes the correctness of BLM's determinations. Wayne Klump, 104 IBLA 164 (1988); Soderberg Rawhide Ranch Co., 63 IBLA 260 (1982); see also Conoco, Inc., 96 IBLA 384, 389 (1987); Fred D. Zerfoss, 81 IBLA 14 (1984).

Fortunately for BLM in this case, however, Grynberg has neither denied the applicability of abandonment stipulations to these leases and wells at the time the INC's were issued, disputed service of the INC's, nor challenged the accuracy of BLM's factual finding that the abandonment stipulations had been violated. Further, in his letters to Jubilee in August 1985, discussed above, Jack Grynberg tacitly admitted that these wellsites had not been properly rehabilitated. Also, although BLM did not originally provide us with the necessary proof that Grynberg was the designated operator of these wells, the Board overcame this problem by requesting from BLM and taking official notice of copies of the designation of operator forms. However, we stress that the burden is normally on BLM to provide an adequate file, and that it should not be necessary for us to take such action. In these circumstances, we do not deem it necessary to remand the matter to BLM to assemble an adequate record as to the condition of the wellsites when the INC's were issued, and we have presumed that stipulations similar to the "standard" stipulations were in effect on both leases when the INC's were issued.

[1] In April and June 1986, BLM cited Grynberg, as operator, for failing to comply fully with surface abandonment stipulations, in violation

fn. 5 (continued)

Federal Well. However, these "standard" stipulations vary slightly from the "special approval stipulations." For example, the former require the access road to be ripped "with the rips approximately 18 inches apart" and the latter requires that the rips be "on the contour * * * approximately 3 feet apart." Thus, it is not clear from the record exactly what was required of the operator of the Celsius Federal Well. Further, the record does not contain copies of any stipulations imposed on the Baliff Federal Well, and is silent as to when and how these stipulations were imposed.

of 43 CFR 3162.3-4(a), which provides that a "lessee shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer," certain wells which are subject to being plugged and abandoned. Under the literal terms of this provision, it was the responsibility of the "lessee" with respect to leases NM-18846 and NM-12693 to comply with this prescribed plan of abandonment.

However, at the time the April 1986 INC's were issued and thereafter, the regulations extended the term "lessee" to include the "designated operator" of the lease. They expressly provided for designation of an "operator" to be considered the "agent of the lessee * * * with full responsibility for acting on behalf of the lessee insofar as complying with applicable laws, regulations, the lease terms, NTL's, Onshore Oil and Gas Orders, and other orders and instructions of the authorized officer." 43 CFR 3162.3(a) (1986). Further, under 43 CFR 3160.0-5 (1986), the term "lessee," as used in 43 CFR Subpart 3160, was expressly defined to refer to and include the "designated operator."

Despite the deficiencies in the file noted above, we have ascertained that Grynberg was the designated operator with respect both to leases NM-18846 and NM-12693. The respective "Designation of Operator" forms (Form 9-1123 (Rev. Dec. 1957)) confirm that Grynberg was the designated operator for leases NM-18846 and NM-12693 when these INC's were issued. ^{6/} As designated operator, under the provisions cited above, she was responsible for complying with applicable lease terms and instructions by BLM. Accord Yates Petroleum Corp., 91 IBLA 252, 263 (1986).

There is no evidence to suggest that Grynberg or anyone else complied within the time set for abatement in the June 1986 INC's. It is Grynberg's position that she was under the impression either that Jubilee had complied, or, at the very least, that Jubilee was responsible for complying. However, as noted above, that responsibility was with Grynberg, as designated operator. While Jubilee may have been a "de facto operator" under leases NM-18846 and NM-12693 in Grynberg's view, it is clear that Jubilee was not the formally designated operator. We held in Yates Petroleum Corp., *supra* at 263, which involved an appellant who was a designated operator cited for various violations, that if the designated operator is of the opinion that a third party caused the abrogation of the responsibility to comply with the operational regulations, it may desire to pursue a remedy from that party.

^{6/} The record contains two Designation of Operator forms concerning lease NM-12693. One, dated Aug. 9, 1984, indicates that Exxon Corporation designated Upland Production Company as operator for a large portion of the lease acreage. However, the second form, dated May 11, 1984, indicates that Exxon Corporation designated Celeste C. Grynberg as operator for SE[^], sec. 17, T. 7 S., R. 32 E., New Mexico Principal Meridian. The record also contains a letter (apparently to the surface owner of this tract) alluding to the fact that the Baliff Federal Well is located in the SW[^] of the SE[^], sec. 17. Thus, it was Grynberg who was the designated operator for that portion of lease NM-12693 that included the Baliff well.

However, the issue of the designated operator's own failure to comply, for which it was responsible, is distinct.

Having failed to fulfill her responsibility to comply with the abatement stipulations within the time set for abatement, we hold that Grynberg was subject to an assessment of money for failing to comply with the INC's issued in June. Under 43 CFR 3163.3(a) (1986), liquidated damages in the amount of \$250 may be assessed "[f]or failure to comply with a written order or instructions of the authorized officer * * * if compliance is not obtained within the time specified." ^{7/} Such liquidated damages cover the administrative and other costs to the United States caused by the failure to abate. Mont Rouge, Inc., 90 IBLA 3, 5 (1985). Moreover, it is clear that liquidated damages in the amount of \$250 may be assessed against a "lessee or operator" who fails to comply, within the abatement period, with a writ-ten order of an authorized BLM officer. Timberline Production Co., 98 IBLA 188, 191 (1987); Tricentrol United States, Inc., 97 IBLA 387, 395 (1987); William Perlman, 96 IBLA 181, 186-87 (1987); Yates Petroleum Corp., *supra* at 259; Mont Rouge, Inc., *supra*; Willard Pease Oil & Gas Co., 89 IBLA 236 (1985). Accordingly, we conclude that BLM properly assessed Grynberg, as operator, for failure to comply with the June 1986 INC's within the established abatement period.

Grynberg's final argument is that the assessment should be waived essentially because of her good faith efforts to comply with the abandon-ment stipulations after Jubilee refused to accept responsibility. We note that the current regulations provide authority to compromise or reduce the amount of an assessment. 43 CFR 3163.1(e). Moreover, the assessment itself is discretionary. See 43 CFR 3163.1(a)(2). However, as noted above, the efforts cited by Grynberg occurred only after she asked the working interest owners to send money to Jubilee so that Jubilee could clean up the well areas, and after she had subsequently determined that Jubilee would not clean up these areas, that is, not until after issuance of the INC's that penalized her in August 1986. Moreover, there is no evidence that, during the dispute with Jubilee as to who would comply with the abandonment stipulations, Grynberg made any effort to request an extension of time to comply with the June 1986 INC's while the dispute with Jubilee was resolved. ^{8/} We, therefore, can discern no good faith effort which would justify a waiver

^{7/} This regulation was revised and recodified effective Apr. 21, 1987. See 52 FR 5384 (Feb. 20, 1987). However, the regulation still provides that liquidated damages in the amount of \$250 may be assessed "for failure to abate [a] violation * * * within the time allowed" where a lessee is notified of a failure to comply with a regulation and given a reasonable time for abatement and the violation is minor. 43 CFR 3163.1(a)(2). Both of the August 1986 INC's involved herein refer to the violation as "minor."

^{8/} Departmental regulation 43 CFR 3162.3-4(c) provides that BLM may authorize a "delay in the permanent abandonment of a well for a period of 12 months," as well as additional delays.

of the assessments. Timberline Production Co., *supra* at 191. As we said in Mont Rouge, Inc., *supra* at 5: "[I]f a finding of noncompliance is technically and procedurally correct, a minimum assessment is properly levied, regardless of subsequent efforts on the part of lessee to comply by abatement of the noncompliance condition."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

David L. Hughes
Administrative Judge

I concur:

Anita Vogt
Administrative Judge
Alternate Member