



United States Department of the Interior



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

In Reply Refer To:

SDR-922-11-01
3160 (MT9220.WL)

March 2, 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

DECISION

Mr. Courtney Isselhardt
Slawson Exploration Company, Inc
1675 Broadway, Suite 1600
Denver, Colorado 80202

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SDR No. 922-11-01

AFFIRMED

Slawson Exploration Company, Inc. (Slawson) requests that a Bill for Collection for drilling without approval be voided. Slawson did not specifically request a State Director Review (SDR) in accordance with 43 CFR 3165.3(b), however, given the nature of the request, it is being treated as a request for SDR. Slawson is requesting review of the January 31, 2011, Notice of Incidents of Noncompliance and Assessment issued by the Bureau of Land Management (BLM) North Dakota Field Office (NDFO) for drilling the Loon Federal #1-24-25H well within Federal lease NDM99455 without prior approval. The SDR was considered timely filed on February 17, 2011, in accordance with 43 CFR 3165.3(b), and was assigned number SDR-922-11-01.

BACKGROUND

Slawson submitted an Application for Permit to Drill (APD) for the Loon Federal #1-24-25H on August 16, 2010. The surface location is in the NWNE of Sec. 24, T. 152 N., R. 92 W., Mountrail County, North Dakota, and is located on fee surface overlying fee minerals. The well will be drilled horizontally with a proposed bottom hole location in the SWSE of Sec. 25, T. 152 N., R. 92 W. and will penetrate Federal lease NDM99455. Included in this lease are the S2N2 and the SW of Sec. 24, T. 152 N., R. 92 W., and all of Sec. 25, T. 152 N., R. 92 W. The APD was approved on January 6, 2011.

Around January 14, 2011, the NDFO received a call informing them that the Patterson #167 drilling rig would be moving onto this well, and that the well had been spud on December 7, 2010, using a spud rig. Surface casing had been set at 1752 feet. Upon reviewing the file, it was discovered that the spud date was prior to the APD approval date.

On January 31, 2011, the NDFO issued a Notice of Incidents of Noncompliance which included a \$5,000 assessment in accordance with 43 CFR 3163.1(b)(2) which states:

“For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, \$500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed \$5,000.”

SLAWSON ARGUMENTS

Slawson does not dispute the fact that the well was spud prior to approval of the APD; however, Slawson claims it received verbal approval to spud the well. Slawson argues:

“On 12/05 or 06/2010, one of Slawson’s rig consultants (Sonny) requested and was given permission by the Dickinson Office BLM Field inspector Dennis Tannem to spud the surface hole for the Loon Federal #1-24-25H using Majors Drilling spud rig. On 12/07/2010 (sic) a second Slawson consultant (Steve) called the Dickinson Field Inspector and again asked if we had permission to spud the well and he was also given permission to spud. We obviously made an extra effort to insure that we had permission to spud this well. They were told to go ahead because the approved written permit was on someone’s desk waiting to be mailed, so we were given verbal permission twice to spud the well.”

Slawson feels the assessment was sent in error since it had verbal approval to spud the well. Therefore, Slawson is requesting that the assessment and bill for collection be voided.

DISCUSSION

The BLM records do not indicate that verbal approval to spud the well was given. Slawson argues that they received verbal approval on either December 5 or 6, 2010, from Dennis Tannem. The NDFO does not employ anyone with that name; however there is a Petroleum Engineering Technician in the NDFO by the name of Dennis Hannum. BLM records, however, show that Dennis Hannum was on leave on December 5 and 6 and was not available to be contacted. Therefore, it is not possible that Dennis Hannum gave verbal approval to Slawson on December 5 or 6 to spud the well. Also, Mr. Hannum has stated that he did not give anyone verbal permission to spud a well prior to approval of the APD.

However, even assuming, as Slawson contends, that the BLM employee verbally approved the commencement of drilling operations prior to approval of the subject APD, this advice was plainly erroneous (see 43 CFR 3162.3-1(c)). It has been well established through Interior Board of Land Appeals decisions, that reliance on erroneous advice cannot relieve a party of the consequences imposed by a regulation. See Jack J. Grynberg, 114 IBLA 229 (1990), and cases cited. Departmental regulation 43 CFR 1810.3(c) provides this warning:

“Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.”

The employees of BLM have no authority to depart from the requirements of the regulations dealing with the public lands. Further, all citizens are deemed to have knowledge of such regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Terra Resources, Inc., 107 IBLA 10, 13 (1989); William Perlman, 91 IBLA 208, 231-32. Thus, even if Slawson was erroneously advised by the BLM that it could commence drilling prior to the issuance of the APD, it has not established that grounds exist for stopping the BLM from enforcing the terms of this regulation.

DECISION

The Notice of Incidents of Noncompliance and Assessment and accompanying Bill for Collection issued by the NDFO is affirmed.

APPEAL RIGHTS

This Decision may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and Form 1842-1 (Enclosure 1). 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

Enclosure
1-Form 1842-1 (1p)

cc: WO-310, LS, Rm. 501
All BLM State Offices
Miles City Field Office
North Dakota Field Office
Great Falls Oil and Gas Field Office