

TAYLOR ENERGY CO.

IBLA 95-275

Decided May 5, 1998

Appeal from a determination of the Associate Director, Minerals Management Service, affirming an order to repay an unauthorized recoupment. MMS-92-0381-OCS.

Appeal Dismissed.

1. Rules of Practice: Appeals: Dismissal

A statement of reasons for appeal which does not affirmatively point out why the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

APPEARANCES: George W. Payne, Jr., Revenue Accountant, Taylor Energy Co., New Orleans, Louisiana, for Taylor Energy Company.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Taylor Energy Company (Taylor) has appealed from a determination of the Associate Director, Minerals Management Service (MMS), issued on October 21, 1994, affirming an order to repay \$96,688.54 as an unauthorized recoupment. For reasons set forth below, we dismiss the appeal.

On April 14, 1992, Bill of Collection No. 76920081 in the amount of \$96,688.54 was issued to Taylor by the MMS Royalty Management Program (RMP), for alleged unauthorized recoupments of royalties taken on three Federal oil and gas leases on the Outer Continental Shelf (OCS). The alleged recoupments were reflected on Taylor's "Report of Sales and Royalty Remittance" (Form MMS-2014) filed with MMS between April and September 1986. The RMP concluded that the recoupments were unauthorized since Taylor had not obtained prior approval from the Department as required by section 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1339 (1994). Accordingly, the RMP directed that the amount improperly recouped be repaid to the Federal Government. Taylor paid the amount under protest and then appealed the decision which required the repayment.

Before the MMS Director, Taylor claimed that it had relied upon Paragraph 4.4.1 of the Oil and Gas Payor Handbook, Volume II, in making the

adjustment which was under challenge. That paragraph provided that "[a] payor may make an overpayment to MMS even though his Form MMS-2014 accurately reflects royalties due for a reporting month. In this instance, a payor could reduce this next month's payment by the amount previously overpaid. No reporting adjustments are necessary." Citing the above language, Taylor argued that "[w]e believe that the adjustment was made in good faith under a procedure outlined in the Oil and Gas Payor Handbook and no assessment is proper." Notice of Appeal dated May 18, 1992.

In rejecting Taylor's appeal, MMS first pointed out that Taylor could not have relied upon the cited provision of the Oil and Gas Payor Handbook because that Handbook was not issued to the public until December 1986, after the recoupment had been taken. In any event, MMS noted that the procedures cited by Taylor did not apply to Taylor's situation. Thus, Paragraph 4.4.1 presupposed a situation in which a payor correctly reported the royalty due but submitted a payment which exceeded the reported amount. In point of fact, Taylor was claiming that it had incorrectly overstated the amount due in previous months as justification for its offsetting the excess in subsequent months. In this latter situation, MMS noted, Taylor was required both by Addendum 4 of the Geological Survey Conservation Division Payor Handbook, dated July 1983, as well as a "Dear Payor" letter dated July 10, 1985, to submit a written request to MMS and obtain its approval "prior to recouping an overpayment or obtaining a cash refund on OCS leases." (Decision at 2.) Its failure to obtain such prior approval rendered its recoupments improper.

The MMS decision further noted that not only could MMS find no evidence that Taylor had ever submitted a request for a refund or credit with respect to its alleged overpayments, but that Taylor did not even assert that it had filed such a request. In the absence of such a showing, MMS concluded that the recoupment in 1986 was clearly unauthorized. Accordingly, MMS held that the Order requiring Taylor to repay the amount of the unauthorized recoupments was proper. Taylor thereafter filed this appeal with this Board.

We note that, before this Board, Taylor no longer asserts that its recoupment was proper under existing guidance provided by the Oil and Gas Payor Handbook. Rather, Taylor focusses its argument on the claim that the monies which it tendered to pay the Bill of Collection in May 1992, should, themselves, be subject to refund as overpayments. Taylor notes that a July 2, 1992, request for refund of its May 1992 payments had been denied by MMS in a decision dated March 17, 1994. It raises various arguments explaining why, in its view, the March 17, 1994, decision was in error.

As an initial matter, we note that Taylor's appeal of the March 17, 1994, decision was subsequently rejected by this Board in a decision reported as Taylor Energy Co., 139 IBLA 395 (1997), for reasons which we will not repeat herein. More to the point, however, is the fact that while Taylor presents arguments in its statement of reasons explaining why it believes the March 17, 1994, MMS decision was in error, it has provided

no basis for challenging the October 21, 1994, decision which is the putative subject of this appeal. Indeed, in its recitation of facts, Taylor admits that it "subsequently recouped the overpayment without authority." (Statement of Reasons at 1.)

[1] We have noted on numerous occasions that a statement of reasons for appeal which does not affirmatively point out why the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. See, e.g., Mustang Fuel Corp., 134 IBLA 1 (1995); Shell Offshore Inc., 116 IBLA 246 (1990). Herein, Taylor has not only failed to affirmatively point out any error in the decision under review, it has essentially conceded the animating rationale. Dismissal of its appeal is clearly appropriate under the circumstances. 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal is dismissed.

James L. Burski
Administrative Judge

I concur.

James P. Terry
Administrative Judge

1/ Moreover, we would note that it is well-settled that unilateral offsetting by a lessee of prior alleged "overpayments" is prohibited. See, e.g., Mesa Operating Limited Partnership, 98 I.D. 193 (1990); Santa Fe Energy Co., 107 IBLA 121 (1989).

