

ANR PRODUCTION CO.

IBLA 87-639

Decided August 8, 1989

Appeal from a decision of the Assistant Director for Program Review, Minerals Management Service, granting in part appeals from orders to pay late payment charges. MMS 85-0261-OCS and MMS 86-0032-OCS.

Appeal dismissed.

1. Appeals: Jurisdiction--Rules of Practice: Generally--Rules of Practice: Appeals: Dismissal

Pursuant to 30 CFR 290.7 any party adversely affected by a final decision of the Director, Minerals Management Service, may file an appeal with the Board. Where the issues raised before the Board were not raised before the Director, the appeal must be dismissed for lack of jurisdiction.

APPEARANCES: Hugh V. Schaefer, Esq., and Andrew A. Brodkey, Esq., Denver, Colorado, for appellant; 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 KELLY

ANR Production Company (ANR) appeals a March 18, 1987, decision of the Assistant Director for Program Review, Minerals Management Service (MMS), granting in part appeals of interest assessments for late payments of oil and gas royalties.

Pursuant to 30 CFR Part 290, ANR appealed the interest assessment in MMS 85-0261-OCS by notice dated September 19, 1985, and the interest assessment in MMS 86-0032-OCS by notice dated December 19, 1985. The only issue raised by ANR in these appeal documents was the correct date from which interest should be calculated. In a November 7, 1986, letter, ANR supplemented its reasons for appeal by raising various issues concerning the royalty assessments underlying the interest charges in MMS 85-0261-OCS and MMS 86-0032-OCS. ^{1/} Prior to that date, ANR had not filed any appeal

^{1/} Underlying the subject interest charges are assessments of royalties on Federal Energy Regulatory Commission Order 94 payments. In the letter of Nov. 7, 1986, appellant maintained that royalties are not due on such payments and, in the alternative, if they are due, they should be calculated differently.

notices or presented any arguments pertaining to the underlying royalty assessments.

In its March 18, 1987, decision, MMS agreed with the argument concerning the date from which interest should be calculated; thus, the appeal was referred to the Royalty Management Program's Fiscal Accounting Division for recalculation of interest. As to the arguments concerning the underlying royalty obligation, MMS concluded ANR's appeal was without merit and that even if it had merit, the November 7, 1986, letter was an untimely appeal of the royalty assessments, and would be dismissed. 2/

In its statement of reasons (SOR) before this Board, appellant contends that MMS is not authorized to assess late payment charges because they are inconsistent with the applicable leases and the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 1701-1757 (1982); that absent a statutory grant, there is no authority to charge interest; that the interest charges are actually civil penalties entitling ANR to the procedural protections of 30 U.S.C. § 1719 (1982) and causing the assessments to be contrary to the statute of limitations at 30 U.S.C. § 1755 (1982); and, that MMS did not consistently apply its operating policy regarding collection of small late payment charges. 3/

Thus, appellant has presented three separate sets of arguments. One set pertaining to the date from which interest assessments should be calculated and another set pertaining to the underlying royalty assessments were presented to the Director, MMS, and a third entirely different set was presented before this Board.

[1] Pursuant to 30 CFR 290.7, a party to a case adversely affected by a final decision of MMS shall have a right of appeal to this Board. However, arguments presented before the Board but not before the Director must be dismissed for lack of jurisdiction. Blackhawk Coal Co., 104 IBLA 169 (1988). See also Henry A. Alker, 62 IBLA 211 (1982). As none of the arguments presented before this Board were also presented to the Director, we lack jurisdiction to decide any of the issues appellant raises. In addition, by initially challenging only the date from which interest should be calculated, appellant effectively acquiesced to MMS's authority to assess late payment charges, subjecting this appeal to dismissal as it only challenges the authority of MMS to assess late payment charges. See ANR Production Co., 108 IBLA 387 (1989).

2/ The proposition that untimely appeals to the Director are properly dismissed pursuant to 30 CFR 290.3(a) is supported by Pennzoil Oil & Gas, Inc., 61 IBLA 308 (1982), and Texaco, Inc., 51 IBLA 243 (1980).

3/ The SOR filed with this appeal is very similar to those filed in the appeals decided in Coastal Oil & Gas Corp., 108 IBLA 62 (1989). In Coastal we affirmed assessment of the late payment charges with one minor exception which is irrelevant to the matter at hand.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, ANR's appeal is dismissed.

John H. Kelly
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge