

SANTA FE ENERGY CO.

IBLA 87-178

Decided February 2, 1989

Appeal from a decision by the Director, Minerals Management Service, affirming an order of the Royalty Management Program assessing late payment interest charges. MMS-86-0324-OCS.

Affirmed.

1. Outer Continental Shelf Lands Act: Refunds

A person claiming a refund of excess royalty payments must file a request within 2 years of the date payments were made. A refund claimant may not circumvent the refund procedures prescribed by Congress in sec. 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. | 1339 (1982), by "offsetting" prior alleged overpayments against future payment obligations.

2. Oil and Gas Leases: Royalties--Payments: Generally

30 CFR 218.54 authorizes the Minerals Management Service to assess late payment interest charges if royalty payments for oil and gas leases are unpaid or underpaid on the date the amounts are due. The imposition of late payment charges is appropriate to compensate the Government for the loss of the time value of the funds due but not paid.

APPEARANCES: Joyce Colson, Esq., Houston, Texas, for Santa Fe Energy Company; Peter J. Schaumberg, Esq., Howard W. Chalker, Esq., and Geoffrey Heath, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Santa Fe Energy Company (SFE) appeals from a decision dated September 30, 1986, by the Director, Minerals Management Service (MMS), upholding an order of the Royalty Management Program (RMP) assessing SFE \$146,794.07 in late payment interest charges for unauthorized credit adjustments.

On May 7, 1986, the Manager, Tulsa Regional Compliance Office, MMS, issued an order assessing SFE late payment interest charges of \$146,794.07 under lease OCS-G 3589, South Pelto Block 18. These charges represented interest on credits totalling \$389,083.53 which SFE had taken on its MMS Form 2014 (Report of Sales and Royalty Remittance) for May 1983. SFE had taken these credits (for the sales months of July, August, September, and October 1982), in order to offset prior royalty overpayments. By demand letter dated October 19, 1984, MMS required SFE to remit the amount of its credit adjustment. In its statement of reasons (SOR), SFE asserts that "[b]y letter dated March 5, 1986, MMS advised SFE that it would settle this matter by SFE's payment of \$389,083.53 and the MMS would process and approve SFE's refund claim of \$385,867.07." The MMS letter referred to has not been included in the file. In any event, on March 21, 1986, SFE remitted to MMS the amount of its May 1983 credit adjustment (\$389,083.53), and MMS' Tulsa Office, in its May 7, 1986, order, assessed interest charges on this amount. In his decision affirming that assessment, the Director, MMS, found that SFE's credit adjustment, taken to offset royalty overpayments, circumvented the refund provision of section 10 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. | 1339 (1982). The Director ruled that since crediting was improper, late payment interest charges were properly assessed.

SFE contends on appeal that since its credit adjustment corrected a royalty overpayment, there was no underpayment which could be subject to late payment interest charges. SFE also argues that its credit adjustment was made in good faith reliance on MMS instructions. SFE explains that in a December 13, 1982, telephone conversation it was told by an MMS official "that retroactive adjustments reflecting royalties on actual sales were appropriate if all other working interest owners agreed to take such adjustments." Relying thereon, SFE asserts it requested Mesa Petroleum Company (Mesa), the operator of South Pelto Block 18, to "instruct the other working interest owners to take the appropriate adjustments." SFE cites an undated letter (Exh. C) from the Chief of the MMS Lessee Contact Branch received by Mesa in February 1983. The letter states:

This is in response to your letter of February 18, 1983, regarding royalties to be paid on actual rather than entitled quantities [1] and the handling of deposits (estimated payments) against AID numbers.

First, you are not required to make any adjustments for reporting periods prior to the effective date of the reporting method change of December 1, 1982. If you wish to make adjustments prior to December 1, 198[2], then all working interests would have to make adjustments from the entitled basis to actual sales for purposes of consistency.

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1/ In its Answer, MMS states that effective Dec. 1, 1982, lessees were instructed to pay royalties based on actual sales rather than entitlements.

Second, your information regarding estimated payment procedures is generally correct. Estimated payments would be rolled up to the payor level so that underpayments for one or more AIDs could be compensated by overpayments for one or more other AIDs to eliminate or reduce late payment charges.

SFE states that by letter of August 4, 1983, Mesa advised all working interest owners to make adjustments consistent with MMS' letter. SFE argues that late payment interest charges should be assessed only against those working interest owners who either failed to make timely adjustments or made no adjustments at all.

MMS contends that SFE's credit adjustment improperly circumvented the refund provision of section 10 of OCSLA. MMS asserts that the amount credited was due the United States as royalty in the month in which the credit was taken. Since payment was made after it was due, late payment interest charges were properly assessed.

MMS contends that SFE failed to follow its advice. MMS asserts that SFE was advised to make a credit adjustment only "if it could demonstrate that the co-lessees made corresponding upward adjustments." Such was not the case, however, because, as SFE acknowledges, some working interest owners made adjustments months after SFE made its adjustment, and one working interest owner made no adjustment at all.

[1] Section 10(a) of OCSLA, 43 U.S.C. | 1339(a) (1982), provides that when it appears to the Secretary of the Interior that any person has made a payment to the United States in connection with any lease in excess of the amount he was lawfully required to pay, "such excess shall be repaid \* \* \* if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment."

There can be no doubt that the credits taken by SFE on its May 1983 Form MMS 2014 were subject to section 10 of OCSLA. In Mobil Oil Co., 65 IBLA 295 (1982), the Board stated: "With respect to refunds, repayments or credits, the 2-year period in the statute applies \* \* \*. The purpose of the 2-year limit is to urge lessees to verify their accounts promptly and ascertain the correctness of payments within the time provided." 65 IBLA at 304 (emphasis supplied).

In Mobil Oil, *supra*, the Board clarified the proper use of the term "offsetting." Agreeing with Solicitor's Opinion M-36942, Refunds & Credits Under the Outer Continental Shelf Lands Act, 88 I.D. 1090 (1981), the Board observed that offsetting is the crediting of overpayments against past payments due and that "[o]ffsetting has nothing to do with refunds and is permissible within the auditing period whether or not that period is within 2 years of the date of the audit." 2/ Id. 65 IBLA at 303.

2/ Mobil Oil involved an audit by the Department in which under- and overpayments of royalties were discovered.

OCSLA's reference to crediting, as in section 10(b) ("refund of or credit for such excess payment") refers, on the other hand, to credits "against future payments due and is governed by the 2-year limitation in the statute just as refunds and repayments are." 65 IBLA at 303.

In Kerr-McGee Corp., 103 IBLA 338 (1988), the appellant filed a request in January 1978 for reimbursement of royalty payments made between 1961 and 1970. In February 1978, the appellant deducted the amount for which it had requested reimbursement from its monthly report of sales and royalty filed with the Geological Survey. Affirming MMS' decision that appellant's "offset" was improper, the Board stated:

If this procedure were countenanced, we would thwart the will of Congress, which has expressly provided how refunds for overpayments are to be processed. The Secretary of the Interior, not the individual claimant, is empowered to pass judgment on refund requests and only requests which are timely filed are entitled to be approved. [Footnote omitted.]

103 IBLA at 340. Under section 10 of OCSLA, a person claiming a refund of excess royalty payments must file a request within 2 years of the date the payments were made. SFE's attempt to obtain credits for prior overpayments through an offsetting procedure which circumvents section 10 of OCSLA cannot be endorsed by this Board. Kerr-McGee, supra.

Thus, under section 10 of OCSLA, SFE should have filed a request for a refund in May of 1983 rather than taking a credit on its MMS Form 2014. SFE asserts, however, that it took the credit in reliance on MMS instructions. The MMS letter quoted above does not authorize SFE to unilaterally deduct amounts from its royalty payments due the United States. It purports to authorize adjustments only if such adjustments are made by all working interest owners. In any event, instructions or advice from a Government official cannot grant to an individual rights not authorized by law. Enfield Resources, 101 IBLA 120, 124 (1988).

[2] Section 111(a) of 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. Yates Petroleum Corp., 104 IBLA 173 (1988), and cases cited. 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 are late and subject to the accrual of a late payment charge, in accordance with 30 CFR 218.54.

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.

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Will A. Irwin  
Administrative Judge

I concur:

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Gail M. Frazier  
Administrative Judge