

EXXON COMPANY, U.S.A.

IBLA 88-181

Decided February 21, 1990

Appeal from a decision of the Deputy Director, Minerals Management Service, affirming an order assessing charges for erroneous reporting. MMS 87-0222-O&G.

Affirmed in part, reversed in part, and remanded.

1. Administrative Practice--Administrative Procedure: Decisions

When issuing a formal decision one must do more than ensure that the decision is supported by a rational basis. The basis for that decision must be stated in the written decision and demonstrated in the administrative record accompanying the decision. The recipient of the decision deserves a reasoned and factual explanation of the rationale for the decision, and must be given some basis for understanding it and accepting it or, alternatively, for appealing and disputing it.

2. Administrative Procedure: Generally--Federal Oil and Gas Royalty Management Act of 1982: Generally--Federal Oil and Gas Royalty Management Act of 1982: Assessments--Oil and Gas Leases: Royalties: Generally--Regulations: Generally--Regulations: Applicability--Regulations: Interpretation

A regulation should be sufficiently clear that there is no basis for an oil and gas lessee's noncompliance with the regulation before that regulation is interpreted to the detriment of a lessee. If a regulation is ambiguous, any doubt as to its meaning should be resolved favorably to the lessee. The need for clarity is even more imperative when MMS attempts to base a significant monetary assessment on a lessee's failure to properly apply provisions of its Oil and Gas Payor Handbook, because that Handbook lacks the force and effect of law enjoyed by a statute or regulation.

APPEARANCES: Salvatore J. Casamassima, Esq., Houston, Texas, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Exxon Company, U.S.A. (Exxon), has appealed from a decision of the Deputy Director, Minerals Management Service (MMS), dated October 5, 1987, affirming a \$10,000 assessment for erroneous reporting on Exxon's June 1986 Form MMS-2014, Report of Sales and Royalty Remittance.

At the outset of this decision we must note that the record submitted by MMS on appeal is not the complete, official file in this dispute. MMS has not submitted Exxon's June 1986 Form MMS-2014, or a complete copy of Royalty Rejected Line Detail Report No. ATL 152R, documents central to the dispute now before us. The MMS field report and MMS' Answer do shed some light upon what transpired, but, in the absence of the complete file, some details of the disputed transaction are left to speculation. 1/

Oil and gas lessees are required to file monthly production reports with MMS. The reports filed are on forms prepared by MMS, and require a listing of various transactions as line item entries, using various numeric codes, called "transaction codes" (TCs). MMS also requires the use of the report form for entries intended to correct entries on previous reports, and a numeric code is also used to describe the nature of any line item entry that makes adjustments. These entries are called "adjustment reason codes" (ARCs) Use of these codes presumably facilitates computerized processing of production data.

The dispute now before us arose from the manner in which Exxon completed Form MMS-2014 in June 1986 when it made line item entries to adjust previously reported transportation allowances (allowable deductions). Evidently, MMS had previously approved a tentative transportation allowance, with the understanding that necessary adjustments would be made when actual costs were determined. Apparently, Exxon assembled transportation cost data, and, in the June 1986 report, it "reversed" the previously reported tentative allowance (presumably by adding an amount equal to the tentative allowance previously deducted) and replaced it with a corrected transportation allowance based on actual costs. 2/ This adjustment was evidently noted with the correct TC and ARC, as MMS has had no problem with the manner in which Exxon reported this adjustment.

1/ MMS is reminded of its obligation to submit the complete, original administrative record to this Board when an appeal is filed, and that failure to comply may result in our vacating its decision as unsupported by the evidence. Dugan Production Corp., 103 IBLA 362, 364 (1988), and cases cited therein. We note that despite the difficulty experienced when attempting to determine what actually transpired in this case, it is unnecessary for us to take further steps to overcome MMS' failure to submit a complete record. The MMS decision must be reversed on other grounds.

2/ It is not clear whether Exxon revised an earlier report for June 1986, or made entries in a June 1986 report to adjust entries on previous report(s). It appears that the latter procedure was used.

The problem arose because the June 1986 report also contained line item entries in which Exxon had evidently reversed its previously reported gross royalty and royalty-in-kind figures for the same time periods and replaced them with identical figures. Exxon listed these entries using TC 01 (royalty due) and TC 06 (royalty-in-kind) to describe the transactions and ARC 34 (adjustments for allowances) on the report to explain the adjustment.

MMS' computer balked at accepting the MMS-2014 report form submitted by Exxon because of Exxon's use of the ARC 34 entries, and generated Royalty Rejected Line Detail Report No. ATL 152R. The report identified 1,365 line item entries as being erroneous. By demand letter and bill for collection, Invoice No. 75760111, both dated December 11, 1986, MMS assessed Exxon \$10,000 for 1,365 erroneous reports on Exxon's Form MMS-2014 for the June 1986 reporting period. MMS enclosed the Royalty Rejected Line Detail Report, upon which MMS circled each line which contained at least one reporting error. The following errors were cited by MMS: "1. [t]he use of adjustment reason codes that were incompatible with the transaction codes used (e.g., using adjustment reason code 34 with transaction codes 01 and 06); and 2. [r]eporting unnecessary lines with no quantities and values." Although the regulations then in effect provided for the assessment of \$10 per line for each line containing one or more payor errors (in this case \$13,650), MMS charged Exxon \$10,000, the maximum erroneous reporting assessment permitted.

Exxon appealed this assessment to the Director, MMS. In its appeal to the Director, Exxon explained that the alleged errors resulted from adjustments it made to its tentative transportation allowance figures following MMS' approval of its actual transportation costs for its California Hondo lease. Exxon argued that it had selected ARC 34 by following the 1982 MMS Oil and Gas Payor Handbook (Handbook). The Handbook instructions stated that ARC 34 should be used to adjust royalties as a result of a retroactive allowance determination made by MMS, and that ARC 38, the code MMS determined to be appropriate, should be used to adjust line entries previously reported with coding or typographical errors. Exxon further asserted that it had never been notified that ARC 34 was incompatible with TC 01 and TC 06.

By decision dated October 5, 1987, the Deputy Director, MMS, denied Exxon's appeal. He first noted that a completed Form MMS-2014 must accompany all royalty payments to MMS. He also indicated that 30 CFR 218.40(b) (1986) provides for an assessment of \$10 for each report which is completed incorrectly, and that 30 CFR 218.40(c) (1986) defines a report as each line on a Form MMS-2014. He further found that Exxon's adjustments using ARC 34 in conjunction with TC 01 and TC 06 had been rejected by the MMS exception processing system because ARC 34, as an adjustment to allowances, is "incompatible" with TC 01 and TC 06, which are used for royalty transactions and not allowance transactions.

The Deputy Director continued:

The Appellant states that the MMS Payor Handbook does not explain this incompatibility and that Exxon has never been notified that the use of ARC 34 for this kind of reporting is incorrect.

The MMS Fiscal Accounting Division, in the field report on this appeal prepared pursuant to 30 CFR 290.3(b) (1986), states that Exxon's errors were avoidable because the adjustments made by Exxon (the reversals of TC 01 and 06) were unwarranted and unnecessary. The Fiscal Accounting Division further states that Exxon was notified in November 1984 that this type of reporting was inappropriate.

The record supports the finding that Exxon had been notified of the incompatibility of TC 01 and ARC 34.

Based on the record before me, I conclude the Fiscal Accounting Division acted correctly with respect to the subject assessment. The Appellant has offered no arguments which would justify the waiver of these charges. Accordingly, the subject appeal is denied.

(Decision at 2).

In its statement of reasons (SOR), Exxon initially asks the Board to disregard the Deputy Director's conclusion that the record supports the finding that Exxon had been notified of the incompatibility of ARC 34 and TC 01 and TC 06. This request derives from MMS' failure to provide a copy of the Fiscal Accounting Division field report to Exxon or refer to any document of record supporting the MMS notification claim.

Exxon also repeats the arguments it presented in its appeal to the Director. Exxon notes that its royalty reporting consists of two components--valuation and transportation allowances--and that the asserted errors stem from its retroactive adjustment of the transportation allowance for its Hondo lease. Exxon then explains that when it made the transportation allowance adjustments on Form MMS-2014, it attempted to set out the transportation adjustments in a straightforward manner, using ARC 34 with the basic valuation lines TC 01 and TC 06. Exxon asserts that there are no regulations, guidelines, directives, or notices of any kind supporting the MMS position that ARC 34 cannot be used on non-transportation lines, and that Exxon should have used ARC 38.

Exxon argues that the only written guidance for proper ARC designation was the 1982 Handbook and that the instructions in the Handbook support its use of ARC 34. Exxon elaborates:

As stated in Appendix B.3 [3/] of the Handbook * * *, the MMS instructs that [ARC] "34" is to be used "to adjust royalties as a result of a retroactive allowance determination by [MMS]." Nowhere does it state that the MMS prohibits the use of the code to adjustments made to valuation lines. In fact, code "34" appears to be in accordance with the instructions and is the most suitable code for retroactive transportation adjustments of the type made. In contrast, [ARC] "38" is ill-suited for that type of adjustment. The instructions for code "38" state that it is to be used "to adjust line entries that were previously reported with coding or typographical errors when the adjustment does not result in the payment of additional royalties." (Emphasis supplied.) Coding or typographical errors were clearly not the genesis of the transportation allowance adjustments and it would be inappropriate, if not incorrect, to use code "38" for such adjustments. Code "34" best reflects that type of adjustment, not code "38".

Thus, the only written guidance on the subject contradicts the position of the MMS taken in this appeal. Even if the MMS had revised its position on the proper method of making the adjustment, there is nothing in the record that would indicate the Payor Handbook was not providing the proper guidance. The only rebuttal the MMS offers is that it allegedly gave Exxon verbal notice of its error more than two years prior to the incorrect adjustment. Even if such a verbal contact had been made, it does not pass muster under the Administrative Procedure Act as adequate notice of policy, the violation of which carried a potential \$10,000 penalty. At the very least the MMS should have sent a letter to Exxon in 1984 clarifying its interpretation of the appropriate adjustment reason code. [Emphasis in original.]

(SOR at 2-3).

Exxon concludes that the assessments for reporting errors based on the use of the incorrect ARC should be rescinded, and that the assessments, at most, should be confined to those lines containing no reported values or quantities. Exxon further asserts that the \$10,000 assessment is grossly excessive in relation to the administrative inconvenience the errors caused MMS. Exxon requests that the Deputy Director's decision be reversed and the \$10,000 tendered in payment of the assessment be refunded.

In its answer, MMS describes its practice after a payor requests a transportation allowance:

The MMS grants a tentative allowance which the payor uses on a monthly basis until actual cost data are available. Actual cost data subsequently are used by the payor and MMS to compute an actual transportation allowance. Once an actual allowance is

3/ The descriptions of the adjustment reason codes are actually found in Appendix B.4 of the 1982 Handbook.

granted, the payor reverses its previously reported transportation allowance entries, which were based on the tentative allowance, and enters the approved transportation allowance.

(Answer at 2).

MMS states that Exxon's report correctly set out the adjustments to its transportation allowance by setting out the transportation allowance based on actual costs and reversing the tentative transportation allowance, but was in error because Exxon had also reversed its royalty lines (TC 01 and TC 06) and reentered those lines exactly as it had reversed them. MMS contends that the whole assessment could have been avoided because there was no reason to reverse and reenter those royalty lines, because the gross royalty value was not changed by the transportation allowance adjustments. MMS explains that the erroneous reporting assessment was made because Exxon used ARC 34, an incorrect code, to justify the adjustments when it unnecessarily adjusted its royalty lines (TC 01 and TC 06). MMS states that it rejected Exxon's contention that it used the correct code because TC 01 and TC 06 are royalty transactions which are incompatible with a code for allowance transactions. MMS explains the inconvenience resulting from the improper use of ARC numbers by noting that the royalty lines were rejected by MMS' computer and MMS had to change the ARC numbers on each line to 38 before reentering the data. MMS states that by correcting those line items itself, rather than returning the report to Exxon, it prevented Exxon's being assessed late reporting or interest charges.

MMS asserts that Exxon had actual notice that ARC 34 should not be used with TC 01 and TC 06 because MMS had corrected this same mistake on Exxon's October 1984 Form MMS-2014. MMS contends that it made the necessary corrections and sent the original and one copy of the Royalty Rejected Line Detail Report to Exxon, with instructions to retain the copy for its records and to sign, date, and return the original to MMS with the statement: "I have examined the changes and agree they are accurate and complete." MMS states that the original was signed by Ms. Susan Handley on November 28, 1984, and returned to MMS, and indicates that a copy of the signed report is in the official file. MMS contends that this signed acknowledgement demonstrates Exxon's knowledge of the incompatibility of ARC 34 and TC 01 and TC 06.

MMS further contends that the 1982 Payor Handbook clearly identified ARC 34 as a code to be used only when adjusting allowances, while TC 01 and TC 06 are equally clearly identified as involving royalty transactions. Therefore MMS concludes that it gave Exxon sufficient notice that the use of ARC 34 with TC 01 and TC 06 was incorrect.

In sum, MMS argues that the lines on Form MMS-2014 were incorrectly completed; 30 CFR 218.40(b) and (c) (1986) 4/ authorized it to assess

4/ MMS recognizes that 30 CFR 218.40 was revised in 1987 but states that Exxon would have been assessed the \$10,000 maximum under the revised regulation as well as under the 1986 regulation (Answer at 3 n.1).

Exxon \$10,000 for the erroneous reporting; and, therefore, the Deputy Director's decision must be affirmed.

[1] As an initial matter, we are troubled by MMS' failure to give Exxon a sufficient explanation of the basis for its conclusion that Exxon had notice of the incompatibility of ARC 34 and TC 01 and TC 06 prior to addressing that issue in its answer to Exxon's statement of reasons in this appeal. It is not enough that MMS ensures that its decision is supported by a rational basis. The basis for that decision must be stated in the written decision and demonstrated in the administrative record accompanying the decision. Eddleman Community Property Trust, 106 IBLA 376, 377 (1989); Roger K. Ogden, 77 IBLA 4, 7, 90 I.D 481, 483 (1983). The recipient of a decision deserves a reasoned and factual explanation of the rationale for the decision, and must be given some basis for understanding it and accepting it or, alternatively, for appealing and disputing it. Eddleman Community Property Trust, *supra*; Southern Union Exploration Co., 51 IBLA 89, 92 (1980) (and cases cited therein).

It is readily apparent from Exxon's submissions on appeal that Exxon did not know that the October 1984 Form MMS-2014 corrections were the basis for the MMS holding that Exxon had prior notice. The Deputy Director's sole explanation for his finding that "[t]he record supports the finding that Exxon had been notified of the incompatibility of TC 01 and ARC 34" is his statement that "[t]he Fiscal Accounting Division further states that Exxon was notified in November 1984 that this type of reporting was inappropriate" (Decision at 2). This statement gives no clue regarding how Exxon was given notice, what constituted that notice, or how that document placed Exxon on notice, and does not provide an adequate explanation for his determination.

Our concern goes further than noting that the Deputy Director's decision fails to sufficiently apprise Exxon of the basis for the notice conclusion. The Fiscal Accounting Division field report which was the principal source for the MMS determination that Exxon had notice of the incompatibility of ARC 34 and TC 01 and TC 06 was never made available to Exxon. Exxon was prejudiced by MMS' failure to provide necessary information concerning the basis for its decision. See Southern Union Exploration Co., *supra* at 93. However, as will be seen, our resolution of this appeal moots the question of how to remedy this prejudice.

[2] The regulations in effect when Exxon filed its Form MMS-2014 authorized MMS to assess \$10 per day "for each report received by the designated due date but which is incorrectly completed." 30 CFR 218.40(b) (1986). The regulations further defined a report "as each line item on a Form MMS-2014." 30 CFR 218.40(c) (1986). Thus MMS clearly has the authority to assess Exxon for reporting errors, and Exxon does not challenge that general authority. Rather, Exxon contends that it did not err when using ARC 34 with TC 01 and TC 06 because, based on the information it had, its use of that ARC number was reasonable and appropriate.

Appendix B.4 of the 1982 Handbook provides the following descriptions for the relevant adjustment reason codes:

Code 34 Adjustments for Allowances - To adjust royalties as a result of a retroactive allowance determination by Minerals Management Service (MMS).

* * * * *

Code 38 Other Adjustments - To adjust line entries that were previously reported with coding or typographical errors when the adjustment does not result in the payment of additional royalties. [Emphasis supplied.]

(1982 Oil and Gas Payor Handbook at B.4.2). Exxon notes that its adjustments were not made because of previous typographical or coding errors but were the result of retroactive transportation allowance adjustments approved by MMS, and contends that MMS' descriptions of ARC 34 and ARC 38 support Exxon's initial determination that ARC 34 was the appropriate code to use. On the other hand, MMS argues that the code for adjustments for allowances cannot be used for royalty value lines.

Often appellants will argue that a regulation is vague. In many of those cases we have stated that a regulation should be sufficiently clear that there is no basis for an oil and gas lessee's noncompliance with the regulation before that regulation is interpreted to the detriment of a lessee. See, e.g., Dennis W. Belnap, 112 IBLA 243 (1989); Beard Oil Co., 97 IBLA 66 (1987); James M. Chudnow, 82 IBLA 262 (1984); Charles J. Rydzewski, 55 IBLA 373, 88 I.D. 627 (1981); Wallace S. Bingham, 21 IBLA 266, 82 I.D. 337 (1975); Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971); A. M. Shaffer, 73 I.D. 293 (1966). If a regulation is ambiguous, any doubt as to its meaning should be resolved favorably to the lessee. Wallace S. Bingham, *supra*; Mary I. Arata, *supra*; A. M. Shaffer, *supra*.

The need for clarity is even more imperative when MMS attempts to base a significant monetary assessment on a lessee's failure to properly apply provisions of the Oil and Gas Payor Handbook because that Handbook lacks the force and effect of law enjoyed by a statute or regulation. See Mesa Petroleum Co., 107 IBLA 184, 192 (1989); Chevron U.S.A. Inc., 105 IBLA 21, 26 n.5 (1988).

An examination of the descriptions of ARC 34 and ARC 38, as found in the 1982 Handbook leaves little doubt that those descriptions do not unambiguously inform a payor that ARC 34 cannot be used with TC 01 and TC 06. In fact, those descriptions actually support Exxon's choice of ARC 34 instead of ARC 38. As can be seen, MMS' description of ARC 38 clearly states that ARC 38 is to be used to adjust line entries that were previously reported with coding or typographical errors. Exxon was attempting to report adjustments to its transportation allowance figures following MMS approval of its actual transportation costs, an entry much closer to "a result of a retroactive allowance determination by Minerals Management Service (MMS)" than an adjustment for "line entries that were previously reported with coding or typographical errors." A search of the Handbook for a proper code for the entry reported by Exxon could logically

lead to the selection of ARC 34. In addition we find nothing which can be construed as explicitly instructing a payor that it is inappropriate to use ARC 34 with TC 01 and TC 06. Accordingly, we find that, although Exxon may have erroneously used ARC 34 with TC 01 and TC 06, the MMS Handbook is ambiguous, and the doubt as to the proper use of ARC 34 should be resolved in Exxon's favor.

We deem it unnecessary to consider whether the Handbook ambiguity would relieve Exxon of the responsibility for using the proper ARC number if it had actual prior notice that it was improper to use ARC 34 for the transactions reported. After review of the evidence before us, we are not persuaded by MMS' argument that Exxon had actual notice that its use of ARC 34 was wrong. The only evidence in the record supporting this argument consists of three sample pages of the Royalty Rejected Line Detail Report prepared in response to Exxon's October 1984 Form MMS-2014, and attached as an exhibit to the Fiscal Accounting Division field report. Although one of those pages does contain a signed acknowledgement that the changes are accurate and complete, the report itself merely states "INCORRECT REASON CODE FOR THIS TRANSACTION," and provides no explanation whatsoever for this conclusion. We also note that, when preparing this report, MMS changed some of the ARC's from 34 to 00 and others to 38. There is no explanation whatsoever for this conclusion, and no statement that ARC 34 is incompatible with TC 01 and TC 06. We therefore reverse the assessments based on line item entries found to be incorrect for that reason only.

We note that the ambiguities in the 1982 Oil and Gas Payor Handbook leading to this appeal no longer exist. MMS substantially revised the Handbook in September 1986, and the current Handbook discusses the usage of the various transaction codes and lists the adjustment reason codes that may be used with each transaction code. ARC 34 is not listed for use with either TC 01 or TC 06. (Volume II 1986 Oil and Gas Payor Handbook at 3-27 and 3-103). The Handbook also contains revised descriptions of ARC 34 and ARC 38: ARC 34 is to be used "[t]o adjust an allowance as a result of a retroactive allowance determination by MMS," while ARC 38 is to be used "[t]o make adjustments that are MMS-mandated but do not fall within one of the categories above and are not audit related" (Volume II 1986 Oil and Gas Payor Handbook at 4-14 and A3-4). Thus the requisite clarity of instruction now exists.

Exxon has not challenged the assessment for reporting unnecessary lines with no quantities and values. We affirm the assessments for those reporting errors. We note that 30 CFR 218.40(b) was revised in 1987 to permit assessments of an amount not to exceed \$10 for each incorrect report. The current regulations also authorize MMS to periodically establish the assessment amount for each reporting error based on its experience with costs and improper reporting, and provide for the publication of notice of the assessment amounts in the Federal Register. 30 CFR 218.40(e). On July 22, 1987, MMS published a notice establishing the following assessment schedule for erroneous royalty reporting: \$5 per line for 1-100 erroneous lines; \$8 per line for 101-500 erroneous lines;

and \$10 per line for over 500 erroneous lines. 52 FR 27593 (July 22, 1987). MMS should apply the revised regulation and assessment schedule in its determination of the proper amount of charges for the incorrect lines. See Conoco, Inc., 102 IBLA 230 (1988).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, reversed in part, and remanded for further action consistent with this decision.

R. W. Mullen
Administrative Judge

I concur:

David L. Hughes
Administrative Judge