

MAGNESS PETROLEUM CORP.

IBLA 88-443

Decided February 23, 1990

Appeal from a decision of the Acting Deputy State Director, Mineral Resources, New Mexico State Office, Bureau of Land Management, affirming an assessment of \$5,000 for drilling a gas well without a permit. 14-20-207-1643 (OK).

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties

Drilling a gas well on Federal lands without obtaining the prior approval of the Bureau of Land Management is a violation of 43 CFR 3162.3-1(c), and under 43 CFR 3163.1(b)(2), the Bureau is required to impose an assessment of \$500 for each day that the violation exists, including the days the violation existed prior to discovery, not to exceed \$5,000.

2. Federal Employees and Officers: Authority to Bind Government--Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, and reliance on allegedly incomplete or inaccurate information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Gary Magness, pro se; Margaret C. Miller, Esq., Department Counsel, Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Magness Petroleum Corporation (Magness) has appealed from an April 6, 1988, decision of the Acting Deputy State Director, Mineral Resources, New Mexico State Office, Bureau of Land Management (BLM), upholding an

assessment of \$5,000 for drilling a gas well without prior approval from BLM. 1/

In a letter dated January 6, 1988, the Chief, Branch of Fluid Operations, Tulsa District Office, BLM, informed Magness that its Johnson No. 25-1 well, located in sec. 25, T. 22 N., R. 1 E., Indian Meridian, Noble County, Oklahoma, on Indian Lease No. 14-20-207-1643, which had been drilled in November 1987, had not been approved by BLM. It requested that Magness file an "after-the-fact" APD. Thereafter, Magness filed an APD, and BLM accepted it for record purposes on March 4, 1988.

On March 21, 1988, the Chief, Branch of Fluid Operations, Tulsa District Office, BLM, issued a decision finding that the well had been spudded on November 5, 1987, without prior approval of the District Office, and had been completed as a gas well on November 10, 1987. In accordance with 43 CFR 3163.1(b)(2), he assessed Magness noncompliance damages of \$5,000. 2/

Pursuant to 43 CFR 3165.3, Magness sought review of the assessment with the New Mexico State Director, asserting that "[w]e filed the necessary documents with the Indian Agency and received their approval on October 21, 1987," and "[w]e did not know we needed approval by your agency or we would certainly have requested your approval." It stated that it did not intend to violate BLM's regulations and protested that the assessment was excessive.

In his decision, the Acting Deputy State Director stated that Magness had been correctly cited with a violation and that 43 CFR 3165.1(b)(2) provides for an assessment of \$500 per day for each day the violation existed, not to exceed \$5,000. He concluded that the violation existed from the date the well was spudded, November 5, 1987, until acceptance of the APD by BLM on March 4, 1987, and, therefore, \$5,000 was properly assessed.

On appeal, appellant reiterates its contentions that the amount assessed was excessive and that it was unaware of BLM's regulations. Appellant also questions why BLM required 2 months to notify it of the violation. BLM contends that as a Federal oil and gas lessee, appellant was responsible for being aware of, and complying with, applicable regulations.

[1] The regulation under which BLM's assessment was made, 43 CFR 3163.1(b)(2), provides as follows:

1/ In accordance with 43 CFR 3162.3-1(c), an operator is required to submit an application for permit to drill (APD) a well to the authorized officer for approval and "[n]o drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the authorized officer's approval of the permit."

2/ By letter of May 2, 1988, appellant notified the Minerals Management Service that the Johnson No. 25-1 was not a producing well but had been shut-in since Nov. 10, 1987.

(b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

* * * * *

(2) For drilling without approval or for causing surface disturbance of Federal or Indian surface preliminary to drilling without approval, \$500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed \$5,000 * * *.

This regulation, issued effective April 21, 1987 (52 FR 5384, 5393, Feb. 20, 1987), reflects Departmental policy that drilling without approval, or causing surface disturbance preliminary to drilling without approval, constitutes an instance of noncompliance "of such a serious nature as to warrant the imposition of immediate assessments upon discovery." In the preamble to the rulemaking, the Department stated that prior approval of such operations "is critical to proper multiple use management of the public lands." 52 FR at 5388.

In Noel Reynolds, 110 IBLA 74 (1989), we set forth the history and policy of this regulation in order to emphasize the seriousness of both disturbing the surface or drilling without prior approval by BLM. As we noted in Reynolds, *supra* at 78, the regulatory scheme provides for imposing an immediate assessment without notice or an opportunity to abate in three instances: (1) the failure to install blowout preventers; (2) the failure to obtain approval prior to drilling or causing surface disturbance; and (3) the failure to obtain approval of a plan for well abandonment. BLM's rationale for imposing an immediate assessment is stated in the commentary associated with the promulgation of the regulation:

The comments specifically criticized the provision of the proposed rulemaking that would permit the assessment of damages without notice. Lessees and operators, of course, are expected to know the obligations and requirements of a Federal or Indian oil and gas lease. In essence, the comments complain that the proposed rulemaking fails to provide provisions for notifying them that they are failing to comply with requirements which are contained in their lease or the regulations that control their operations. The inconsistency of this argument is clear because the only violations assessed without notice and an opportunity to abate are set out in paragraph (b) of this section and cover only a failure to install blowout preventers, a failure to obtain approval prior to drilling, and a failure to obtain approval for well abandonment. These three enumerated requirements for Federal and Indian lease operations could not be clearer or more widely known. The Bureau finds that additional notice prior to the assessment is not warranted due to the serious nature and potential consequences of a breach of these requirements.

52 FR at 5387.

[2] Appellant's claim that it was "totally unaware" of the regulations does not justify a different result. All persons who deal with the Government are presumed to have knowledge of relevant statutes and regulations. The regulations cited by BLM were published in the Federal Register, and were, therefore, a matter of public record. See 44 U.S.C. § 1507 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Venlease I, 99 IBLA 387, 390-91 (1987). Thus, appellant must be deemed to have had knowledge of the regulatory requirement that BLM approval was necessary prior to drilling the well and that failure to secure such permission could result in an assessment of up to \$5000. Moreover, if appellant relied upon alleged erroneous or incomplete advice from employees of the Bureau of Indian Affairs, such reliance cannot create rights not authorized by law or relieve appellant of the consequences imposed by the regulations. See Donald E. Stewart, 104 IBLA 48 (1988).

Finally, appellant complains that it took BLM 2 months to notify it of the violation. The regulations do not impose any requirement on BLM to notify a person violating 43 CFR 3162.3-1(c) within any particular time period following discovery of the violation. In addition, appellant has not alleged, nor does the record indicate, that BLM delayed in notifying it after discovering the violation.

Appellant also states that under the regulations there is "little or no chance of receiving a minimal fine of \$500.00." Certainly, that is true where, as in this case, the operator drills a well before it even files its APD. But, as discussed above, the prior approval requirement is so basic and the potential adverse consequences so great that the imposition of \$500 per day assessment, not to exceed \$5,000, is justified.

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