



ROCKSOURCE GULF OF MEXICO CORP.

184 IBLA 34

Decided June 28, 2013



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

ROCKSOURCE GULF OF MEXICO CORP.

IBLA 2012-196

Decided June 28, 2013

Appeal from an April 27, 2012, decision of the Regional Supervisor, Office of Production and Development, Gulf of Mexico Outer Continental Shelf (OCS) Region, Bureau of Safety and Environmental Enforcement, denying, as untimely, its request for a suspension of operations for certain oil and gas leases in the Gulf of Mexico. OCS-G 32874 and OCS-G 33422.

Affirmed.

1. Oil and Gas Leases: Suspensions--Outer Continental Shelf Lands Act: Oil and Gas Leases

The Secretary may properly use Notices to Lessees and Operators (NTLs) to establish temporary policies providing for suspensions of operations in extraordinary circumstances. To be granted, a request for a suspension must meet such terms and conditions as the Secretary may specify in the NTL, including submission deadlines.

APPEARANCES: William J. Dwyer, Senior Landman, Rocksource Oil Production Company, Houston, Texas, for appellant; Matthew Ballenger, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Ocean Energy Management, Regulation, and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

The Rocksource Gulf of Mexico Corporation (Rocksource) has appealed from an April 27, 2012, decision of the Regional Supervisor, Office of Production and Development, Gulf of Mexico Outer Continental Shelf (OCS) Region, Bureau of Safety and Environmental Enforcement (BSEE),¹ denying, as untimely, its request for

¹ The management of OCS activities that had been carried out by the Minerals Management Service (MMS) was transferred to the Bureau of Ocean Energy

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a suspension of operations (SOO) for OCS oil and gas leases OCS-G 32874² and OCS-G 33422 (Leases), situated, respectively, in Block 407, Garden Banks, and Block 300, East Breaks, of the Gulf of Mexico.³

Rocksource had filed its March 29, 2012, request for an SOO, pursuant to Notice to Lessees and Operators of Federal OCS Oil and Gas Leases No. 2011-N05 (NTL), promulgated under the general authority of section 5(a) of the OCSLA, 43 U.S.C. § 1334(a) (2006), and its implementing regulations, 30 C.F.R. §§ 250.168-250.177. Letter to BSEE, dated Mar. 29, 2012. The NTL states, “Lessees intending to use the process described in this NTL must submit and BOEMRE must receive a signed request identifying the relevant lease and indicating satisfaction of all criteria identified herein *by the earlier of the end of the lease term or 5:00 pm CDT [Central Daylight Time] on July 29, 2011.*” NTL at 2 (emphasis added).

Since it is undisputed that Rocksource filed its request for an SOO 8 months after the July 29, 2011, deadline set by the NTL, and Rocksource has failed to

¹ (...continued)

Management, Regulation and Enforcement (BOEMRE) by Secretarial Order Nos. 3299 and 3302, respectively dated May 19 and June 18, 2010. On Oct. 1, 2011, the functions of BOEMRE were divided between the Bureau of Ocean Energy Management and BSEE. Secretarial Order No. 3299A (Aug. 29, 2011); *see* 76 Fed. Reg. 64432 (Oct. 13, 2011). For convenience, we generally will refer, in this disposition, only to BSEE.

² By letter dated Nov. 13, 2012, but received by the Board on Feb. 1, 2013, Rocksource informed the Board that it had not submitted rental on lease OCS-G 32874, by the Oct. 31, 2012, due date, and had filed a relinquishment of that lease. “Still pending is a decision on [OCS-]G33422, covering East Breaks Block 300.” Rocksource Letter to Board dated Nov. 13, 2012. Rocksource continued, “with the extra year justified under NTL No. 2011 N05, for which [lease OCS-]G33422 fits the necessary criteria, we can accomplish getting a well drilled.” *Id.*

³ The Leases were originally issued effective Nov. 1, 2008 (OCS-G 32874) and Nov. 1, 2009 (OCS-G 33422), pursuant to section 8 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1337 (2006). Rocksource is the designated operator under both leases. All or part of the record title interest was transferred to Rocksource, with MMS’ approval, on May 3, and Dec. 8, 2010 (OCS-G 32874), and Apr. 9, 2010 (OCS-G 33422). Rocksource acquired 35% of the record title interest in lease OCS-G 32874 (Focus Exploration, LLC, holds 65%) and 100% of the record title interest in lease OCS-G 33422.

demonstrate any error of fact or law in the Regional Supervisor's April 2012 decision denying its request, we affirm the decision.⁴

BACKGROUND

The Moratoria and NTL No. 2011-N05

In the midst of the April 2010 Deepwater Horizon oil spill disaster, the President ordered the Secretary of the Interior to evaluate measures to improve the safety of OCS exploration and production operations. *See generally Anadarko Petroleum Corp.*, 183 IBLA 1, 5-8 (2012). On May 6, 2010, Secretary Salazar ordered a halt to processing and issuing new offshore drilling permits pending the results of an investigation that would be reported to the President at the end of the month. That report, submitted on May 27, 2010, as investigations continued, recommended, *inter alia*, new procedures and equipment to improve safety and diminish the possibility of catastrophic events, and a 6-month moratorium on certain permitting and drilling activities. In a May 28, 2010, memorandum to the Director of MMS, the Secretary directed a 6-month suspension of all pending, current, or approved offshore drilling operations of new deepwater wells in the Gulf of Mexico and Pacific regions, pending implementation of appropriate measures designed to promote safe and environmentally sound exploration and development of deepwater offshore oil and gas resources.

After the May 28 memorandum was enjoined by a Federal district court on June 22, 2010,⁵ the Secretary issued a July 12, 2010, memorandum, which superceded the prior one, included a detailed rationale, and provided an end date of November 30, 2010. BOEMRE issued new letters directing SOOs for lessees involved in particular operations who were drilling or proposing to drill pursuant to approved applications for permits to drill. *Anadarko Petroleum Corp.*, 183 IBLA at 8 (citing

⁴ By letter dated July 10, 2012, Rocksource requested the Board "to grant a one year extension (Suspension of Operations) to the subject leases." Departmental regulations at 43 C.F.R. § 4.1, only provide the Board authority to decide appeals from agency decisions. The Board has no authority to initially adjudicate new SOO requests for the Department under that rule, section 5 of the OCSLA, the regulations at 30 C.F.R. §§ 250.168-250.177, or any other authority.

⁵ The court found that the Secretary's May 27 Report "ma[de] no effort to explicitly justify the moratorium: it does not discuss any irreparable harm that would warrant a suspension of operations, it does not explain how long it would take to implement the recommended safety measures." *Hornbeck Offshore Servs., L.L.C. v. Salazar*, 696 F. Supp. 2d 627, 631 (E.D. La. 2010), appeal dismissed as moot, 396 F. Appx. 197 (5th Cir. 2010).

Statoil Gulf of Mexico LLC (Statoil), 181 IBLA 252, 264 (2011)). The May 28 moratorium was terminated on October 12, 2010.

Thereafter, BOEMRE was authorized to resume decisionmaking on requests to drill. On February 28, 2011, BOEMRE approved the first drilling permit that would have been subject to the 2010 moratorium.

During the moratorium, MMS issued NTL No. 2010-N05 (June 8, 2010) and NTL No. 2010-N06 (June 18, 2010) that required certain specific safety measures and verification. Lessees complained that the burdens imposed by these new requirements breached their leases and effected *de facto* directed suspensions. *See, e.g., Century Exploration New Orleans, LLC, v. United States*, 110 Fed. Cl. 148 (2013); *Anadarko Petroleum Corp.*, 183 IBLA 1 (2012). Responding to these concerns, the Secretary released a Memorandum on June 16, 2011, instructing the Director, BOEMRE, to issue an NTL, consistent with BOEMRE's existing regulations governing lease suspension, that would establish "a one-time, expedited process" for lessees to request and obtain an extension, up to 1-year in length, for deepwater offshore leases in the Gulf of Mexico that had been affected by the Secretary's moratorium, in effect at times between May 28, and October 12, 2010. Memorandum of Secretary, dated June 16, 2011 (June 16 Memorandum), at unpaginated (unp.) 2. The Memorandum stated that such action was justified "[i]n light of the unique circumstances" presented by the Deepwater Horizon disaster and its aftermath, including the temporary suspension of specific drilling activity in the Gulf of Mexico, as the Department promulgated safety and environmental protection policies and rules intended to prevent future disasters, and as lessees and operators took actions to comply with the new rules and policies. *Id.*; *see id.* at unp. 3-4.

The Memorandum cited the regulations at 30 C.F.R. §§ 250.172(b), (c), (d), and 250.175(a), as authorization for this one-time, expedited process. *See* June 16 Memorandum at unp. 2. Those rules provide the Regional Supervisor authority to grant an SOO when drilling or other operations are prevented or delayed by reason of the threat posed by ongoing activities, the need to install safety or environmental protection equipment, the need to undertake environmental review of proposed activities, or any other circumstances beyond the lessee's control.

To justify a suspension of a deepwater lease under the expedited process, the lease must be at water depths greater than 500 feet; no oil or gas was produced on the lease as of May 15, 2011; and the lease would expire on or before December 31, 2015. *See* June 16 Memorandum at unp. 2.

SOOs were to be effective beginning May 28, 2010, and run until the earlier of May 28, 2011, or the commencement of suspended operations. *See* June 16 Memorandum at unp. 2. Therefore, the SOOs would extend qualified leases "by the

length of time prior to May 28, 2011, in which no suspended activity had resumed after May 28, 2010, up to a full year[.]” *Id.* at unp. 3. Accordingly, the SOO would afford the lessee no more than a 1-year extension of the term of its lease.

The Memorandum further stated: “Nothing in this Memorandum otherwise precludes the suspension and extension of [qualified] . . . leases if justified *under the procedures and circumstances provided for in the applicable regulations*. See 30 C.F.R. §§ 250.168-177.” June 16 Memorandum at unp. 4 (emphasis added).

On June 29, 2011, the Deputy Director, BOEMRE, issued the NTL, implementing the June 16 Memorandum, pursuant to 30 C.F.R. § 250.103.⁶ Entitled “Procedure for Requesting Suspensions of Operations for Certain OCS Oil and Gas Leases in the Gulf of Mexico,” the NTL established the “one-time, expedited process” for requesting and obtaining an extension, up to 1-year in length, under the criteria of the Memorandum. NTL at 1, 3.⁷ The NTL provided that SOO requests were “to be made pursuant to 30 C.F.R. §§ 250.168(a) and 171[,] and will be granted by the Regional Supervisor pursuant to 30 C.F.R. §§ 250.170(a) and (b), 172(b), (c), and (d), and 175(a)[,] provided that the specific criteria contained in the [June 16 Memorandum] are met.”^{8,9} *Id.* at 1-2.

⁶ The NTL is no longer in effect. See <http://www.bsee.gov/Regulations-and-Guidance/Notices-to-Lessees-and-Operators.aspx> (last visited Mar. 26, 2013).

⁷ In accordance with the NTL, SOO requests could be made using the model form, set forth as Attachment A to the NTL, or by other means, so long as the lessee “at a minimum identif[ied] the lease at issue by lessee company name, BOEMRE company number, lease serial number, lease area and block,” and indicated that the lease met the three basic criteria. NTL at 2.

⁸ Under 30 C.F.R. § 250.168(a), the submission of a suspension request is required to be submitted in the manner provided by 30 C.F.R. § 250.171. The request is to be submitted to the Regional Supervisor, and received by BSEE “before the end of the lease term (*i.e.*, end of primary term, end of the 180-day period following the last leaseholding operation, and end of a current suspension),” and include a suspension justification, reasonable schedule of work leading to commencement of the suspended operations, and payment of a service fee. 30 C.F.R. § 250.171. The NTL obviated the need to submit the reasonable schedule of work, but left intact the remainder of the regulatory requirements regarding the content of the request, noting that satisfaction of the specific NTL criteria would meet the justification requirement. See NTL at 2.

⁹ Under 30 C.F.R. § 250.170(a) and (b), a suspension up to 5 years in length is
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Finally, the NTL stated: “Nothing in the [June 16 Memorandum] or this NTL or otherwise precludes the suspension of leases that do not meet the above criteria if justified *under other circumstances and according to other procedures provided for in the applicable regulations*. See 30 C.F.R. §§ 250.168 *et seq.*” NTL at 3 (emphasis added).

BSEE states that, in his June 16 Memorandum, “[t]he Secretary left the details for implementation of the [suspension] process through the NTL to BOEMRE’s discretion in the administration of suspension requests.” Answer at 2.

Rocksource’s Request for SOO and the Regional Supervisor’s Decision

On March 29, 2012, Rocksource filed a request for SOOs for the Leases, pursuant to NTL No. 2011-N05.¹⁰ Letter to BSEE, dated Mar. 29, 2012. Rocksource asserted it was entitled to a 1-year extension of the Leases, stating that it had become a lessee in the Gulf of Mexico shortly before the April 20, 2010, Deepwater Horizon offshore drilling rig disaster and resulting oil spill in the Gulf of Mexico, and, despite a considerable commitment of manpower and financial resources, had been “unable to move forward.” *Id.* “The intent and spirit of NTL No. 2011-N05 is to aid those companies *who were hurt by the moratorium* and have leases with near term expiration dates.” *Id.* (emphasis added).

In his April 2012 decision, the Regional Supervisor denied Rocksource’s SOO request as untimely under the NTL:

As NTL No. 2011-N05 clearly states, “[l]essee[s] intending to use the process described in this NTL must submit and BOEMRE must receive a signed request identifying the relevant lease and indicating satisfaction of all criteria identified herein *by the earlier of the end of the lease term or 5:00 pm CDT on July 29, 2011.*” Your requests were received after July 29, 2011. [Emphasis added.]

⁹ (...continued)

authorized, but, in any case, the suspension ends automatically upon commencement of the suspended operations.

¹⁰ The SOO request specifically invoked the authority of the NTL; sought a 1-year extension, as provided for in the NTL; and sought to demonstrate that Rocksource satisfied the eligibility criteria established by the NTL.

The Appeal

Rocksource appealed timely from the Regional Supervisor’s April 2012 decision.^{11,12} It “admit[s] that through ignorance we missed the deadline [for submission of the SOO request] stated in the NTL,” but contends that it is nonetheless entitled to the relief afforded by the NTL, “regardless of [the] deadline.” Letter to Board, dated Aug. 22, 2012 (August 22 Letter), at unp. 1. Rocksource asserts it satisfied the criteria for suspension enumerated in the NTL and is therefore entitled to the relief afforded by the NTL. It further claims that it fulfilled the time frame requirement for submission of the SOO request established by 30 C.F.R. § 250.171, and that “[t]he deadline included in NTL No. 2011-N05 . . . ignores the language contained in [30] C.F.R. [§] 250.171,” which “specifically states that the SOO can be requested any time prior to the end of the primary term.” NOA. It essentially argues that, in view of the differences between the two, the regulation takes precedence over the NTL. Moreover, granting its SOO request, asserts Rocksource, is in BSEE’s and Rocksource’s “mutual interest to see activity on lease acreage,” where it does not, at the same time, operate to the detriment of “any party.” Attachment to Letter to Board, dated July 10, 2012 (July 10 Attachment).

BSEE responds that the timeliness of the SOO request is controlled by the NTL, since the request was “based solely on the NTL,” which established, as envisioned by the Secretary in the June 16 Memorandum, “a specialized ‘one-time, expedited process’ for streamlined SOO requests to accommodate the ‘unique circumstances’ confronted in the immediate aftermath of the Deepwater Horizon blowout and spill.”¹³ Answer at 1-2. It adds:

¹¹ Rocksource filed its one-page notice of appeal (NOA) on May 15, 2012. By e-mails dated May 8 and 22, 2012, followed by a meeting on June 5, 2012, Rocksource pursued informal resolution of the matter with the Regional Director, Gulf of Mexico Region, BSEE, during the 60-day appeal period provided by 30 C.F.R. § 290.6. See Answer at 5 n.5. The Regional Director informed Rocksource, by letter dated June 22, 2012, that he concurred in the Regional Supervisor’s April 2012 decision.

¹² Departmental regulations provide that an appeal is subject to summary dismissal, pursuant to 43 C.F.R. §§ 4.402(a), (c) and 4.412(c), for failing to file and serve a statement of reasons (SOR) within 30 days after the notice of appeal was filed, as required by 43 C.F.R. § 4.412(a). See 30 C.F.R. §§ 250.104 and 290.2. Rocksource filed a one-page SOR for the appeal on July 26, 2012—more than 30 days after filing its May 15, 2012, NOA. We do not dismiss the appeal for failure to file and serve an SOR, since we find that Rocksource’s NOA provides its reasons for appeal.

¹³ BSEE reports that, out of the over 1,400 SOO requests submitted timely pursuant
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The NTL did not, and did not purport to, offer a generalized or open-ended interpretation of the governing regulations, but rather a limited and particularized application thereof through the mechanism of a formal, structured, and time-limited procedural opportunity. . . . The NTL was not designed to be, and was not, a broad conceptual interpretation of the governing regulations Ultimately, the NTL “intended” to do precisely what it did, and what the Secretary directed: *it implemented a “one-time, expedited process” to accommodate the “unique circumstances” presented, that was both consistent with and more limited and specialized than the standard regulatory process for suspension requests.* [Emphasis added.]

Id. at 2-7. BSEE asserts that, since it did not comply with the “plain and unambiguous language of the NTL,” which established a precise deadline for submission of an SOO request, Rocksource “cannot benefit from” the NTL. *Id.* at 2.

DISCUSSION

Section 5(a) of the OCSLA directs the Secretary to prescribe regulations implementing the statute, providing, *inter alia*, for “the suspension or temporary prohibition of any operation or activity, including production,” pursuant to an offshore oil and gas lease. 43 U.S.C. § 1337(a) (2006). It states that suspensions may be granted or directed in two basic circumstances: (1) at the request of the lessee, in the national interest, to facilitate proper lease development or allow for the construction or negotiation for use of transportation facilities; or (2) when there is a threat of serious, irreparable, or immediate harm or damage to life, property, any mineral deposits, or the marine, coastal, or human environment. It also provides for the extension of any lease affected by a suspension. Effective May 31, 1988, and January 27, 2000, MMS promulgated the implementing regulations at 30 C.F.R. §§ 250.168-250.177 (formerly, 30 C.F.R. § 250.10 (1988) and 30 C.F.R. § 250.110 (1998)). See 53 Fed. Reg. 10596, 10698-99 (Apr. 1, 1988); 64 Fed. Reg. 72756, 72785-86 (Dec. 28, 1999).

In general, the statute and its implementing regulations afford the Secretary, and his delegates, the discretionary authority to suspend offshore oil and gas leases,

¹³ (...continued)

to the NTL, almost 98 percent were granted, noting that “[t]he remainder either did not satisfy the eligibility criteria, were already under suspension or engaged in leaseholding operations during the relevant suspension period, or were withdrawn.” Answer at 4, n.2. It states that Rocksource’s request was the only one made pursuant to the NTL that was submitted after the July 29, 2011, deadline established by the NTL. See *id.* at 4-5.

thus tolling the running of the lease term. *See Anadarko Petroleum Corp.*, 183 IBLA at 13; *Statoil Gulf of Mexico LLC*, 42 OHA 261, 267, 268 (2011) (“Because no entitlement to a suspension can arise, a lessee’s request provides the Secretary with a choice to extend the le[ase] or allow it to expire in accordance with the ‘national interest[.]’”).

The courts and this Board have recognized that a lease suspension is generally appropriate where the Secretary has taken action that prohibits the lessees’ timely access to the lease or otherwise prevents beneficial use to which the lessee is entitled as a matter of right. *Anadarko Petroleum Corp.*, 183 IBLA at 1, 18-19. We have held, however, that a lessee cannot claim to have been denied the beneficial use of a lease if the lessee has neither requested nor been denied authorization to conduct operations. *Id.* Accordingly, when the Secretary issued the moratorium after the Deepwater Horizon disaster, suspensions were directed only for leases on which operations were occurring or proposed.

However, the Secretary recognized that lessees who did not qualify for suspensions under the earlier criteria may have nevertheless experienced delay in their exploration and development activities as a result of having to comply with new requirements and needed more time to provide new information in updating their plans. Accordingly, NTL 2011-N05 established an expedited process for granting suspensions for leases that may have been affected without requiring them to make the showing that would ordinarily be required by existing regulations.

[1] The Secretary has previously used NTLs to establish temporary policies providing for suspensions in extraordinary circumstances, such as when Hurricane Katrina resulted in a lack of rig availability. *See ATP Oil & Gas Corp.*, 173 IBLA 250, 259 (2008), *aff’d*, *ATP Oil & Gas Corp. v. Dep’t of the Interior*, 2009 WL 2777868 (E.D. La. 2009), *aff’d*, 396 Fed. Appx. 93 (5th Cir. 2010), *cert. denied*, 131 S. Ct. 2159 (2011) (affirming the denial of a suspension that did not meet the criteria of the NTL). In this case, the special opportunity provided by NTL 2011-N05 would not last forever; lessees were required to submit their requests by 5:00 p.m. CDT on July 29, 2011. Otherwise, they could still obtain a suspension if they qualified under the ordinary regulatory criteria, as long as they applied before their leases expired.

Rocksource alleges that the NTL is inconsistent with the regulatory process for requesting suspensions, set forth in 30 C.F.R. § 250.171, and that “[t]he deadline included in NTL No. 2011-N05 . . . ignores the language contained in [30] C.F.R. [§] 250.171,” which “specifically states that the SOO can be requested any time prior to the end of the primary term.” NOA. We disagree.

The Departmental regulation at 30 C.F.R. § 250.171 requires a lessee seeking a suspension of operations or production to “submit your request for a suspension to

the Regional Supervisor,” stating further that “BSEE must receive the request *before the end of the lease term (i.e., end of primary term, end of the 180-day period following the last leaseholding operation, and end of a current suspension).*”¹⁴ (Emphasis added.) In all cases, suspension requests must be submitted before the lease expires, because an expired lease cannot be suspended. *See Statoil Gulf of Mexico LLC*, 42 OHA at 269-70, n.8; *Union Pac. Res. Co.*, 149 IBLA 294, 303 (1999). The “end of the lease term” represents the last deadline for submission of any suspension request. The last deadline for submission of an SOO request, established by the regulation at 30 C.F.R. § 250.171 in the present case, is the end of the primary term of the Leases.

The NTL states that an SOO request must, in the words of 30 C.F.R. § 250.171, be filed “before the end of the lease term (*i.e., end of primary term, end of the 180-day period following the last leaseholding operation, or end of a current suspension*),” adding that a request “will not be granted unless [it] . . . is received prior to the end of the lease term.” NTL at 2. It further states: “Lessees intending to use the process described in this NTL must submit and BOEMRE must receive a signed request identifying the relevant lease and indicating satisfaction of all criteria identified herein *by the earlier of the end of the lease term or 5:00 pm CDT on July 29, 2011.*” *Id.* (emphasis added). In this way, the NTL explicitly adopted the outside time frame for submission of SOO requests set forth in 30 C.F.R. § 250.171. However, it provided that, for requests made pursuant to the NTL, the deadline was July 29, 2011 (30 days after promulgation of the NTL), when that date fell before the end of the lease term, and the deadline was the end of the lease term, when that date fell before July 29, 2011.

The NTL at issue was developed in accordance with section 5 of the OCSLA and 30 C.F.R. §§ 250.168-250.177. It authorized BSEE to suspend operations where leases were set to expire between June 29, and July 29, 2011, provided the request was submitted on or before the expiration of the lease term, and authorized SOOs for leases expiring between July 30, 2011, and December 31, 2015, provided the request was submitted no later than July 29, 2011.

The burden of demonstrating error in BSEE’s application of the NTL falls to the appellant. *See Mobil Producing Texas & New Mexico, Inc.*, 115 IBLA 164, 169 (1990). Rocksource admitted, in a March 29, 2012, e-mail, that it had failed to meet the July 29, 2011, NTL deadline, attributing this to its parent company’s location in Norway, the newness of its oil and gas leasing, exploration, and development activities in the Gulf of Mexico, and its misinterpretation of the NTL. It asked BSEE to grant an SOO “under the spirit and intent of the NTL.” March 29, 2012, e-mail;

¹⁴ The regulation at 30 C.F.R. § 250.171 was amended, effective Oct. 1, 2011, substituting BSEE for BOEMRE. *See* 76 Fed. Reg. at 64500.

see also August 22 Letter at unp. 1. Rocksource has not shown that BSEE erred in determining that the company submitted its NTL SOO request after the deadline established in the NTL.

Nor has Rocksource shown that BSEE's decision implementing the NTL by finding the SOO request untimely was inconsistent with any statute or regulation, despite appellant's claim. BSEE enforced a deadline established in the NTL that was reasonable and consistent with 43 U.S.C. § 1334 (2006) and 30 C.F.R. §§ 250.168-250.177, and that afforded sufficient time for the submission of SOO requests pursuant to the NTL, while promoting the expedited processing of such requests.

It is well established that a departmental agency may establish a reasonable time limit for compliance with a particular directive, and, in the event of failure to comply within that time frame, may deny the requested action, when to do otherwise would prejudice a contravening right. *See, e.g., Mary Nan Spear*, 101 IBLA 13, 16 (1988). We think the same is true here, where the deadline to submit a request for the benefits afforded by the NTL is reasonable and rationally connected to a legitimate public purpose. BSEE states that the distinct procedural elements established by the NTL were "essential to the effective and expeditious processing of the large number of specialized requests" expected to follow from the Department's response to the Deepwater Horizon disaster, and the 30-day window was intended to decrease the administrative and logistical burden of this additional suspension process and facilitate expeditious processing of SOO requests under the NTL for those in need of them. Answer at 7, 13.¹⁵ The reasonable goal of timely and expeditiously processing requests for SOOs under the NTL would be prejudiced without adherence to its deadline. *See Fen F. Tzeng*, 68 IBLA 381, 384 (1982), and cases cited. Establishing a cut-off date of July 29, 2011, for the submission of such requests promoted efficiency in administering the NTL suspension process, a valid and reasonable interest, particularly in light of BSEE's other duties administering the routine suspension process and the offshore oil and gas leasing program, as a whole.

¹⁵ In its Answer, BSEE explains that "the administrative and logistical burden posed thereby [administering the NTL] was extreme enough—with over 1,400 requests for suspensions received within the 30-day window provided—and could have been unmanageable if left open-opened. Answer at 13. BSEE also notes that it devised a "limited and streamlined request[]" process since lessees "affected by the post-Deepwater Horizon regulatory actions of the Department . . . and legitimately in need of a suspension were well aware of that fact and in a position (and incentivized) to act promptly," thus rendering the 30 days "ample time" for those legitimately in need of a suspension to prepare and submit a request. *Id.* at 13 nn.14, 15.

Rocksource asserts that, because the NTL's SOO request deadline may fall before the end of the lease term, it conflicts with the regulations at 30 C.F.R. § 250.171, which "specifically states that the SOO can be requested *any time prior to the end of the primary term.*" Attachment to Letter to BSEE, dated May 15, 2012 (emphasis added). We agree with BSEE that the establishment of a final deadline for the submission of suspension requests in 30 C.F.R. § 250.171, which was the end of the lease term, did not prevent BSEE from establishing an earlier deadline as a matter of policy. See Answer at 9-10. We find nothing in the language of the regulation or its history that specifically precluded an earlier cut-off date. The rule at 30 C.F.R. § 250.171 did not specify that the end of the lease term represented the *only* deadline that could be instituted for suspension requests. Although it provides that BSEE "must receive the [suspension] request before the end of the lease term," thus precluding the filing of any request after the end of the lease term, the rule does not require BSEE to accept requests any time prior to the end of the lease term.

The regulation provides, in BSEE's words, an "absolute outside deadline[.]"¹⁶ Answer at 9. In other words, to the extent that leases reached the end of their primary term before July 29, 2011, and thus would expire before that date, the NTL deadline coincided with the absolute regulatory deadline. And, to the extent that leases reached the end of their primary term after July 29, 2011, the NTL's deadline was not contrary to the language of the regulation, since the deadline still fell "before the end of the lease term[.]" 30 C.F.R. § 250.171. We do not read the regulation at 30 C.F.R. § 250.171 to foreclose BSEE's adoption in the NTL of a deadline that precedes the end of an OCS lease term.

Furthermore, while the NTL established a particular suspension process that differed in its procedures and criteria from the regulatory mechanism established by 30 C.F.R. §§ 250.168-250.177, neither the June 16 Memorandum nor the NTL supplanted the suspension authority of section 5 of the OCSLA and 30 C.F.R. §§ 250.168-250.177. See June 16 Memorandum at unp. 4; NTL at 3; *Anadarko Petroleum Corp.*, 183 IBLA at 3 ("Lessees that did not qualify for an extension under the new [NTL] policy could still obtain suspensions if otherwise qualified"); Answer at 10 n.11. Rocksource could have filed an SOO request, pursuant to the usual

¹⁶ After reciting the deadline of the end of the lease term or July 29, 2011, whichever is earlier, the NTL reiterates the general lease term deadline of 30 C.F.R. § 250.171, adding: "Requests pursuant to the [June 16 Memorandum] and this NTL *will not be granted* unless the request from the lessee is received prior to the end of the lease term." NTL at 2 (emphasis added). It thus emphasized that the end of the lease term was the absolute last, but not exclusive, date for submission of an SOO request pursuant to the NTL.

authority of 30 C.F.R. §§ 250.168-250.177, at any time before or after July 29, 2011, up to the expiration of the Leases.¹⁷

Finally, Rocksource argues that to deny it the benefit of the suspension afforded by the NTL is contrary, as it says in its notice of appeal, to “the spirit of equal protection,” thus presumably indicating that BSEE’s April 2012 decision, denying the SOO request, is contrary to the equal protection clause of the 14th Amendment to the U.S. Constitution, as interpreted to apply to the Federal government, under the 5th Amendment to the U.S. Constitution.¹⁸ Although we have sometimes stated that this Board is not a proper forum to decide constitutional issues, *see, e.g., Mark Patrick Heath*, 175 IBLA 167, 196 (2008); *Slone v. OSM*, 114 IBLA 353 (1990), we have also recognized that we are not free to disregard them in all cases. In *Cook Inlet Region, Inc. (On Reconsideration)*, 100 IBLA 50, 55, 94 I.D. 422, 425 (1987), we recognized our obligation to avoid an interpretation of a statute that would raise a serious doubt about its constitutionality. Similarly, in construing any regulation, we have an obligation to construe and apply it in a manner that does not threaten its validity. A court will defer to an agency’s interpretation of a regulation “only . . . where that interpretation ‘does not violate the Constitution or a federal statute.’” *City of Idaho Falls, Idaho, v. Fed. Energy Regulatory Comm’n*, 629 F.3d 222, 230 (D.C. Cir. 2011) (quoting *Stinson v. United States*, 508 U.S. 36, 45 (1993)); *see South Dakota v. U.S. Dep’t. of the Interior*, 487 F.3d 548, 551 (8th Cir. 2006).

Rocksource has not shown and we have no basis to conclude that BSEE’s establishment of the NTL deadline provision violated any statute or regulation or that, in establishing the NTL deadline, which BSEE applied in rejecting Rocksource’s application, BSEE interpreted the authorizing regulations in a manner that violates the Constitution. Rocksource’s failure to timely file its SOO request under the NTL doomed its request, not an unconstitutional interpretation or application.

CONCLUSION

The Secretary may properly use NTLs to establish temporary policies providing for SOOs in extraordinary circumstances. To be granted, a request for a suspension must meet such terms and conditions as the Secretary may specify in the NTL,

¹⁷ As indicated, NTL 2011-N05 established an expedited process for granting suspensions for leases that may have been affected without requiring them to make the showing that would ordinarily be required by existing regulations. We note that, even if Rocksource was correct in its theory that the regulation controls over the NTL, it would obtain no more than the regulation provides and any request under the regulation would have been subject to the rule’s more stringent requirements.

¹⁸ *See, e.g., Bolling v. Sharpe*, 237 U.S. 497 (1954).

including submission deadlines. Rocksource failed to comply with the deadline BSEE reasonably established for expeditiously processing suspension applications in the wake of the Deepwater Horizon disaster and its aftermath. We conclude, therefore, that the Regional Supervisor, in his April 2012 decision, properly denied Rocksource's request for a suspension of operations for OCS oil and gas leases OCS-G 32874 and OCS-G 33422, situated, respectively, in Block 407, Garden Banks, and Block 300, East Breaks, of the Gulf of Mexico, pursuant to NTL No. 2011-N05.

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 appealed from is affirmed.

/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

/s/
James F. Roberts
Administrative Judge