



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Montana State Office  
5001 Southgate Drive  
Billings, Montana 59101-4669  
www.blm.gov/mt

In Reply Refer To:  
SDR-922-13-02  
3165.3 (MT9220.PL)

January 17, 2013

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Elizabeth S. Bush-Ivie, P.E. )  
OXY USA Inc. ) SDR No. 922-13-02  
5 Greenway Plaza, Suite 110 )  
Houston, Texas 77046-0521 )

### **DISMISSED - UNTIMELY FILED**

OXY USA Inc. (OXY) requested a State Director Review (SDR) on January 4, 2013 (Enclosure 1), of a written order for an Incident of Noncompliance (INC) issued by the North Dakota Field Office (NDFO) on November 27, 2012 (Enclosure 2). The INC was issued regarding the construction of a well pad prior to approval of an Application for Permit to Drill (APD). The INC referenced the regulations under 43 CFR 3162.3-1(c) which states:

“The operator shall submit to the authorized officer for approval an Application for Permit to Drill for each well. No drilling operations, **nor surface disturbance preliminary thereto**, may be commenced prior to the authorized officer’s approval of the permit”. (emphasis added)

Our review of the SDR shows that the INC dated November 27, 2012, was received by OXY via Federal Express delivery and confirmation on November 28, 2012 (Enclosure 3). OXY’s SDR was received in the Bureau of Land Management (BLM), Montana State Office on January 4, 2013, **twenty-five (25) business days later**.

The regulations under 43 CFR 3165.3(b) state:

“Any adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director **within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received and shall be filed with the appropriate State Director....**” (emphasis added)

Therefore, since the SDR request was not filed and received in this office within 20 business days of the date the INC was received by OXY, **your request for an SDR is dismissed as untimely filed.**

This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and Form 1842-1 (Enclosure 4). If an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed from is in error.

If you wish to file a Petition for a Stay of this Decision, pursuant to 43 CFR 4.21, the Petition must accompany your Notice of Appeal. A Petition for a Stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and Petition for a Stay **must** also be submitted to each party named in the Decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a Decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- (4) Whether the public interest favors granting the stay.

/s/ Theresa M. Hanley

Theresa M. Hanley,  
Deputy State Director  
Division of Resources

#### 4 Enclosures

- 1-OXY SDR Request dated December 31, 2012 (5 pp)
- 2-BLM NDFO INC Letter dated November 27, 2012 (2 pp)
- 3-Federal Express Receipt – Confirmation of Delivery (1p)
- 4-Form 1842-1(1p)

cc: (w/o encls.)

WO(310)

All BLM State Offices

North Dakota Field Office

Miles City Field Office

Great Falls Oil and Gas Field Office