



STATOIL USA E&P, INC.  
v.  
OFFICE OF NATURAL RESOURCES REVENUE

185 IBLA 302

Decided April 29, 2015



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

STATOIL USA E&P, INC.  
v.  
OFFICE OF NATURAL RESOURCES REVENUE

IBLA 2013-111

Decided April 29, 2015

Interlocutory appeal from an order of an Administrative Law Judge, adjudicating cross-motions for summary judgment filed by appellant and the Office of Natural Resources Revenue, in relation to appellant's request for a hearing with respect to a Notice of Civil Penalty. Case No. CP11-098

Affirmed.

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

Under sec. 109(d) of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 1719(d) (2012), ONRR may properly assess a civil penalty to a lessee that knowingly or willfully "maintains . . . false, inaccurate, or misleading . . . written information," by failing to correct inaccurate information submitted to ONRR in royalty computation reports.

APPEARANCES: Peter J. Schaumberg, Esq., David A. Barker, Esq., and James M. Auslander, Esq., Washington, D.C., and Thomas E. Gottsegen, Esq., Houston, Texas, for appellant; Lance C. Wenger, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Office of Natural Resources Revenue.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Statoil USA E&P, Inc. (Statoil) (formerly, Hydro Gulf of Mexico, L.L.C.), has taken an interlocutory appeal from a March 7, 2013, Order of Administrative Law Judge (ALJ or Judge) Harvey C. Sweitzer, adjudicating cross-motions for summary judgment filed by Statoil and the Office of Natural Resources Revenue (ONRR), in conjunction with a request for a hearing by Statoil with respect to a February 17,

2012, Notice of Civil Penalty (NCP) (Case No. CP11-098) issued by ONRR.<sup>1,2</sup> ONRR had levied the penalty, pursuant to section 109 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (2012), because of Statoil's allegedly knowing or willful failure to correct previously-reported inaccurate information pertinent to royalty computation and payment, regarding natural gas produced and sold from its Outer Continental Shelf (OCS) oil and gas lease, OCS-G 054-024160-0 (Lease), following receipt of an August 18, 2010, Order to Report issued by ONRR.<sup>3</sup>

In his March 2013 Order, disposing of the cross-motions for summary judgment, Judge Sweitzer ruled on three basic "threshold legal issues" raised either by ONRR or Statoil: (1) whether the failure to correct inaccurate information in royalty reporting constitutes "maintain[ing]" inaccurate information, within the meaning of 30 U.S.C. § 1719(d) (2012) (Statoil) (hereinafter, Issue 1); (2) whether, even assuming that Statoil knowingly or willfully failed to correct inaccurate information in its royalty reporting, ONRR is entitled, under 30 U.S.C. § 1719(d) (2012), to assess the most severe civil penalty (Statoil) (hereinafter, Issue 2); and (3) whether Statoil knowingly or willfully "maintain[ed]" inaccurate information in its royalty reporting, under 30 U.S.C. § 1719(d) (2012) (ONRR) (hereinafter, Issue 3). Order at 2. The judge ruled against Statoil as to Issues 1 and 2, and ruled against ONRR as to Issue 3. He denied Statoil's motion for summary judgment in its entirety, but granted in part (as to Issues 1 and 2) and denied in part (as to Issue 3) ONRR's motion for summary judgment.

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<sup>1</sup> By order dated Apr. 26, 2013, Judge Sweitzer certified his ruling for interlocutory appeal to the Board, which we accepted by order dated May 8, 2013, since the ruling was deemed to raise a controlling question of law, the resolution of which will materially advance the final Departmental decision. Accordingly, the matter is now subject to adjudication by the Board, in accordance with 43 C.F.R. § 4.28.

<sup>2</sup> By Orders dated May 19, June 18, and Oct. 1, 2010, the Secretary of the Interior transferred authority over offshore oil and gas royalty from the Minerals Management Service (MMS) initially to the newly-created Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), and then to the newly-created ONRR. See 75 Fed. Reg. 61051, 61052 (Oct. 4, 2010); *Anadarko Petroleum Corp.*, 181 IBLA 388, 389 n.1. (2012). For the sake of clarity, all references herein to ONRR refer, as appropriate, to ONRR and its predecessors, MMS and BOEMRE.

<sup>3</sup> The Lease is situated in Block 199, within the Green Canyon area of the Gulf of Mexico, off the coast of Louisiana.

Statoil took an interlocutory appeal from the judge's ruling that ONRR is entitled, as a matter of law, to pursue a civil penalty under 30 U.S.C. § 1719(d) (2012). As a result, Issues 1 and 2 are before the Board for resolution.<sup>4</sup>

As discussed below, Statoil has failed to establish error in Judge Sweitzer's ruling that ONRR, as a matter of law, was entitled, under 30 U.S.C. § 1719(d) (2012), to assess the most severe civil penalty for Statoil's failure to correct inaccurate information in its royalty reporting, although for reasons that differ from the analysis of the Judge. Accordingly, we will affirm, as modified, and in relevant part, Judge Sweitzer's March 2013 Order.

### *Background*

Royalty payment pertaining to Federal offshore oil and gas leases is governed by the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331-1356a (2012), as well as FOGRMA, 30 U.S.C. §§ 1701-1759 (2012), and the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (FOGRSFA), Pub. L. No. 104-185, 110 Stat. 1700, which amended FOGRMA. Together, these statutes provide for the proper and timely assessment, accounting, and collection of royalties owed for oil and gas produced and sold from offshore leases, imposing responsibilities on offshore lessees and operators regarding the computation and payment of royalties and entrusting the Secretary with enforcement authority, for the purpose of ensuring fulfillment of such responsibilities. *See, e.g., Anadarko Petroleum Corp.*, 181 IBLA at 390-93, 404-11.

The Secretary is required, by section 101(a) of FOGRMA, 30 U.S.C. § 1711(a) (2012), to “establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide *the capability to accurately determine oil and gas royalties . . . owed*, and to collect and account for such amounts in a timely manner.” (Emphasis added.) ONRR properly states that “the lynchpin to ensuring that royalties are fully and accurately paid,” for the benefit of the United States, is that the oil and gas lessee or operator is required to report “accurate information” related to the computation and payment of royalties to the United States: “Without accurate information, ONRR cannot know whether the United States is owed royalties. [And] [w]ithout knowing whether it is owed royalties, ONRR cannot ensure that the United States is being paid the full amount of royalties due.” Answer at 4, 18.

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<sup>4</sup> ONRR did not take an interlocutory appeal as to Issue 3.

In order to satisfy the statutory objective of ensuring accurate royalty accounting, section 103(a) of FOGRMA, 30 U.S.C. § 1713(a) (2012), specifically requires a lessee or operator involved in producing or selling oil or gas to “*establish and maintain any records, make any reports, and provide any information* that the Secretary may, by rule, reasonably require for the purposes of implementing this [Act] or determining compliance with rules or orders under this [Act].” (Emphasis added.) See generally 30 C.F.R. §§ 1210.30, 1210.50 through 1210.56, 1212.50, and 1212.51. Such records and reports are subject to review by the Secretary, in the course of an investigation or audit, pursuant to sections 101(c) and 107 of FOGRMA, 30 U.S.C. §§ 1711(c) and 1717 (2012). See 30 C.F.R. §§ 1212.51(c) and 1217.50.

ONRR, as the delegate of the Secretary, promulgated 30 C.F.R. § 210.52 (2007), which requires lessees to “submit a completed Form MMS-2014 (Report of Sales and Royalty Remittance)” (hereinafter, MMS-2014 Report) to ONRR, along with the proper royalty payment, by the end of the month following the month of production.<sup>5</sup> See 30 C.F.R. § 210.10(c) (2007) (“MMS-2014 [is] . . . [u]sed monthly to report lease-related transactions essential for royalty management to determine the correct royalty amount due, reconcile or audit data, and distribute payments to appropriate accounts”); 30 C.F.R. §§ 218.50(a) and 218.150(a) (2007) (now 30 C.F.R. §§ 1218.50(a) and 1218.150(a)); Statement of Reasons (SOR) at 4 (“[MMS-2014 Reports] pertain[] to oil and gas volumes, transportation and processing allowances, and sales and royalty valuation”).

The statutory obligation to ensure the full and proper collection of royalties owed for the production and sale of Federal oil and gas rests on the accuracy of the information reported by the lessee. See Answer at 7-8. Further, 30 C.F.R. § 1210.30 now imposes an express obligation on a lessee to update its reported information, in order to ensure its accuracy:

Each reporter/payor must submit accurate, complete, and timely information to ONRR according to the requirements in this part [30 C.F.R. Part 1210]. *If you discover an error in a previous report, you must file an accurate and complete amended report within 30 days of your*

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<sup>5</sup> 30 C.F.R. § 210.52 (2007) was in effect during the production period at issue (April 2006 through December 2007). Its applicable provisions are now contained in 30 C.F.R. §§ 1210.52 and 1210.53(a), originally promulgated effective Apr. 25, 2008 (redesignated effective Oct. 1, 2010). See 73 Fed. Reg. 15892, 15894 (Mar. 26, 2008); 75 Fed. Reg. 61051, 61052 (Oct. 4, 2010).

*discovery of the error.* If you do not comply, ONRR may assess civil penalties under 30 CFR [P]art 1241.<sup>6</sup> [Emphasis added.]

Moreover, FOGRMA serves, in relevant part, “to require the development of enforcement practices that ensure the prompt and proper collection . . . of oil and gas revenues owed to the United States[.]” 30 U.S.C. § 1701(b) (2012). Importantly for our present purposes, section 109(d) of FOGRMA ensures compliance with the royalty reporting requirement of FOGRMA and its implementing regulations by imposing civil penalties for the failure to comply, providing, in pertinent part, that “[a]ny person who--(1) knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information[] . . . shall be liable for a penalty of up to \$25,000 per violation for each day such violation continues.” 30 U.S.C. § 1719(d) (2012).

The regulations implementing section 109(d) of FOGRMA are currently found at 30 C.F.R. §§ 1241.60 through 1241.64, which pertain to “*Penalties Without a Period to Correct*[.]”<sup>7</sup> 30 C.F.R. § 1241.60(b) essentially mirrors the statutory language. The rule at 30 C.F.R. § 1241.61 states that ONRR will inform the lessee of any violation by issuing an NCP, which will “explain[] the violation, how to correct it, and the penalty assessment.”<sup>8</sup>

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<sup>6</sup> 30 C.F.R. § 1210.30, originally promulgated effective Apr. 25, 2008 (redesignated effective Oct. 1, 2010), was in effect at all times after ONRR notified Statoil in 2011 that it had failed to submit accurate MMS-2014 Reports, leading to issuance of the February 2012 NCP. See 73 Fed. Reg. at 15893; 75 Fed. Reg. at 61052.

<sup>7</sup> 30 C.F.R. §§ 1241.60 through 1241.64 were originally promulgated effective June 14, 1999 (redesignated effective Oct. 1, 2010). See 64 Fed. Reg. 26251, 26252-53 (May 13, 1999); 75 Fed. Reg. at 61052.

<sup>8</sup> 30 C.F.R. § 1241.61 expressly provides for issuance of a “Notice of Noncompliance and Civil Penalty,” which serves to notify the lessee that it is in noncompliance and to assess a civil penalty. If it desires to challenge its underlying liability, the lessee may request a hearing before an ALJ regarding the “Notice of Noncompliance” by filing a request within 30 days after receipt of the document, pursuant to 30 C.F.R. § 1241.62, or, if it desires to challenge only the amount of the penalty, request a hearing before an ALJ regarding the “Notice of Civil Penalty” by filing a request within 10 days after receipt of the document, pursuant to 30 C.F.R. § 1241.64. While ONRR had labeled its February 2012 notice only as a “Notice of Civil Penalty,” Judge Sweitzer considered it a “Notice of Noncompliance and Civil Penalty,” from which Statoil had timely appealed, challenging both its underlying liability and the amount of the penalty. See Order at 1-2. We agree. He reached this conclusion after his

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ONRR issued its August 2010 Order to Report, requiring Statoil to correct the reported natural gas volumes produced and sold from the Lease, during the period from April 2006 through December 2007, within 30 days of receipt of the Order. It stated that the Order pertained to “incorrect gas volumes on the Report of Sales and Royalty Remittance (Form MMS-2014), residue gas volumes, unprocessed gas volumes, and natural gas liquids (NGL),” all of which resulted in “significant volume variances,” during that time frame. Order to Report at 1. ONRR further stated: “[ONRR] may assess civil penalties if [Statoil] does not comply with this Order, as authorized by Section 109 of the Federal Oil and Gas Royalty Management Act of 1982 and 30 CFR § 241.53 (2009).” *Id.* at 2.

Statoil took no action to correct the reported sales volumes on or before the 30-day deadline following receipt of the Order to Report, or at any time thereafter, prior to issuance of the NCP.<sup>9</sup> Nor did it appeal the Order to Report within 30 days of receipt of the Order, seeking review by the Director, ONRR, pursuant to 30 C.F.R. Part 290 (2010) (now 30 C.F.R. Part 1290).

ONRR issued its NCP on February 17, 2012, specifically citing Statoil for “knowing or willful maintenance of incorrect information on [natural] gas sales volumes,” and thus for failing to correct the gas sales volumes from the Lease, reported on its monthly Form MMS-2014, during the period from April 2006 through December 2007. NCP at 1. Failure to correct each of the monthly MMS-2014 Reports was deemed to constitute a “separate violation,” thus resulting in a total of

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June 4, 2012, receipt of ONRR’s “Clarifying Statement,” dated June 1, 2012, in which ONRR stated that the NCP was intended to and did, in fact, serve as a Notice of Noncompliance and Civil Penalty. *See* Statoil Motion for Summary Judgment, Docket No. ONRR 2012-03, dated Sept. 19, 2012, at 11 n.3. Statoil did not object to ONRR’s filing.

<sup>9</sup> Statoil did not correct the inaccurate reporting, despite what ONRR describes as “multiple telephone and e-mail contacts between Statoil and ONRR between January 2011 and September 2011.” Answer at 2 (citing e-mail exchange (Ex. 2 attached to Answer); and Declaration of Karen Lee, Enforcement Specialist/Litigation, ONRR, dated Oct. 16, 2012 (Ex. 3 attached to Answer)). These “contacts” included a Sept. 5, 2011, e-mail in which Terra Fontenot-Beard, Senior Accountant, USA Global Business Services, informed ONRR that Statoil needed to “update” its volume reporting, and thus would be “prepar[ing] corrections” of MMS-2014 Reports, with respect to the period from April 2006 through December 2007, and an “August 22, 2011[,] pre-penalty teleconference notice from ONRR that ONRR would be issuing civil penalties if Statoil did not correct the data.” *Id.*

21 violations. *Id.* ONRR concluded that it was entitled to charge Statoil, pursuant to section 109(d) of FOGRMA, and its implementing regulation, 30 C.F.R. § 1241.60(b), with having knowingly or willfully “*maintain[ed] . . . false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information[.]*” *Id.* at 2 (quoting 30 U.S.C. § 1719(d) (2012)).

ONRR computed the civil penalties starting with January 27, 2011, the day after the date Statoil was first requested to correct its MMS-2014 Reports, in compliance with the August 2010 Order to Report, and thus when “it became indisputable that [Statoil] knew the data was incorrect and improperly maintained on ONRR’s Financial System.”<sup>10</sup> NCP at 2. Civil penalties, in the amount of \$50 per day, were deemed to accrue with respect to each of the 21 violations from January 27, 2011, through February 17, 2012, the date of issuance of the NCP, or a total of 387 days.<sup>11</sup> According to ONRR’s calculations, Statoil, at that time, owed a total of \$406,350 (\$50 per day x 387 days x 21 violations), in civil penalties. It further informed the company that, in the absence of correction of the MMS-2014 Reports, civil penalties would continue to accrue at the rate of \$50 per day for each violation. ONRR required Statoil to pay the assessed civil penalties on or before March 23, 2012. Finally, ONRR notified Statoil that, in lieu of payment of the civil penalties deemed to be owed, it could appeal from the NCP, seeking a hearing and decision by an ALJ, pursuant to 30 C.F.R. § 1241.62. *See* NCP at 2.

On March 28, 2012, Statoil timely requested a hearing and decision by an ALJ, with respect to ONRR’s February 2012 NCP, pursuant to 30 U.S.C. § 1719(e) (2012) and 30 C.F.R. § 1241.62.<sup>12</sup> In bringing an interlocutory appeal, Statoil stated that it

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<sup>10</sup> ONRR refers to a Jan. 26, 2011, e-mail (part of Ex. 2 attached to Answer), in which Yvette Smith, Auditor, Audit and Compliance Management, ONRR, notified Fontenot-Beard that Statoil had failed to respond timely to the August 2010 Order to Report, and requested a status update on “where [Statoil] is on resolving the volume variances[.]”

<sup>11</sup> ONRR noted that, in accordance with 30 U.S.C. § 1719(d) (2012) and 30 C.F.R. § 1241.60(b), it could charge civil penalties in the maximum amount of \$25,000 per day, but that it had chosen instead to utilize its “standard assessment of \$50 per day, per inaccurate report[.]” NCP at 2. ONRR also stated that the civil penalties assessed against Statoil were “independent of any additional royalties that may be due as a result of [Statoil’s] incorrect reporting[.]” *Id.*

<sup>12</sup> In accordance with 30 C.F.R. § 1241.63(a), Statoil’s appeal did not stay the effect of the NCP, and thus civil penalties continued to accrue, in the absence of correction of the MMS-2014 Reports, and thus abatement of the underlying violations.

“has corrected all alleged errors in its royalty reports[.]”<sup>13</sup> Request for Interlocutory Appeal at 2. ONRR reported that, in May 2012, during the pendency of the administrative review proceedings before the Hearings Division and the Board, Statoil submitted information, which corrected the inaccurate reporting of natural gas sales volumes in connection with 19 of the 21 MMS-014 Reports currently at issue, for the period April 2006 through December 2007, and was in the process of correcting the inaccurate reporting on the remaining 2 MMS-2014 Reports. See Declaration of Smith, dated July 11, 2012 (Ex. 6 attached to Answer), ¶¶ 21-24, at 3. In July 2012, Statoil submitted information, which corrected the remaining inaccurate reporting. See ONRR Sur-Reply, Docket No. ONRR 2012-03, dated July 18, 2012, at 1, 3.

On appeal, Statoil explains that errors in ONRR’s own assessment of inaccuracies in Statoil’s royalty reporting and changes in ONRR’s position since its Order to Report rendered it difficult for Statoil to properly correct its royalty reporting for the relevant time period. See SOR at 7-8; Statoil Motion for Summary Judgment at 11-12. However, it also reports that ONRR notified it on July 18, 2012, “confirm[ing] that all alleged errors in the [MMS-2014] Reports, cited by the Notice of Civil Penalty or otherwise, *had been corrected*.” (Emphasis added.) SOR at 8; see ONRR Sur-Reply at 1.

ONRR reports that, as a consequence of “receiv[ing] the corrected information from Statoil,” it determined that Statoil owed additional royalties, in the total amount of \$370,293.25, with respect to natural gas produced and sold from the Lease, during the period from April 2006 through December 2007, which royalties have been paid. Answer at 18; see e-mail to Lee from Smith, dated Aug. 8, 2012 (Ex. 7 attached to Answer).

On April 11, 2012, Judge Sweitzer initiated hearing proceedings, adjudicating a series of procedural matters.<sup>14</sup> After receiving the cross-motions for summary judgment, the Judge issued his March 2013 Order, without the necessity of a hearing. As to Issue 1, he ruled that the failure to correct inaccurate information in royalty reporting could be deemed “maintain[ing]” inaccurate information, within the

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<sup>13</sup> Statoil also stated that it “has paid under protest all sums demanded in ONRR’s Notice of Civil Penalty.” Request for Interlocutory Appeal, dated Mar. 29, 2013, at 2. Such payment is said to have occurred on Mar. 23, 2012. See SOR at 7.

<sup>14</sup> In later seeking an interlocutory appeal of Judge Sweitzer’s March 2013 Order, Statoil asked Judge Sweitzer to suspend the hearing proceedings, pending the Board’s interlocutory review of the controlling legal issue. The Judge suspended the hearing proceedings, in an Apr. 26, 2013, order.

meaning of 30 U.S.C. § 1719(d) (2012), and, as to Issue 2, that ONRR could properly assess Statoil, under 30 U.S.C. § 1719(d) (2012), with the most severe civil penalty, for having “maintain[ed]” inaccurate information in its royalty reporting. However, the Judge further ruled, as to Issue 3, that the case raised a genuine question of material fact concerning whether Statoil had knowingly or willfully “maintain[ed]” inaccurate information under 30 U.S.C. § 1719(d) (2012), which must be adjudicated following a hearing.<sup>15</sup> He denied Statoil’s motion for summary judgment in its entirety, and granted in part and denied in part ONRR’s motion for summary judgment.

ONRR declined to take an interlocutory appeal from the Judge’s disposition of Issue 3. Pending before the Board is Statoil’s interlocutory appeal, filed March 29, 2013, from the Judge’s basic ruling on Issues 1 and 2. Order at 17 (“Statoil can be penalized under 30 U.S.C. § 1719(d)[] for knowingly or willfully maintaining inaccurate information on MMS-2014 Reports previously submitted to ONRR[.]”). The Board now resolves that issue, as a matter of law, with finality for the Department.

The statutory scheme set forth in section 109 of FOGRMA, mirrored in its implementing regulations, 30 C.F.R. Part 1241, is correctly characterized as establishing a “hierarchy of ascending penalties for increasingly serious violations.” Order at 3. The law distinguishes between violations for which penalties may be assessed only after notice and an opportunity to correct and violations for which penalties may be assessed without the necessity of notice and an opportunity to correct. *Id.*; see SOR at 1. Sections 109(a) and (b) provide, in pertinent part, that a person shall be liable for a penalty of up to \$500 per violation per day whenever, “after due notice of violation,” he “fails or refuses to comply with any requirements of this [Act][,] . . . any rule or regulation thereunder, or the terms of any lease . . . issued thereunder” (sec. 109(a)),<sup>16</sup> or for a penalty of not more than \$5,000 per

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<sup>15</sup> Judge Sweitzer held that the hearing and decision would decide outstanding factual questions regarding whether Statoil’s failure to correct the previously-reported inaccurate royalty information was “knowing[] or willful[],” considering, *inter alia*, whether there existed any errors in Statoil’s royalty reporting, whether Statoil made any effort to correct the errors, and whether these errors were, as a consequence of communications between ONRR and Statoil or otherwise, known by or attributable to Statoil. See Order at 16.

<sup>16</sup> Section 109(a) of FOGRMA also provides that the penalty may be avoided where the violation at issue is “corrected . . . within 20 days of . . . notification or such longer time as the Secretary may agree to.” 30 U.S.C. § 1719(a) (2012). Thus, any person notified of a violation is afforded a minimum of 20 days after receipt of notice to correct the violation, without incurring any penalty. See 30 C.F.R. § 1241.52.

violation per day whenever he fails to take corrective action within 40 days following a notice of violation (sec. 109(b)).<sup>17</sup> 30 U.S.C. § 1719(a) and (b) (2012); *see* 30 C.F.R. §§ 1241.51 through 1241.53. Sections 109(c) and (d) provide, in pertinent part, that a person shall be liable for a penalty of up to \$10,000 per violation per day whenever he knowingly or willfully “fails to make any royalty payment by the [due] date” (sec. 109(c)), or for a penalty of up to \$25,000 per violation per day whenever he knowingly or willfully “prepares, maintains, or submits false, inaccurate, or misleading . . . written information” (sec. 109(d)).<sup>18</sup> 30 U.S.C. § 1719(c) and (d) (2012); *see* 30 C.F.R. §§ 1241.60 and 1241.61.

For purposes of the pending interlocutory appeal, Statoil does not deny that it incorrectly reported natural gas volumes produced and sold from the Lease, during the period from April 2006 through December 2007. *See* Reply at 9-10. However, ONRR has never alleged and Statoil has never admitted that it knowingly or willfully “submit[ted]” false, inaccurate, or misleading information, within the meaning of 30 U.S.C. § 1719(d) (2012), in connection with the original submittal of its MMS-2014 Reports, covering the period from April 2006 through December 2007, with respect to production and sales from the Lease. *See* SOR at 5. Rather, as the Judge properly stated: “ONRR instead alleges that[,] after Statoil was notified in the [August 2010] Order to Report that the gas sales volumes reported for these months were inaccurate, *it did nothing to correct the inaccuracies.*” Order at 8 (emphasis added). Therefore, in the words of Statoil, at issue are not “inadvertent errors” in its original royalty reporting, but rather its “delay” in correcting those errors, following notice to do so, extending from the August 2010 Order to Report until after the February 2012 NCP. SOR at 1; Statoil’s Reply in Support of SOR (Statoil’s Reply) at 5 (citing SOR at 13-15, 21-22).

In addition to acknowledging its delay in correcting errors brought to light by the agency, Statoil also acknowledges ONRR’s general authority under 30 U.S.C. § 1719(a) to assess civil penalties attributable to its failure to correct the previously-reported incorrect sales volumes. *See* SOR at 4. However, Statoil challenges ONRR’s authority under subsection (d) of section 109 of FOGRMA to assess civil penalties for the failure to correct previously-reported incorrect sales volumes:

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<sup>17</sup> The daily penalty will accrue, whether in the case of sections 109(a) or 109(b), “each day [the] violation continues, dating from the date of [the] notice [of violation][.]” 30 U.S.C. § 1719(a) and (b) (2012).

<sup>18</sup> The daily penalty will accrue, whether in the case of sections 109(c) or 109(d), “each day [the] violation continues.” 30 U.S.C. § 1719(c) and (d) (2012).

No one disputes that lessees, including Statoil, must accurately report oil and gas data to ONRR and act promptly to correct errors that were concededly inadvertent when made. Nor is Statoil suggesting here that it should not have been more responsive to the Agency's requests. The narrow legal issue before the Board is whether the knowing or willful civil penalty provisions of § 109(d), and the various consequences of an assessment thereunder, including potentially the concurrent criminal liability provisions in § 110, can be applied to alleged failures to timely correct reports after notice by ONRR of inadvertent reporting errors. Exercising its de novo review authority over the ALJ, the Board should reject ONRR's attempt to shoehorn such failures to correct into § 109(d).

Statoil's Reply at 3.

Not until the February 2012 NCP, after issuing the Order to Report, undertaking additional efforts to notify Statoil of the need to correct its royalty reporting, and waiting for Statoil's corrective action, did ONRR determine that Statoil's failure to correct the errors identified in the Order constituted knowing or willful "maintenance" of inaccurate information. On that basis, ONRR assessed Statoil civil penalties, pursuant to 30 U.S.C. § 1719(d) (2012).<sup>19</sup> ONRR assessed a penalty of up to \$25,000 per violation per day, running from January 27, 2011, to February 17, 2012, pursuant to 30 U.S.C. § 1719(d) (2012). In the end however, ONRR actually assessed Statoil with a civil penalty of \$50 per violation per day, nowhere near the maximum \$25,000 per violation per day penalty authorized by 30 U.S.C. § 1719(d) (2012), and well below the maximum \$500 and \$5,000 per violation per day penalty authorized by 30 U.S.C. § 1719(a) and (b) (2012).

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<sup>19</sup> Pursuant to this provision, ONRR may assess a civil penalty without prior notice and an opportunity to correct. Nevertheless, in its August 2010 Order to Report, ONRR, in fact, specifically notified Statoil that it had failed to correctly report gas sales volumes during the April 2006 through December 2007 time period, required Statoil to correct the reporting, and notified it that the failure to correct might subject Statoil to civil penalties. Therefore, we find no support for Statoil's assertion that penalties "silently accru[ed]" starting on Jan. 27, 2011. SOR at 6.

We further note that the Order to Report provided Statoil with more than the minimum 20 days to correct the violation, afforded by 30 U.S.C. § 1719(a) (2012) and 30 C.F.R. § 1241.52. It specified a "longer time," *i.e.*, 30 days. 30 U.S.C. § 1719(a) (2012); 30 C.F.R. § 1241.52.

At issue is whether, despite the applicability of 30 U.S.C. § 1719(a) and (b) (2012) to the circumstances of the present case, ONRR was authorized alternatively to pursue a civil penalty pursuant to 30 U.S.C. § 1719(d) (2012), for Statoil's failure to correct previously-reported inaccurate information regarding natural gas volumes produced and sold from the Lease. In doing so, we exercise our authority, under 43 C.F.R. § 4.1, to resolve the legal question raised as fully and finally as might the Secretary, unburdened by any prior interpretation of applicable law by ONRR or Judge Sweitzer. *See, e.g., U.S. Fish & Wildlife Service*, 72 IBLA 218, 220-21 (1983); *Exxon Co., U.S.A.*, 15 IBLA 345, 353 (1974) (“To the extent that a question presents legal issues amenable to the adjudicatory process this Board has [under 43 C.F.R. § 4.1] full powers including, without limitation, the right of *de novo* consideration.”).

### *Discussion*

Statoil contends that ONRR was not entitled to assess civil penalties for a failure to correct natural gas sales volumes, previously reported in its MMS-2014 Reports, pursuant to subsection (d) of section 109 of FOGRMA, since this undermined the “carefully crafted ‘hierarchy’ of civil penalties” set forth in the section, “read[ing]” subsections (a) and (b) of section 109 entirely “out of the statute[.]” Request for Certification, dated Mar. 29, 2013, at 4. Indeed, it asserts that, “[i]nexplicably eschewing §§ 109(a) & (b), ONRR *attempts to shoehorn the same violation into § 109(d)[.]*” SOR at 2 (emphasis added); *see id.* at 10. It states that, in doing so, ONRR improperly invoked § 109(d), which allowed ONRR to assess the “most severe civil penalty” available under section 109 of FOGRMA of \$25,000 per day in the case of a violation, without first providing any notice of or opportunity to correct the violation, rather than a minor civil penalty of \$500 per day in the case of a failure to correct a violation, after providing notice of the violation. *Id.* at 1.

According to Statoil, under 30 U.S.C. § 1719(d) (2012), Congress intended ONRR to assess the severest civil penalty for “intentionally retaining internal false or inaccurate documents to mislead auditors and deprive an unknowing lessor of financial benefits from oil and gas production,” and not intentionally failing to correct false or inaccurate documents already filed with the agency, even where doing so equally deprived an unknowing lessor of financial benefits from oil and gas production. SOR at 1; *see id.* at 21 (“[§ 1719(d) proscribes] active maintenance of false information and documents to mislead the government . . . (i.e., ‘cooking the books[.]’[.]”), 22 (“§ 109(d)[.] plainly refers to . . . egregious conduct, namely knowingly or willfully keeping internal false and inaccurate records (*i.e.*, ‘cooked books’) to intentionally support false reports, thwart government audits and inspections, and deprive the lessor of royalty revenues for oil and gas production”). Statoil claims that ONRR should have initially founded its civil penalty assessment on

§ 1719(a), and then, only after Statoil failed to timely correct the inaccurate information in its royalty reporting, on § 1719(b). *See id.* at 15-16.

In its February 2012 NCP, ONRR assessed civil penalties expressly for Statoil’s “knowing or willful *maintenance of incorrect information* on gas sales volumes reported to [ONRR] on [MMS-2014] Reports[.]” NCP at 1 (emphasis added.). We think it clear that ONRR meant the maintenance of information on file with ONRR, regarding the computation and payment of royalties. This would encompass the records submitted by Statoil and kept by ONRR. ONRR expressly referred to the maintenance of information “*reported to [ONRR] on [MMS-2014] Reports[.]*” *Id.* (emphasis added). ONRR clearly was at least principally concerned with the accuracy of the information Statoil provided to ONRR, also reflected in the fact that since January 2011, ONRR had been directing Statoil to correct the MMS-2014 Reports on file with ONRR.

ONRR alleges that Statoil violated 30 U.S.C. § 1719(d) (2012), not when Statoil first “submit[ted]” its MMS-2014 Reports for the period from April 2006 through December 2007, but when it knowingly or willfully “maintain[ed]” false, inaccurate, or misleading information in ONRR’s possession, by failing to correct the inaccurate MMS-2014 Reports after notice of the errors and demand for correction.

[1] Judge Sweitzer upheld ONRR’s interpretation of 30 U.S.C. § 1719(d) (2012), concluding that the term “maintain[.]” is not limited simply to Statoil’s internal record-keeping regarding royalty computation and payment, which is subject to scrutiny by ONRR, but also refers to Statoil’s reporting to ONRR regarding royalty computation and payment, which is also subject to scrutiny by ONRR. We agree with the Judge’s ruling for the reasons he provided, as well as reasons advanced by ONRR.<sup>20</sup> By looking at the statutory scheme, legislative history, and plain language of 30 U.S.C. § 1719(d) (2012), we too conclude that under section 109(d) of FOGRMA, 30 U.S.C. § 1719(d) (2012), ONRR may properly assess a civil penalty to a lessee that knowingly or willfully “maintains . . . false, inaccurate, or misleading . . . written information,” by failing to correct inaccurate information submitted to ONRR in royalty computation reports.<sup>21</sup>

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<sup>20</sup> However, we note that the general legislative purpose the Judge and ONRR point to applies equally to 30 U.S.C. § 1719(a) and (b) (2012), as to 30 U.S.C. § 1719(d).

<sup>21</sup> In the present case, ONRR also could have sought to penalize Statoil under 30 U.S.C. § 1719(d) (2012) for Statoil’s maintenance of records kept by Statoil that contained false, inaccurate, or misleading information. However, it did not do so,

(continued...)

The statutory language of 30 U.S.C. § 1719(d) (2012) penalizes “[a]ny person *who . . . prepares, maintains, or submits*” false, inaccurate, or misleading written information. (Emphasis added.) ONRR determined that, “by *failing to* amend or make adjustments to incorrect information contained in previously submitted MMS-2014 Reports,” the lessee acted to “maintain[]” inaccurate information on ONRR’s system, explaining that, because Statoil and other lessees “submit information to ONRR electronically and place it on ONRR’s database, the only way for a lessee to comply with the second sentence of 30 C.F.R. § 1210.30 is to properly maintain accurate reports on ONRR’s system. Order at 12; *see* SOR at 8-9. We agree.

Pursuant to 30 C.F.R. § 1210.30, lessees are obligated to correct inaccurate data, submitted in a previous report, such as the MMS-2014 Reports, and are warned that failure to timely file an accurate and complete amended report may result in ONRR assessing civil penalties under 30 C.F.R. Part 1241, which applies to both minor civil penalties in 30 U.S.C. § 1719(a) and major civil penalties in section 1719(d). ONRR chooses whether to apply the more lenient or severe civil penalty provisions depending on the particular circumstances. Clearly, when a lessee first submits an MMS-2014 Report knowing it to be inaccurate or intending it to be inaccurate, we would not hesitate to conclude, no doubt with the concurrence of both ONRR and Statoil, that ONRR properly charged the lessee with a civil penalty under § 1719(d) for having knowingly or willfully submitted an inaccurate report. It is also clear that, when a lessee maintains, in its records only, information used to calculate royalty, which it is required to accurately maintain for inspection by ONRR, and the lessee knows that information to be inaccurate, it is also subject to a civil penalty under § 1719(d).

We similarly conclude that, when a lessee, having already submitted an MMS-2014 Report, later comes to know, whether through its own efforts or notice by ONRR, that the report is inaccurate, and fails to timely correct the inaccuracies in the report and thereby maintains the report, on file with ONRR, in the same inaccurate state, the lessee has knowingly or willfully maintained inaccurate information with ONRR, and ONRR, in turn, is equally authorized to charge the lessee with a civil penalty under § 1719(d). In terms of whether a lessee “actively and intentionally attempt[s] to defraud the [F]ederal government of oil and gas revenues,” which Statoil admits is actionable under § 1719(d), we fail to see the distinction, between maintenance of inaccurate internal records that effectively conceal a failure to properly pay royalties, and maintenance, on file with ONRR, of previously-submitted

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(...continued)

owing perhaps to ONRR’s lack of knowledge regarding the state of Statoil’s records. *See* Answer at 6-7; Reply at 5 n.1.

inaccurate records, when the lessee has known those records to be inaccurate, made no effort to correct them, and effectively concealed its failure to properly pay royalties. See SOR at 13; Answer at 9. A lessee in either situation is equally subject to the severest civil penalty under section 109 of FOGRMA since, in each case, it seeks to thwart the ability of ONRR to collect the proper royalty, which was an important congressional purpose. See 128 Cong. Rec. 13,941 (1982) (“In regard to the penalty section of this bill [S. 2305], I was concerned that the bill did not differentiate between knowing and willful acts to evade the law and just bookkeeping errors. . . . Provisions were added to the bill which made the distinction and provided the chance to correct unintentional technical violations of the law.” (remarks of Senator Domenici)); 128 Cong. Rec. 30,377 (1982) (“[H.R. 5121] establishes strict penalties, both civil and criminal, for oil [and gas] producers that do not play by the rules” (remarks of Representative Santini)); H.R. Rep. No. 97-859, at 34 (1982), *reprinted in* 1982 U.S.C.C.A.N. 4268, 4288 (“For the more serious acts such as knowingly or willfully submitting false records, . . . the Committee provided stiffer penalties”); SOR at 10-15 (citing H.R. Rep. No. 97-859, at 24 (1982), *reprinted in* 1982 U.S.C.C.A.N. 4268, 4278 (“[Most severe civil penalty applies to] knowingly or wil[l]fully committing *certain acts*” (Emphasis added))).

We do not believe that Congress meant, under 30 U.S.C. § 1719(d) (2012), to penalize the failure by a lessee to maintain accurate records regarding its royalty computations, which must be accessed by ONRR in order to verify the accuracy of the lessee’s royalty payments, and not penalize the failure by a lessee to maintain the accuracy of the royalty computation reports on file with ONRR, which ONRR uses to verify the accuracy of the lessee’s royalty payments. Appellant provides no basis for concluding that, in enacting FOGRMA, Congress considered the accuracy of the reports made by a lessee to ONRR as less important than the accuracy of records the lessee does not report to ONRR but must keep for inspection by ONRR, and that Congress intended to disparately penalize knowing or willful inaccuracy of one over the other. Appellant provides no justification for intuiting such distinctions, and there is none. The accuracy of both sets of information is necessary for the Department to fulfill its statutory obligation to verify the accuracy of the production, sales, and other information critical to ensuring the proper collection and payment of royalties owed the United States. Knowing or willful inaccuracy in such reports or records equally undermines the statutory mission, justifying the severest civil penalty. See H.R. Rep. No. 97-859, at 15 (1982), *reprinted in* 1982 U.S.C.C.A.N. 4268, 4269 (“Until very recently there has been no capability in the Federal Government to verify production data or sales data with respect to oil [or gas] produced from a Federal lease, allowing industry to operate essentially on an honor system. . . . [T]he[] [solutions to the problems identified] involve clearly establishing the authorities and responsibilities of the Secretary of the Interior[] [and] the responsibilities of lessees,

operators and other interest holders . . . and establishing meaningful penalties for various cases of noncompliance.”).

Appellant finds the word “maintain” inapplicable to these circumstances. However, we agree with ONRR that “‘maintains’ is not a term of art requiring a narrow, specialized definition,” and that “[i]n fact, the general legal definition is consistent with ONRR’s position that ‘maintains’ applies to information which a lessee has placed on ONRR’s database. Answer at 12. ONRR continues:

Black’s Law Dictionary defines “maintain” in part as “to care for (property) for purposes of operation productivity or appearance; to engage in general repair and upkeep.” Black’s Law Dictionary, Abridged Eighth Edition, 796 (2005). It defines “maintenance” in part as “the care and work put into property to keep it operating and productive, general repair and upkeep.” *Id.* Maintaining data on ONRR’s computer system, which must be accurate to fulfill ONRR’s mandate and which a lessee is obligated by 30 C.F.R. § 1210.30 to correct when erroneous, is consistent with “general repair and upkeep” and “the care and work put into property to keep it operating and productive.”

*Id.*

Furthermore, the well-established principle of statutory construction, applied by Judge Sweitzer here provides that, when a particular matter is specifically and generally addressed in a statute, the specific language of the statute prevails over the general language. *See, e.g., Clifford F. MacEvoy Co. v. United States*, 322 U.S. 102, 107 (1944) (“However inclusive may be the general language of a statute, it ‘will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same . . . statute which otherwise might be controlling.” (quoting *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208 (1932))); *Debra Smith (On Reconsideration)*, 180 IBLA 107, 111 (2010). Despite the applicability of section 109(a) and (b) to the present case, the Judge concluded that section 109(d) was the “most appropriate provision under which to impose civil penalties,” and, indeed, since Statoil’s conduct was covered by the “specific language” of subsection (d), such language “prevail[ed] over the general” language of subsections (a) and (b). Order at 13, 14. Like Judge Sweitzer, we conclude that ONRR properly assessed Statoil with civil penalties under 30 U.S.C.

§ 1719(d) (2012), rather than 30 U.S.C. § 1719(a) and (b) (2012), since the specific statutory language prevails.<sup>22</sup>

Finally, we address Statoil's argument that, were ONRR permitted to assess civil penalties for a failure to correct previously-reported natural gas sales volumes under subsection (d) of section 109 of FOGRMA, which does not require prior notice of the violation, as do subsections (a) and (b) of the section, it would allow ONRR to delay assessing any civil penalties and then, after a considerable time frame has elapsed, assess civil penalties retroactive to the date of the original failure to correct. See SOR at 27 ("Under ONRR's approach, an entity would not even know whether or not ONRR is accruing penalties until ONRR decides to inform the entity after the fact"). However, Statoil overlooks the fact that subsection (d) requires that ONRR be able to show that the failure was "knowing[] or willful[][" 30 U.S.C. § 1719(d) (2012). This presumes that the lessee already knew or could be deemed to have known of its failure or that the lessee was notified by ONRR of its failure, as in the present case. Thereafter, any knowing or willful failure to correct the royalty reporting, and thereby avoid assessment of civil penalties, is directly attributable to the lessee's failure to act after notice, not to any delay by ONRR in notifying the lessee.<sup>23</sup> In the instant case, it remains to be determined whether ONRR can demonstrate that Statoil's failure to act was, in fact, knowing or willful, starting with the specified date (January 27, 2011).

Except to the extent that they are expressly addressed herein, all other allegations of legal error made by Statoil are deemed to be either plainly contrary to the law or immaterial to a final disposition of the question of law now presented to the Board.

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<sup>22</sup> We note that, while disputing the applicability of the statutory provision, Statoil admits, on appeal, that 30 U.S.C. § 1719(d) (2012) established "certain specifically-enumerated . . . transgressions[.]" SOR at 1.

<sup>23</sup> Nor are we persuaded that ONRR was not justified, as a matter of law, in assessing a civil penalty under § 1719(d) because, at the time of issuance of the NCP, ONRR already knew that the information that Statoil failed to correct was inaccurate (although ONRR was mistaken regarding the extent of the inaccuracy), the amount of the penalty actually assessed was less than what could have been assessed under § 1719(a) and (b), or Statoil was also subject to criminal prosecution under 30 U.S.C. § 1720 (2012). See SOR at 26-27, 28-30. None of this bears on the question of the proper interpretation of § 1719(d).

We, therefore, conclude that, in his March 2013 Order, Judge Sweitzer properly held that, under 30 U.S.C. § 1719(d) (2012), ONRR was entitled to assess civil penalties for Statoil’s knowing or willful failure to correct inaccurate information in its royalty reporting, for the reasons discussed above. Since we conclude that ONRR “utilize[d] . . . the tools Congress actually afforded” to penalize noncompliance under FOGRMA and its implementing regulations and “for purposes for which they were . . . intended,” we decline to reverse the judge’s order and vacate the NCP “as an unlawful application of § 109(d).” SOR at 4. Mindful of the importance of accuracy in royalty reporting to proper royalty collection and enforcement under FOGRMA, we cannot, as a matter of law, characterize ONRR’s action as imposing a “very severe penalty liability for relatively minor or inadvertent violations of necessarily complex [royalty] regulations,” thereby providing “a major disincentive to produce oil or gas from lease sites on [F]ederal . . . lands [and the OCS].” S. Rep. No. 97-512, at 17 (1982).

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 March 7, 2013, Order of ALJ Sweitzer is affirmed, on interlocutory appeal, to the extent that the judge ruled that ONRR was entitled, under 30 U.S.C. § 1719(d) (2012), to assess civil penalties for knowingly or willfully failing to correct inaccuracies in its royalty reporting.

\_\_\_\_\_/s/\_\_\_\_\_  
Christina S. Kalavritinos  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
James F. Roberts  
Administrative Judge