

Mobil



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VIA e-mail (RMP.comments@mms.gov)
ORIGINAL BY U.S. MAIL

David S. Guzy, Chief
Rules and Publications Staff
Minerals Management Service
Royalty Management Program
P.O. Box 25165 – Mail Stop 3021
Denver Colorado 80225-0165

Dear Mr. Guzy:

Mobil Exploration & Producing U.S. Inc. ("Mobil") welcomes the opportunity to comment on the Minerals Management Service ("MMS") proposed rulemaking on appeals of MMS orders published at 64 Fed. Reg. 1930 (January 12, 1999).

Mobil incorporates by reference the comments that it filed by letter dated March 27, 1997, on the MMS proposed rulemaking published at 61 Fed. Reg. 55607 (October 28, 1996). While MMS now has withdrawn that proposed rulemaking and has replaced it with the current proposal, many of the same comments still apply. Mobil also concurs with the written comments submitted by the American Petroleum Institute ("API"). Accordingly, Mobil adopts those comments, by reference, as its own. While all of the comments are important, Mobil wishes particularly to emphasize the following.

Mobil believes that the current MMS royalty appeals process is badly in need of reformation for the reasons for the reasons outlined in the report of the Royalty Policy Committee's Subcommittee on Appeals and Alternative Dispute Resolution ("RPC Report"). MMS asserts that it based its current proposal on the RPC Report. Nevertheless, as API's comments point out, MMS' current proposal has not been true to the carefully crafted, even-handed consensus that was achieved at great expense and effort by the RPC subcommittee. Although both the RPC and the Assistant Secretary endorsed

the subcommittee consensus with only minor changes, MMS has undertaken to refashion the consensus and, as a result, it has changed the balance. Appellants under MMS' proposal will be faced with a maze of unnecessary and unjustified procedural traps and yet have little expectation of receiving an impartial review. Mobil urges MMS to return to the consensus appeals process contained in the RPC Report and endorsed by the Assistant Secretary.

As is detailed in API's comments, the much-needed reformation of the MMS appeals process also must be consistent with the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. 104-185, as corrected by Pub. L. 104-200 ("Fairness Act"). MMS is not at liberty to disregard either the letter or the spirit of that legislation. For example, only an order meeting certain statutory requirements will stop the running of the Fairness Act's seven-year limitations period. MMS cannot circumvent this requirement by allowing defective orders to be "fixed" during the appeals process. Similarly, MMS cannot circumvent the Fairness Act's 33-month deadline for deciding appeals by adopting a creative definition of when an administrative proceeding "commences" for purposes of starting the 33-month clock. Mobil made similar comments regarding MMS' earlier proposed rulemaking; however, MMS has not even acknowledged those comments.

Mobil concurs with API's comments regarding the proposed rules for civil penalty appeals. Additionally, however, Mobil points out that the preamble contains a statement that is at best confusing and, at worst, unwise. The preamble states:

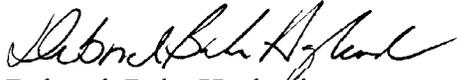
MMS believes that the statutory provision for assessing penalties for "failure to permit entry, inspection or audit" applies to failure to provide MMS with documents or information that MMS has requested under the authority of FOGRMA, the regulations or the leases.

64 Fed. Reg. at 1958. On numerous occasions MMS has argued in court that audit requests are voluntary only and, for that reason, that they are not appealable agency actions. This position cannot be reconciled with the statement in the preamble that MMS believes that lessees are subject to FOGRMA penalties for not complying with audit requests. To make matters worse, according to the preamble, lessees are not even entitled to a notice of noncompliance. If this is truly what MMS intends, it is unwise, since all audit requests will now be appealable. If it is not what MMS intends, this should be made clear in the final rule.

The proposal is also confusing with respect to the proposed rules for Offshore Minerals Management ("OMM") appeals. Proposed section 290.2 states that appeals must conform with the procedures found "in this part and 43 CFR part 4." 64 Fed. Reg. at 1990. It is not clear whether the section is referring to the rules currently found in subpart E of 43 CFR part 4, or whether it is referring to the rules that are proposed to be included in the new subpart J of 43 CFR part 4. Mobil agrees with API that the latter is preferable, and it urges MMS to make it clear that OMM appeals are to be governed by the existing rules of subpart E, not the new rules of subpart J.

Mobil appreciates your consideration of these comments. If you have any questions regarding the comments, please call me at 214-951-3349.

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Deborah Bahn Haglund".

Deborah Bahn Haglund

Attorney for Mobil Exploration & Producing U.S. Inc.