

ANR PRODUCTION CO.

IBLA 90-14

Decided March 12, 1991

Appeal from a decision of the Assistant Director for Program Review, Minerals Management Service, denying an appeal of a Royalty Management Program assessment levied for late reporting and nonreporting of royalties. MMS-89-0098-O&G.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Civil Penalties--Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Royalties: Generally

Assessments for the nonreporting and late reporting of royalties pursuant to 30 CFR 218.40 are properly distinguished from civil penalties assessed under sec. 109 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 1719 (1988), and are not subject to the procedures required by that section.

2. Oil and Gas Leases: Generally--Regulations: Force and Effect as Law--Regulations: Validity

The Board of Land Appeals has no authority to declare invalid duly promulgated regulations of this Department. Such regulations have the force and effect of law and are binding on the Department.

APPEARANCES: Hugh V. Schaefer, Esq., and Stephen M. Brainerd, Esq., Denver, Colorado, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Howard W. Chalker, Esq., and George Fishman, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

ANR Production Company (ANR) 1/ has appealed from a June 23, 1989, decision of the Assistant Director for Program Review, Minerals Management

1/ The notice of appeal in this case states that ANR, "by and through its attorneys \* \* \* hereby appeals the decision of the Director \* \* \*."

Service (MMS), denying its appeal of a \$160 assessment levied by MMS Royalty Management Program (RMP) officials for late reporting and nonreporting of royalties on Form MMS-2014 (Report of Sales and Royalty Remittance). 2/

By invoice No. 89712125, dated April 15, 1988, MMS assessed ANR \$160 for the nonreporting and late reporting of zero sales. 3/ In a form letter addressed to "Dear Payor" which appears in the file and apparently accompanied the invoice, MMS explained:

The enclosed Bill for Collection (Enclosure 1) is an invoice for late reporting and/or nonreporting exceptions issued under the [MMS] automated Auditing and Financial System's (AFS) exception processing program. These exceptions are assessed pursuant to 30 CFR § 218.40 (1987) (formerly codified at 30 CFR § 218.56).  
\* \* \*

\* \* \* \* \*

In the "Dear Payor" letter dated March 18, 1987, the Director, MMS, informed you that MMS would reinstate the billing of late report (LR)/nonreporting (NR) assessments beginning with the report month of April 1987. As delineated in that letter, the MMS policy of issuing these assessments is that:

fn. 1 (continued)

However, the statement of reasons submitted in support of the appeal states that "CIG Exploration, Inc. ('CIGE'), by and through its attorneys \* \* \* hereby submits the following Statement of Reasons \* \* \*." The attorneys filing the notice of appeal and the statement of reasons are the same, but there is no explanation of the relationship between ANR and CIGE.

2/ When ANR did provide the necessary information, it reported zero sales in each instance.

3/ In a field report dated Mar. 22, 1989, prepared in response to ANR's appeal of the assessment to the Director, MMS, the RMP Office, Fiscal Accounting Division, explained its computation of the assessment amount. It noted that for lease No. 284-032765, on Mar. 3, 1988, ANR submitted six reports for March 1987 sales reflecting zero sales, and indicated that in order to avoid assessments, those zero sales should have been reported by Nov. 2, 1987, 3 months after ANR received notice of the March 1987 nonreporting. Because each of the six reports was 5 months late (November 1987 through March 1988), ANR owed \$50 for each report for a total of \$300. However, ANR had already been assessed \$180 for nonreporting (as opposed to late reporting) on previous invoices. MMS credited ANR for those assessments and Invoice No. 89712125 reflected a balance of \$120. The remaining \$40 represented nonrespondent charges for two May 1987 reports for lease No. 053-032413 and two June 1987 reports for lease No. 256-071496.

Payors will be assessed \$10 per month for each accounting identification number, product code, and selling arrangement (AID/PC/-SA) with royalty value that is received late (late reporting). No assessments will be made for zero sales except as described below.

Payors will be notified of expected AID/PC/SA's not received (nonreporting) and will be given a 3-month period to take corrective action. Payors will be assessed for nonreporting in the following manner:

- No assessment will be made if the AID/PC/SA is reported as zero sales within 3 months after the nonreporting notice is received by the payor. If the zero sales transaction is reported after the 3-month period, the payor will be assessed \$10 for each month beyond the 3-month period, up to and including the month of receipt of the Form MMS-2014 or MMS-4014, Report of Sales and Royalty Remittance, that includes the expected AID/PC/SA.

\* \* \* \* \*

A report is required for every active AID/PC/SA for every sales month. \* \* \* [A] nonrespondent exception will most likely result if you fail to report every sales month on every product for which there is an active AID/PC/SA in the AFS. Failure to report completely and timely, including failure to report Transaction Code (TC) 20 for zero sales, will generate an exception.

(Payor Letter at 1-2).

By letter dated May 18, 1988, ANR appealed the assessment to the Director, MMS, arguing that MMS erred in assessing it for the late March 1987 reports because ANR had ended its responsibilities as payor for Lease No. 284-032765 on March 31, 1987. ANR also argued that the \$10 and \$20 per line assessments were excessive because MMS had amended its rules to reflect a \$5 per line charge for up to 100 lines; the assessments were actually penalties authorized by section 109 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (1988), and the due process and procedural safeguards mandated by that Act had not been afforded ANR in this instance; and the imposition of the assessment was inequitable in light of the MMS policy of waiving charges under \$25 since the assessment for each individual line was less than \$25, and accumulating the charges to exceed the threshold amount circumvented agency policy.

In his June 23, 1989, decision, the Assistant Director for Program Review, MMS, denied ANR's appeal, noting that the regulations require

that a Form MMS-2014 accompany all royalty payments to MMS; provide for the assessment of an amount not to exceed \$10 per day for each report not received by the designated due date; and define report as each line item on the Form MMS-2014. He rejected ANR's assertion that MMS rules prohibit charges in excess of \$5 per line, explaining that the \$5 assessment applies to erroneous, not late, reporting. While acknowledging that ANR had ended its responsibilities as payor for lease No. 284-032765 as of March 31, 1987, the Assistant Director concluded that ANR was nevertheless responsible for March 1987 sales reports, noting that under ANR's interpretation, no one would have been responsible for that month's reports. He also found that the \$25 threshold for assessments did not apply to each individual line charge; rather, he determined it had been RMP's longstanding policy to bill only when the sum of the invoices for each payor code exceeded \$25 in a 1-month processing cycle.

Finally, the Assistant Director concluded that the line item assessments were not civil penalties authorized by FOGRMA, but were nominal charges in the nature of liquidated damages designed to reimburse the Government for the expenses caused by late or inaccurate reporting. He explained that the information contained on the forms is necessary "to ensure that lease accounts are maintained in accordance with lease terms and regulatory requirements, that reported operations and royalty liability reflect actual conditions on the lease, and that timely payment is made to Indian lessors and to the States" (MMS Decision at 4), and that late reports disrupt computerized data collection activities, increasing administrative costs. He further stated that "[l]ate reporting may also impair MMS's capacity to provide States and the Bureau of Indian Affairs with Explanation of Payment reports within the timeframe specified in 30 CFR 219.104" (MMS Decision at 4-5). Accordingly, he determined that RMP had correctly assessed ANR \$160 for late reporting and nonreporting and denied its appeal. The present appeal followed.

[1] The regulations provide that a completed Form MMS-2014 must accompany all royalty payments to MMS, and that the completed Form MMS-2014 is due by the end of the month following the production month. 30 CFR 210.52. The provisions of 30 CFR 218.40(a) authorize the assessment of an amount not to exceed \$10 per day for each report not received by MMS by the designated due date. Procedures for establishing the assessment amount are set out in 30 CFR 218.40(e). Pursuant to that regulation, MMS established a \$10 per month assessment under 30 CFR 218.40(a) for late reports and failure to report (nonrespondent exceptions) under the AFS. 52 FR 27593 (July 22, 1987). <sup>4/</sup> The regulations further define a report "as each line item on a Form MMS-2014." 30 CFR 218.40(c).

<sup>4/</sup> MMS revised the assessment rates applicable to reports received on or after Jan. 1, 1990, but did not change the \$10 per month rate for nonrespondent exceptions under AFS. 54 FR 47838 (Nov. 17, 1989).

The issues raised by ANR in this appeal are virtually identical with those considered by the Board in Conoco, Inc. (On Reconsideration), 113 IBLA 243 (1990). In that case, in response to Tenneco Oil Company's arguments that late reporting assessments are without statutory basis unless classified as civil penalties, and that the assessments imposed there were invalid because they were imposed without the procedural requirements mandated by section 109 of FOGRMA, 30 U.S.C. § 1719 (1988), we stated:

We disagree. The language of FOGRMA directly contradicts Tenneco's assertion that the Act is the sole statutory authority for assessments relating to Federal oil and gas royalty payments. "The penalties and authorities provided in [FOGRMA] are supplemental to, and not in derogation of, any penalties or authorities contained in any other provision of law." 30 U.S.C. § 1753(a) (1982).

The late reporting assessments are not penalties designed to punish and deter violations, but are in the nature of liquidated damages imposed to compensate MMS for the costs incurred as a result of the late reports. See 52 FR 27545-46 (July 22, 1987). When promulgating these regulations, MMS stated that the Secretary's authority for the assessments derived, not from FOGRMA's civil penalty provisions, but from the Secretary's responsibilities to administer the MLA [Mineral Leasing Act], the OCSLA [Outer Continental Shelf Lands Act], and other mineral leasing laws. 49 FR 37336, 37340 (Sept. 21, 1984).

The mineral leasing laws provide ample statutory authorization for these assessments. Specifically, the MLA, 30 U.S.C. § 189 (1982), authorizes the Secretary "to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes" of the Act. Similarly the OCSLA, 43 U.S.C. § 1334(a) (1982), grants the Secretary the authority to "prescribe such rules and regulations as may be necessary to carry out" the provisions of the OCSLA. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 359 (1982), grants the Secretary similar authority. Because MMS is required by statute and regulation to share the royalty payments it receives with Indian lessors and the states and to provide the Indian tribes and states with timely explanations of those payments (see 30 CFR Part 219), these broad statutory grants of regulatory authority support the promulgation of regulations designed to compensate MMS for the added costs it incurs in complying with these duties as a result of late reporting.

Additionally, we note that, long before the enactment of FOGRMA, the Department's regulations provided for the assessment of liquidated damages for late royalty reports. See 30 CFR 221.54(j)(2) (1949). Accordingly, the procedural protection

afforded by FOGRMA does not apply to late reporting assessments imposed pursuant to 30 CFR 218.40. Cf. M. John Kennedy, 102 IBLA 396 (1988) (assessments levied pursuant to the oil and gas operating regulations in 30 CFR Subpart 3160 are not subject to the procedural safeguards established by FOGRMA).

113 IBLA at 248-49. See also Phillips Petroleum Co., 116 IBLA 152, 155-56 (1990). The rationale set forth in these cases relating to late reporting is equally applicable to nonreporting. Thus, none of ANR's arguments persuades us that our conclusions in Conoco, Inc. (On Reconsideration) should be reexamined.

[2] Similarly, we find ANR's challenges to MMS' enforcement of the assessment regulations to be unconvincing. ANR questions the regulatory definition of "report," arguing that under that definition it is being assessed numerous times for the same violation. The regulations at 30 CFR 218.40(c), however, clearly define a "report" as each line item on a Form MMS-2014. The Board has no authority to declare invalid duly promulgated regulations of the Department. Such regulations have the force and effect of law and are binding on the Department. Conoco, Inc. (On Reconsideration), supra at 249 and cases cited therein. Thus, MMS properly assessed ANR for each late or nonreported line on its Form MMS-2014.

ANR also asserts that the regulations should not be applied here because no royalty payments were affected by its late and nonreporting of zero sales, and, thus, no injury resulted from its noncompliance with the reporting requirements. We disagree. The royalty reporting requirements are distinct from the royalty payment requirements, and if MMS does not have accurate and timely royalty reports, it cannot meet its own management and reporting responsibilities without incurring additional costs. Thus, noncompliance with the reporting requirements directly results in added costs and expenses. Cf. M. John Kennedy, supra at 399; Yates Petroleum Corp., 91 IBLA 252, 257 (1986) (BLM incurs costs and expenses as a direct result of noncompliance with the oil and gas operating regulations). MMS properly assessed ANR liquidated damages designed to compensate MMS for these added expenses.

Further, we reject ANR's contention that the assessment should be remanded to MMS for recalculation of the amount. We find that MMS has exercised flexibility in determining the amount of assessments for late and nonreporting. Although 30 CFR 218.40(a) authorizes an assessment of up to \$10 per day, MMS concluded that an assessment of only \$10 per month was more in line with the actual costs associated with late reports and failure to report. See 52 FR 27593 (July 22, 1987). MMS also provides a payor with notice of the nonreporting and does not assess the payor for the nonreporting of zero sales for the first 3 months after receipt of the notice letter. We, therefore, conclude that MMS properly assessed ANR \$160 for late reporting and nonreporting of royalties.

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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Bruce R. Harris  
Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge