PACIFIC OPERATORS OFFSHORE, LLC

181 IBLA 165 Decided June 17, 2011

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

PACIFIC OPERATORS OFFSHORE, LLC

IBLA 2011-25 Decided June 17, 2011

Appeal from an order of the Bureau of Ocean Energy Management, Regulation, and Enforcement, cancelling field well-workover rules allowing the substitution of blind-shear rams for blind rams for operations on wells drilled from Platforms Hogan and Houchin on Lease OCS P-0166, offshore California.

Set aside and referred for a hearing.

1. Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases--Outer Continental Shelf Lands Act: Operating Procedures

   Under 30 C.F.R. § 250.612, the District Manager, Bureau of Ocean Energy Management, Regulation, and Enforcement, may approve field well-workover rules that modify the specific requirements of 30 C.F.R. Part 250, and such well-workover rules may be amended or canceled for cause at any time upon the initiative of the District Manager or upon the request of a lessee.

2. Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases--Outer Continental Shelf Lands Act: Operating Procedures

   The regulation at 30 C.F.R. § 250.615(b) (2003–2009) required the use of blind-shear rams in the minimum blowout-preventer system for well-workover operations. After field well-workover rules have been approved allowing the substitution of blind rams for blind-shear rams for well-workover operations, the District Manager, Bureau of Ocean Energy Management, Reclamation, and Enforcement, may amend or cancel, for cause, such field well-workover rules.

3. Administrative Procedure: Hearings--Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases--Outer Continental Shelf Lands Act: Operating Procedures--Rules of Practice: Hearings

Where the District Manager, Bureau of Ocean Energy Management, Reclamation, and Enforcement, cancels the field well-workover rules allowing the substitution of blind rams for blind-shear rams for well-workover operations, and the operator files a motion for a hearing under 43 C.F.R. § 4.415, raising specific issues of material fact regarding the safety to personnel and the environment, as well as the geological and engineering justification of requiring blind-shear rams for such operations, and the record without a hearing is insufficient for resolving those issues, the Board will refer the matter to the Hearing Division, Office of Hearings and Appeals, for assignment to an administrative law judge for a hearing on the issues raised by the appellant, and any other relevant issues identified after referral of the case for a hearing.

APPEARANCES: Steven Evans Kirby, Esq., and Marcus S. Bird, Esq., Los Olivos, California, for appellant; Phyllisina Leslie, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Albuquerque, New Mexico, for the Bureau of Ocean Energy Management, Regulation, and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Pacific Operators Offshore, LLC (PACOPS), has appealed from that portion of an undated order [1] of the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE),[2] received by PACOPS on July 20, 2010, providing that the

[1] In its Answer at note 2, BOEMRE indicates that the date of the order is July 14, 2010. The copy of the order included in the administrative record (AR) at Tab 26 bears a date stamp of July 14, 2010.

[2] On June 18, 2010, Department of the Interior Secretary Kenneth Salazar issued Secretarial Order No. 3302, restructuring and renaming the Minerals Management Service. The new name of the agency involved in this matter is BOEMRE. We will use the agency's new name in this Opinion. *See* 75 Fed. Reg. 61051 (Oct. 4, 2010)(amending Chapter II in 30 C.F.R. to reflect new name). BOEMRE

(continued...)

field rule departure [3] allowing the substitution of blind rams [4] for blind-shear (or shear) rams[5] in the blow-out preventer (BOP) for PACOPS' well-workover operations

[2] (...continued)
promulgated rules that extensively amended 30 C.F.R. Part 250, specifically the rules concerning certain safety measures at issue in the Deepwater Horizon catastrophe. 75 Fed. Reg. 63346–63377 (Oct. 14, 2010). Those rules became effective upon publication. Because they were issued after the dates that concern this appeal, we refer to the 2009 edition of 30 C.F.R. Part 250 where appropriate.

[3] The regulations define "[d]epartures" to mean

> approvals by the appropriate [BOEMRE] representative for operating requirements/procedures other than those specified in the regulations found in this part [30 C.F.R. Part 250]. These requirements/procedures may be necessary to control a well; properly develop a lease; conserve natural resources[;] protect life, property, or the marine, coastal, or human environment.

30 C.F.R. § 250.105 (Definitions).

[4] A "blind ram" is defined as

> [a] thick, heavy steel component of a conventional ram blowout preventer. In the normal pipe ram, the two blocks of steel that meet in the center of the wellbore to seal the well have a hole (one-half of the hole on each piece) through which the pipe fits. The blind ram has no space for pipe and is instead blanked off in order to be able to close over a well that does not contain a drillstring. It may be loosely thought of as the sliding gate on a gate valve.

Schlumberger's Oilfield Glossary at http://www.glossary.oilfield.slb.com.

[5] PACOPS explains that "[s]hear rams are emergency well control equipment integrated into BOPs," that, "[w]hen activated, . . . are designed to deliver a hydraulic guillotine-like slice to the drill pipe, crimping the ends of the severed pipe and sealing it off." Statement of Reasons (SOR) at 5.

> Elsewhere, the term "shear ram" is defined as
> [a] blowout preventer (BOP) closing element fitted with hardened tool steel blades designed to cut the drillpipe when the BOP is closed. A shear ram is normally used as a last resort to regain pressure control of a well that is flowing. Once the drillpipe is cut (or sheared) by the shear rams, it is usually left hanging in the BOP stack, and kill operations become more difficult. The joint of the drillpipe is destroyed in the process, but the rest of the drillstring is unharmed by the operation of shear rams.

Schlumberger's Oilfield Glossary at http://www.glossary.oilfield.slb.com.

(30 C.F.R. § 250.615(b)(5) (2009))[6] would expire on July 17, 2011. The expiration of that field rule departure would affect workover operations on existing wells drilled from PACOPS' Platforms Hogan and Houchin on Lease OCS P-0166, located on the Outer Continental Shelf (OCS) off the coast of Santa Barbara, California. As explained below, we set aside BOEMRE's decision and refer this case for a hearing pursuant to 43 C.F.R. § 4.415.

BACKGROUND

Platforms Hogan and Houchin were erected in 1967 and 1968, in water depths of 154 feet and 163 feet, respectively. In 1991, PACOPS became the designated operator of Lease OCS P-0166 and continues to serve in that capacity. As the designated operator, PACOPS is responsible for complying with the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331–1356a (2006), the terms of the lease and applicable regulations, as well as managing operations on the lease. *See* 30 C.F.R. § 250.105 (definitions); 30 C.F.R. § 250.143(b).

BOEMRE's regulations require the operator to use blind-shear rams in the BOP equipment when drilling, conducting well-completions, or conducting well-workovers on the OCS. AR Tab 6 (68 Fed. Reg. 8402, 8435 (Feb. 20, 2003)); *see also* AR Tab 1 (65 Fed. Reg. 38453, 38455 (June 21, 2000)). By February 21, 2006, the minimum BOP system for well-workover operations must include "[a]t least one set of blind-shear rams . . . capable of shearing the drill pipe or tubing in the hole." 30 C.F.R. § 250.615(b)(5) (2009). BOEMRE may approve field well-workover rules that depart from the standard requirements "[w]hen geological and engineering information in a field enables the District Manager to determine specific operating requirements," and such departure rules "may be amended or canceled for cause at any time." 30 C.F.R. § 250.612.

According to BOEMRE's records, PACOPS requested its first departure from the well-workover requirements on March 6, 2006, when it filed its field rules. AR Tab 9 (Field Rules at 2). "For routine operations on no-flow wells," PACOPS

[6] The applicable regulations define a "workover" operation, as distinct from "drilling" or "completion" operations, as "the work conducted on wells after the initial completion for the purpose of maintaining or restoring the productivity of a well." 30 C.F.R. § 250.601.

In its SOR, PACOPS states that it concurs "with the use of blind shear rams in the **drilling and completion** of new wells on Lease OCS P-0166." SOR at 16. Since well completions are not the subject of PACOPS' appeal, we address only PACOPS' objection to BOEMRE's cancellation of the field rule departure for well-workover operations.

requested to "substitute a blind ram for the blind shear ram as required under 30 CFR [§] 250.615(b)." *Id.* BOEMRE approved that field rule departure on March 8, 2006. AR Tab 10.

PACOPS' field rule departure allowing the substitution of blind rams for blind-shear rams for well-workover operations continued from March 2006 to June 2010, when BOEMRE announced cancellation of that departure. By letter dated June 25, 2010, BOEMRE informed PACOPS and other Pacific OCS operators that they were required to review and resubmit their field rules for reconsideration and approval. AR Tab 21. BOEMRE notified the operators, including PACOPS, "that variances or departures will not be granted for regulations specified in [30 C.F.R. § 250.615(b)]," and other regulatory provisions not at issue in this appeal. *Id.* BOEMRE informed PACOPS, (and the other Pacific OCS operators) that "existing field rules will be honored until July 16, 2010," and instructed it to review the field rules and submit revised rules "to allow review and disposition of [PACOPS'] submittal before [its] existing field rules lapse." *Id.*

By letter dated July 10, 2010, PACOPS objected to BOEMRE's June 25, 2010, letter cancelling the field rule departure for well-workover operations. PACOPS asked BOEMRE to reconsider and allow PACOPS to continue with the BOP stack variances in its existing field rules. PACOPS asserted that BOEMRE had "provided no technical justification or explanation to support [its] directive, even though it contradicts existing federal law and careful application of the best available science and engineering." July 10, 2010, Letter from PACOPS to BOEMRE at 1 (AR Tab 22). PACOPS stated that Platforms Hogan and Houchin "were set in the Carpinteria field, in shallow water depths of 135-170 feet, soon after the field's discovery in the mid-1960's." *Id.* "Because the field has been producing for 42 years, reservoir pressure and production have declined to a fraction of their peaks in the late 1960s," argued PACOPS, "[t]he average static fluid level is 2,412 feet below well surface," and the "[s]tanding/static reservoir pressure is low, ranging from 300-400 PSI." *Id.* PACOPS asserted that given the low reservoir pressure and production in the Carpinteria field, "fluids from existing production simply do not have sufficient energy to flow to the surface," and that "even in the event of a hypothetical, catastrophic shearing of the well casing, the laws of physics will not allow an oil spill of ANY amount to occur." *Id.* at 2. PACOPS stated that "[t]he best available science and engineering for over two decades has determined that these BOP stack arrangements are designed to handle at least seven times more than the current reservoir pressure." *Id.* Further, according to PACOPS, "the requirement to replace the blind ram with a set of blind/shear rams . . . is without any technical merit whatsoever given our 'NO FLOW' operating environment." *Id.*

PACOPS argued that, as an engineering matter, requiring installation of blind-shear rams on its well-workover operations would pose safety risks to field personnel:

> Our existing BOP configuration is 8 ft wide by 9 ft high and weighs approximately 15,000 pounds. Your proposed BOP stack configuration would require that those dimensions be increased to a weight of 28,000 + pounds, a width of 15+ feet and a height of 15 ft, almost double the current weight and girth. Your directive would force our field operating personnel to lift the BOP, tip the entire 14-ton assembly diagonally, and manhandle it under the Rig, using both blocks and air tuggers. The men would then have to raise and tip it back to the vertical, a procedure that needlessly creates massive new safety risk. This inherently dangerous procedure would have to be repeated each time they move on and off various wells, which, for normal production maintenance is often several times a week on each platform. For drilling operations, of course, such procedures would have to be repeated approximately every three weeks. As you recall, the serious personnel safety concerns of handling the increased size and weight of the BOP stack arrangements you propose was extensively addressed by us in 2005/6. At that time, we received the attached letter from our BOP supplier, Cameron, which concluded with the following language:
>
> > "In my estimation given the limited size and space under the substructure of the rig on Platforms Hogan and Houchin vs. the size of the BOP capable of shearing pipe it will be very difficult to get the BOP under the rig, if it would fit at all. Also it would require that the BOP [be] tipped on end and lowered under the rig using both the blocks and air tuggers *which becomes very unsafe.*"

Id. at 2-3. PACOPS concluded that BOEMRE's June 25, 2010, letter "is unnecessary, arbitrary, unjustified, and will expose our personnel to serious risk of bodily harm." *Id.* at 3. PACOPS' field rules submission retained the substitution of blind rams for blind-shear rams. *Id.* (Field Rules 2 of 8).

By letter dated July 14, 2010, BOEMRE notified PACOPS that its field rule departure for well-workover operations would expire on July 17, 2011, during which time PACOPS "should develop a plan to fully comply with these regulations," including 30 C.F.R. § 250.615(b)(5) (2009). AR Tab 26 at 1. Without responding to the merits of PACOPS' July 10, 2010, letter, BOEMRE instructed PACOPS to submit a quarterly report to BOEMRE summarizing its progress. BOEMRE left no room for discussion: "For no flow wells, substitute the use of blind rams instead of shear rams

in the BOP stack. This departure expires on July 17, 2011." AR Tab 26 at 2 (citing 30 C.F.R. § 250.615(b)(5)) (2009).

By letter dated August 3, 2010, PACOPS responded to BOEMRE's July 14, 2010, letter. Attaching a copy of its July 10, 2010, letter, PACOPS again requested reconsideration of the decision to cancel PACOPS' field rule departure allowing substitution of blind rams for blind-shear rams for well-workover operations. PACOPS complained that BOEMRE's letter "edicts a new set of Field Rules" with which PACOPS must comply, but had not addressed "the personnel safety and engineering concerns" raised in PACOPS' response. AR Tab 27. PACOPS requested a meeting with BOEMRE for purposes of reviewing PACOPS' "concerns and issues." *Id.* That meeting took place on August 17, 2010.

In a letter dated August 31, 2010, BOEMRE provided, for the first time, an explanation for cancelling the field rule departure at issue. AR Tab 28. BOEMRE stated that on September 23, 2008, PACOPS "was placed on probation for 5 years, because of violation of orders and regulations issued by the Secretary of the Interior, and fined $450,000.00," and that such "probation continues until September 23, 2013." *Id.* at 1. BOEMRE noted that under 30 C.F.R. § 250.612, "field well-workover rules may be amended or cancelled at any time." *Id.* BOEMRE stated that when the draft rule for the requirement for housing a blind-shear ram in the BOP stack was published in the *Federal Register* on June 21, 2000, "[a]ll comments, including some similar to those raised in [PACOPS'] aforementioned letters, were considered at that time." *Id.* at 2; *see* 65 Fed. Reg. at 38453. With publication of the final rule on February 20, 2003, operators were required to install blind-shear rams by February 21, 2006, so that "[a]ny operations requiring a BOP stack after that [date] must have BSR's [blind-shear rams]." AR Tab 28; *see* 68 Fed. Reg. at 8406-08.

BOEMRE provided the following additional justifications for cancelling PACOPS' field rule departure allowing blind rams:

> The Macondo incident in the Gulf of Mexico has indeed led to a review of all our regulatory requirements/processes and the issuance of NTL 2010-N05 and -N06 that have required operators to conduct BOP tests and furnish certification, certify compliance with 30 CFR 250 regulations, and submit additional information for their Oil Spill Response Plans among others. Other appropriate safety related regulations are in the process of development. In this context, the DM/CD's [District Manager, California District's] review of existing departures and enforcement of needed changes are reasonable, to ensure/enhance safety and environmental protection consistent with

> existing regulations in the environmentally sensitive Pacific OCS Region (POCSR).
>
> Furthermore, 30 CFR 250.107(a)(1) requires all operations to be conducted in a safe and workmanlike manner. The procedure for installing the BOP stack that you have described in your July 10, 2010, letter and during the meeting on August 17, 2010, is in direct violation of this rule and if used would lead to issuance of an INC [notice of incidence of noncompliance] and possible other enforcement action. The proper action is for you . . . to make needed modifications to enable safe operations.

AR Tab 28 at 2.

BOEMRE denied PACOPS' request for reconsideration, and further informed PACOPS that it could appeal the July 14, 2010, decision-letter in accordance with 30 C.F.R. § 290.4, *i.e.*, within 60 days of July 20, 2010 (the day of receipt).[7] PACOPS thereupon filed the present appeal.

[7] Like PACOPS, we find it unusual that BOEMRE would state that the July 14, 2010, letter constitutes the decision subject to appeal. It was in its June 25, 2010, letter that BOEMRE first informed PACOPS that the subject field well-workover rule departure would expire and that no variances would be granted. Further, if BOEMRE intended for the July 14, 2010, letter to constitute an appealable decision on the departure cancellation, it should have so informed PACOPS at that time. It was unorthodox for BOEMRE not to announce until issuance of the Aug. 31, 2010, letter that the 60-day appeal period had begun to run from the date of receipt of the prior letter.

Moreover, as PACOPS rightly argues, the July 14, 2010, letter provided no rationale for its decision to cancel the well-workover departure at issue. This Board has often stated that the recipient of a decision is entitled to a reasoned and factual explanation of the rationale for the decision, and must be provided an adequate basis for understanding and accepting it or disputing and appealing it. Further, the basis for that decision must be stated in the written decision and demonstrated by the administrative record. *E.g.*, *Jerry D. Grover d.b.a. Kingston Rust Development*, 160 IBLA 234, 241 (2003); *Nevada Division of Wildlife v. BLM*, 145 IBLA 237, 247 (1998); *Kanawha & Hocking Coal & Coke Co.*, 112 IBLA 365, 368 (1990); *Exxon Co., U.S.A.*, 113 IBLA 199, 205 (1990); *Eddleman Community Property Trust*, 106 IBLA 376, 377 (1989); *Roger K. Ogden*, 77 IBLA 4, 7, 90 I.D. 481, 483 (1983). Given the explanation for the decision to cancel PACOPS' field well-workover rule departure, as set out in BOEMRE's Aug. 31, 2010, letter, even though belated, and PACOPS' (continued...)

ARGUMENTS OF THE PARTIES

Given the record before us, PACOPS' arguments raise serious concerns about whether the requirement to use blind-shear rams for PACOPS' well-workover operations involves undue and unnecessary safety risks to field personnel and the environment, and whether that requirement may be counterproductive given the geological features that characterize the Carpenteria field where Platforms Hogan and Houchin are located. Neither BOEMRE's August 31, 2010, letter nor its Answer responding to PACOPS' SOR adequately responds to PACOPS' arguments or convincingly explains its decision to cancel PACOPS' field rule departure.

PACOPS argues that BOEMRE ignores the fact that "[w]orkover operations are essentially repair and maintenance procedures performed on existing wells," and that "the attendant well control issues are considerably different" from issues involved in drilling or completing new wells, "especially . . . in low pressure, high water cut, shallow water operations such as PACOPS', where well bores are incapable of flowing and blowouts are virtually impossible." SOR at 2. PACOPS asserts that BOEMRE further "ignores the serious personnel safety risks that militate against such a requirement [for blind-shear rams] here." *Id.*

PACOPS asserts that "until the subject order was issued, no operator of the subject Lease OCS P-0166 had ever been required to use shear rams during workover operations." *Id.* PACOPS emphasizes that "departure from the generic rule was—and still is—expressly authorized by the federal regulations," which "enable BOEMRE's District Manager to make site specific operating requirements based upon 'geological and engineering information available in the field.'" *Id.* (quoting 30 C.F.R. § 250.612). PACOPS states that in its case, "the departure from the generic requirement for shear rams in workover operations was based upon the unique characteristics of the Carpinteria Field in which PACOPS' operations are located," but that "in the wake of the BP catastrophe, BOEMRE suddenly and inexplicably cancelled this Field Rule departure, effective July 17, 2011." SOR at 2-3. PACOPS asserts that "BOEMRE's order was not accompanied by any explanation or rationale," and so "violates 30 CFR § 250.612, which provides that well-workover Field Rules may be amended or cancelled 'for cause.'" *Id.* at 3. "[I]n the words of Dr. William Fleckenstein, an experienced well control expert," states PACOPS, "use of shear rams in this situation is not only unnecessary, it 'is simply not worth the risks.'" *Id.* (quoting Declaration of William Fleckenstein (Fleckenstein Declaration), *Analysis of*

[7] (...continued)
response thereto, made within the parameters of 30 C.F.R. § 290.4, we see no prejudice to PACOPS' interests.

the Use of Blind Shear Rams in Workover Operations—Lease OCS P-0166, dated Nov. 6, 2010, at 5).

PACOPS reiterates that "[a]s a result of the [Carpenteria] field having produced for so long, reservoir pressure and produced volumes have declined to a fraction of their peak levels in the late 1960s"; that "[t]he average static fluid level exists 2,412 feet below well surface"; that "[s]tanding/static reservoir pressure is low, ranging from 300 to 400 psi"; and that "[a]s a result, [BOEMRE] officially certified Lease OCS P-0166 as a 'no-flow' reservoir in 1992," with that status remaining in effect today. SOR at 4-5 (citing Declaration of Steven Coombs (Coombs Declaration), Petroleum Engineer and Consultant to PACOPS, at ¶ 3; Fleckenstein Declaration at 7). PACOPS argues that "there is insufficient reservoir energy to push fluids to the surface," and that "even in the event of a hypothetical, catastrophic shearing of the well casing of an existing well, the laws of physics would not allow produced substances to flow from the well. **Instead, seawater would flow into the well."** SOR at 5 (emphasis added by PACOPS) (citing Fleckenstein Declaration at 1, 7; Coombs Declaration at ¶ 3 and Attachment 5).[8] According to PACOPS, "[t]he best available science and engineering for over two decades confirms that these BOP stack arrangements are designed to handle at least seven times the current reservoir pressure." SOR at 5 (citing Coombs Declaration, Attachment 5).

PACOPS asserts that "[s]hear rams are emergency well control equipment integrated into BOPs." SOR at 5. While PACOPS "concurs with the use of blind shear rams in the **drilling and completion** of new wells on Lease OCS P-0166," where there "is still a risk that the new well may penetrate a fault-block or zone that has not been drained and may be under high pressure," such "considerations do not apply in typical **workover** operations on existing wells in no-flow reservoirs." *Id.* at 6 (emphasis added by PACOPS). According to PACOPS, "Lease OCS P-0166 reservoir pressure is physically incapable of producing an oil spill during typical workover operations on existing wells," so that "the availability of blind shear rams offers no significant well-control benefit." *Id.* In fact, asserts PACOPS, "the risks of the use of blind shear rams outweigh their benefits." *Id.* (quoting Fleckenstein Declaration at 4-5). PACOPS advocates use of "alternative well-control methods, such as filling the casing with seawater," which has "proven effective **100%** of the time in Lease OCS P-0166 operations." SOR at 6 (emphasis added by PACOPS); *see* Fleckenstein Declaration at 7.

PACOPS states that its field rules "have worked well and the environmental and worker safety record of the operation has been exemplary"; that "with respect

[8] Attachment 5 to the Coombs Declaration is a copy of PACOPS July 10, 2010, letter to BOEMRE.

to workover operations since 1988 alone, the company has performed 3,916 workover procedures involving more than 84,000 rig hours on Platforms Hogan and Houchin"; and that "[n]ot a single major well-control event has occurred." SOR at 7 (citing Coombs Declaration at ¶ 8; Fleckenstein Declaration at 1, 7-8). PACOPS contrasts its 100% workover well control success rate without shear rams with the "statistically significant failure rate of 3% due to drill pipe configuration" with shear ram technology, "a rate of one blowout for every 387 wells drilled." SOR at 7 (citing Fleckenstein Declaration at 1, 2). PACOPS argues that "the requirement for shear rams presents significant personnel safety risks"; that "crew members are often reluctant to activate shear rams"; that "activation of shear rams at the surface has the inherent danger of immediately releasing the tubing weight"; and that "[t]he resultant 'bow string' effect can pose a grave risk of injury to workers on or near the rig floor." SOR at 7-8 (citing Fleckenstein Declaration at 5-6).

PACOPS reiterates the argument presented in its July 10, 2010, letter to BOEMRE that employing shear rams would pose dangers to field personnel, given the existing rig configuration. SOR at 8. In support of this position, PACOPS again cites to a February 21, 2006, letter to PACOPS from Cameron, "a major international BOP supplier," in which Cameron states:

> In my estimation given the limited size and space under the superstructure of the rig on Platforms Hogan and Houchin vs. the size of the BOP capable of shearing pipe, it will be very difficult to get the BOP under the rig, if it would fit at all. Also it would require that the BOP [be] tipped on end and lowered under the rig using both blocks and air covers *which becomes very unsafe*.

Fleckenstein Declaration, Appendix 6. PACOPS argues that "[t]he fact that such a supplier, one aware of the no-flow status of the lease, recommends against the use of shear rams here for reasons of personnel safety, says a great deal about the need to eliminate this unreasonable requirement." SOR at 9.

PACOPS states that "the agency's approved Field Rules have specified certain types of BOP equipment to ensure safe operations, while at the same time eliminating unreasonable requirements and potential safety risks to operating personnel." SOR at 10 (citing Coombs Declaration at ¶¶ 4, 7). PACOPS argues that "BOEMRE summarily cancelled PACOPS' 'departure' from the generic requirement for use of shear rams during workover operations," and "[i]n so doing, BOEMRE violated DOI's regulations governing the procedures to be followed in order to cancel Field Rules." *Id.* PACOPS states that under 30 C.F.R. § 250.612, "there [must] be 'cause' in order for BOEMRE to amend or cancel Field Rules," but that "BOEMRE's order herein states no cause at all." *Id.* In PACOPS view, "[t]he order should be set aside on this basis

alone." *Id.* (footnote omitted) (citing 5 U.S.C. § 706(2)(A) (2006); *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 412 (1971)). According to PACOPS,

> BOEMRE's order in this case does not explain why the agency cancelled the subject Field Rule. The order identifies no accidents, incidents or any geologic or engineering information to justify the change. The order merely issued an edict without comment. In so doing, the agency violated the basic requirement that it must "cogently explain why it has exercised its discretion in a given manner."

SOR at 11 (quoting *Motor Vehicles Mfgs. Ass'n of the United States v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 48 (1983)). PACOPS argues that "[i]t was arbitrary, capricious and an abuse of discretion for the agency to suddenly reverse course and cancel the BOP equipment Field Rule for PACOPS' workover operations—a rule grounded in compelling and undisputed geologic and engineering information." SOR at 11. PACOPS concludes that BOEMRE's action was without a rational basis.

In response, BOEMRE relies upon the fact that, since 2003, 30 C.F.R. § 250.615(b) has required lessees to use blind-shear rams in their minimum BOP systems by February 21, 2006, and that this requirement is still binding. BOEMRE asserts that the District Manager may amend or cancel the field rules for well-workover operations "for cause at any time upon the District Manager's initiative or the lessee's request." Answer at 11 (quoting 30 C.F.R. § 250.612). BOEMRE claims that PACOPS' "contention that requiring the blind-shear rams presents a serious safety hazard to its employees also does not justify waiving this regulatory requirement." Answer at 12. Rather, according to BOEMRE, "blind-shear rams are an important safety measure because they offer an additional opportunity to control a well in a difficult situation and may serve as the last line of defense against a blowout. The objective is to prevent injuries or loss of life." *Id.*

DISCUSSION—CASE REFERRED FOR A HEARING

[1] The Outer Continental Shelf Lands Act, 43 U.S.C. § 1337(a) (2006), authorizes the Secretary of the Interior to lease submerged land for exploration, development, and production of oil and gas. The Secretary may prescribe rules and regulations to administer the offshore leasing program that "he determines necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf," among other things. 43 U.S.C. § 1334(a) (2006). It is the United States' policy that OCS operations be conducted in a safe manner "using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil or seabed, or other occurrences

which may cause damage to the environment or to property, or endanger life or health." 43 U.S.C. § 1332(6) (2006).

The well-workover field rule regulation was first promulgated in 1988 as part of a major revision of the regulations. Originally found at 30 C.F.R. § 250.102, the well-workover regulation provided:

> When geological and engineering information available in a field enables the District Supervisor to determine specific operating requirements, field well-workover rules may be established on the District Supervisor's initiative or in response to a request from a lessee. Such rules may modify the specific requirements of this subpart. After field well-workover rules have been established, well-workover operations in the field shall be conducted in accordance with such rules and other requirements of this subpart. Field well-workover rules may be amended or canceled for cause at any time upon the initiative of the District Supervisor or upon the request of a lessee.

30 C.F.R. § 250.150 (1988). In 1998, 30 C.F.R. § 250.102 (1988) was re-designated as 30 C.F.R. § 250.612 with no substantive changes. 63 Fed. Reg. 29479 (May 29, 1998). In 2007, all references to "District Supervisor" were changed to "District Manager." 30 C.F.R. § 250.612, 71 Fed. Reg. 46399 (Aug. 14, 2007). No changes to this regulation have been made since 2007.

[2] The well-workover blowout prevention equipment regulation was first promulgated in 1988. Prior to 2003, lessees were required to use either "blind [rams] **or** blind shear rams" in the minimum BOP system for well-workover operations with the tree removed. 30 C.F.R. § 250.615(b) (1988-2002) (emphasis added). However, in 2003, the regulations removed the option to use blind rams and required lessees to use blind-shear rams in their minimum BOP systems by February 21, 2006. 30 C.F.R. § 250.615(b)(5) (2003). No substantive changes have been made to this provision since 2003.

As we have noted, despite the removal of the option to use blind rams in well-workover operations, and despite BOEMRE's belief that blind-shear rams were an "important safety measure" that "serves as the last line of defense against a blowout," PACOPS requested a departure from the regulatory requirements in March 2006 when it filed its field rules. Specifically, PACOPS requested to "substitute a blind ram for the blind shear ram as required under 30 CFR [§] 250.615(b)" for operations on "no-flow" wells on Platforms Hogan and Houchin. BOEMRE approved the field rule departure that same month. PACOPS' field rule departure for well-worker operations continued until June 2010, when BOEMRE canceled that field rule departure.

Our review of the record confirms PACOPS' assertion that BOEMRE provided no convincing explanation for its June 25, 2010, decision to cancel field rule departures for well-workover operations (30 C.F.R. § 250.615(b)). In its July 10, 2010, letter to BOEMRE, PACOPS provided specific reasons in arguing that cancellation of its field well-workover rule departure, thus requiring the use of blind-shear rams, was technologically infeasible and would create serious safety hazards for PACOPS' personnel. In its August 31, 2010, letter, BOEMRE does little more than cite to 30 C.F.R. § 250.612, which provides that field well-workover rules "may be amended or canceled for cause at any time." We agree with PACOPS that the key standard embodied in this provision is that BOEMRE must articulate some "cause" for amending or cancelling field rules. What BOEMRE fails to explain is why, given the purported need for the requirement, it nonetheless approved, for 4 years, PACOPS' field rule departure allowing blind rams rather than blind-shear rams on its well-workover operations on Platforms Hogan and Houchin.

The plain fact of the matter is that BOEMRE has allowed PACOPS to depart from the regulatory requirement; to now state that blind-shear rams are required for well-workover operations, citing nothing more than the regulation, strikes us as unconvincing. We are puzzled by the following assertion: "The record shows that [PACOPS] requested and received a departure through its well-workover field rule from 2006, *the first year the lessees were required to install blind-shear rams and were no longer afforded the option of installing blind rams*, through year 2010." *Id.* This sentence is internally inconsistent. The field rule departure at issue allowed PACOPS the option of installing blind rams—the very option BOEMRE says was no longer available.

In addressing PACOPS' argument that modifying rig configuration to accommodate blind-shear rams in well-workover operations will cause danger to field personnel, BOEMRE states:

> To the extent [PACOPS] claims its employees' safety would be at stake if blind-shear rams are used for the well-workover operations, operational safety associated with the moving of the larger, retrofitted BOP stack for well-workovers could be enhanced with structural modifications, if necessary. Additionally, the application of appropriate procedures and precautions while using cranes and other material-handling equipment would enhance operational safety as well.

Answer at 12-13. Upon considering this statement by BOEMRE, we conclude that it adds nothing to the discussion. PACOPS has described in specific terms, with documentation, the safety risks involved in installing blind-shear rams. BOEMRE's suggestions that PACOPS' operations "could be enhanced with structural

modifications, if necessary," and that "application of appropriate procedures and precautions while using cranes and other material-handling equipment would enhance operational safety as well," do not get at the heart of what PACOPS is arguing. Despite claiming that its "objective is to prevent injuries or loss of life," *id.* at 12, BOEMRE has dictated use of technology that PACOPS argues is dangerous to field personnel and the environment. In light of the seriousness of the issues involved, we grant PACOPS' motion for a hearing pursuant to 43 C.F.R. § 4.415, as explained below.

[3] PACOPS has filed a motion for a hearing under 43 C.F.R. § 4.415, as amended effective November 19, 2010. *See* 75 Fed. Reg. 64655, 64667 (Oct. 20, 2010). In accordance with 43 C.F.R. § 4.415(a), PACOPS identifies the specific issues of material fact that require a hearing; the evidence concerning these issues that must be presented at the hearing; the witnesses that need to be examined; and the documentary evidence that requires explanation. Given the hazards to life and property that PACOPS argues are involved in installing blind-shear rams in well-workover operations, particularly in light of BOEMRE's cursory response to PACOPS' assertions, we conclude that this case is appropriate for a hearing under 43 C.F.R. § 4.415. *See Aera Energy LLC v. Salazar*, __ F.3d __, 2011 WL 1691988 at *4, *7, *9 (D.C. Cir. 2011), *aff'g*, 691 F. Supp. 2d 25, 36 (D.C.C. 2010), *aff'g*, *Samedan Oil Corp.*, 173 IBLA 23 (2007).

In its Reply, PACOPS reiterates, and in many ways amplifies, the seriousness of the consequences that may result from BOEMRE's order cancelling the disputed field rule departure. PACOPS states that "[t]his matter boils down to the question of whether BOEMRE has shown 'cause' for its cancellation of the field rule," *i.e.*, whether BOEMRE "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action, including a 'rational connection between the facts found and the choice made.'" Reply at 2 (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Ins. Co.*, 463 U.S. at 43). PACOPS again objects to BOEMRE's having offered its August 31, 2010, letter as the *post hoc* basis for the earlier order cancelling PACOPS' field rule. PACOPS argues that the same regulations that require the use of blind-shear rams during workover operations also "provide that 'geological and engineering information available in the field' may justify a departure from the generic regulations." Reply at 2 (quoting 30 C.F.R. § 250.612). PACOPS argues:

> It is precisely because of the availability of such geological and engineering information from the Carpenteria Field that the subject field rule was adopted in the first place, and that blind shear rams have never before been required for workover operations on this lease, a lease operated by PACOPS or its predecessor-in-interest for more than 20 years. Nothing new has occurred to justify requiring the uses of

> blind shear rams **during workover operations** in this particular shallow water, "no-flow" operation. From a geological and engineering perspective, all that has occurred during this period is that produced volumes and reservoir pressures—and therefore the possibility and severity of a blowout—have declined. [Emphasis added by PACOPS.]

Reply at 2-3 (citing Fleckenstein Declaration at 7).

PACOPS claims that BOEMRE's second reason for cancelling the field rule departure, *i.e.*, PACOPS' "blemished safety record," is pretextual. Reply at 3 (quoting Answer at 2). PACOPS asserts that its "safety record is quite good, especially in recent years," Reply at 3, as shown by the Declaration of Bruce Johnson and a second Fleckenstein Declaration, attached to PACOPS' Reply. PACOPS states that its "Total Safety Performance Ranking among the other Pacific OCS operators during 2008 and 2009 was 3 out of 6," and that "[f]or 2008, the average Pacific OCS Safety Index for all operators was 0.109, whereas PACOPS' index was 0.087, better than average." Reply at 3-4. PACOPS asserts:

> Indeed, with particular reference to **workover** operations, PACOPS' record is exemplary. Since 1998 alone, PACOPS and its predecessor-in-interest have performed nearly 4,000 workover operations on the subject lease with no blowouts. Thus, PACOPS has amply demonstrated its ability to safety control any "gas kicks" with its current blowout prevention equipment. Fleckenstein Reply Dec. pp. 3-4. In short, PACOPS' safety record is quite good. More importantly however, there is no allegation, backed by any evidence, that anything in PACOPS' safety record is germane to BOEMRE's cancellation of the field rule. [Footnote omitted; emphasis added by PACOPS.]

Reply at 4.

PACOPS also emphatically disagrees with BOEMRE's assertion "that there is a risk of fire or explosion 'based on the static pressure of the wells' associated gas.'" *Id.* at 4 (quoting Answer at 2). PACOPS argues as follows:

> [T]here is no substance behind the allegation. Both parties concede that PACOPS' wells on lease OCS P-0166 are "no-flow" wells, and that they have been properly certified as such since 1992. BOEMRE's Mr. Schroeder alleges in paragraph 7 of his declaration that these wells are nevertheless capable of flowing natural gas because the wells can build up 300-400 psi of static pressure. As Dr. Fleckenstein explains in

> paragraph 3 of his attached declaration, these wells are high water-cut oil wells that do produce some associated gas. However, he goes on to explain that if there is a loss in surface pressure integrity of these wells, oil and water will enter the well bore from the formation and will kill the well. This is precisely the reason BOEMRE designated these wells to be "no-flow" in the first place. Thus, even in the event of a "gas kick," the oil and water would enter the well bore through down hole perforations and kill the well. "The well would remain incapable of flowing." Fleckenstein Reply Dec. para. 3. Mr. Coombs agrees that "a blowout is virtually impossible." Coombs SOR Dec. p. 2: 4-7.
>
> Dr. Fleckenstein explains that the very fact that BOEMRE has correctly designated these wells to be "no-flow" means that the wells are incapable of gas flow. BOEMRE has provided no nodal analysis or other accepted engineering method to substantiate Mr. Schroeder's claim that the wells in question are capable of gas flow. It is also Dr. Fleckenstein's opinion that BOEMRE could not do so using the actual production characteristics of the Carpinteria Field. Fleckenstein Reply Dec. at p. 4. The bottom line is that BOEMRE does not and can not fairly contradict the laws of physics which would not allow produced substances to flow from the well. See, Fleckenstein SOR Dec. Pp. 1 & 7; and Coombs SOR Dec. para. 3, and Attachment #5.

Reply at 4-5. PACOPS concludes that the additional risks associated with well-workover operations are not justified "in an environment such as the Carpenteria Field." *Id.* at 5.

Because we conclude that BOEMRE has failed to substantiate its decision, as well as to respond to the palpable concerns regarding safety and engineering raised by PACOPS, we set aside BOEMRE's decision. The potential risks to life and property resulting from the requirement that PACOPS use blind-shear rams in its well-workover operations, as described in PACOPS' pleadings and attendant Declarations, involve specific issues of material fact that, if proved, would alter the disposition of the appeal. The record before us is insufficient for resolving those issues. Thus, pursuant to 43 C.F.R. § 4.415, we refer this matter to the Hearings Division for assignment to an administrative law judge for a hearing on the factual issues raised by PACOPS, as well as any other relevant issues identified after referral of this case for a hearing. The decision of the administrative law judge will be final for the Department unless a notice of appeal is filed in accordance with 43 C.F.R. § 4.411.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision is set aside and this case is referred for a hearing in accordance with 43 C.F.R. § 4.415.

/s/
James F. Roberts
Administrative Judge

I concur:

/s/
Sara B. Greenberg
Administrative Judge