

PAN OCEAN OIL CORPORATION

IBLA 71-112

Decided April 12, 1971

Oil and Gas Leases: Applications: Noncompetitive Leases

An oil and gas lease offer is properly rejected where it is filed in the name of a corporation and it is not accompanied by the statement as to corporate qualifications required by 43 CFR 3102.4-1, nor by a reference to the serial numbers of case records in which such showings have previously been filed.

Oil and Gas Leases: Noncompetitive Leases: Simultaneous Offers

Where lands are made available to the simultaneous filing of offers for oil and gas leasing, and the offer first drawn is properly disqualified for non-compliance with the governing regulations, later compliance will not entitle the offer to be reinstated and to earn priority from the date of such compliance.

Regulations: Applicability – Validity

Where regulations have been recodified and redesignated in accordance with prescribed procedures, compliance with the mandatory requirements of these regulations is not excused, nor are the regulations rendered ambiguous, merely because various forms of the Department in current use refers to such regulations by their supplanted code designations.

IBLA 71-112 : Wyoming 26573
PAN OCEAN OIL CORPORATION : Noncompetitive offer to lease
oil and gas rejected
Affirmed

DECISION

Pan Ocean Oil Corporation has appealed to the Board of Land Appeals from a decision of the Wyoming land office, Bureau of Land Management, dated November 20, 1970, which rejected its oil and gas lease offer for Parcel No. 315. The offer was rejected because corporate qualification papers did not accompany its drawing card No. 164-3590, nor was any reference provided to serial numbers where they are filed, as required by 43 CFR 3102.4-1 (formerly 43 CFR 3123.2(g)).

Pan Ocean asserts that it made its offer on simultaneous oil and gas drawing entry card form No. 3120-21 (December 1968), which made no reference to the cited regulation 43 CFR 3102.4-1, and that the only regulation referred to on said form is 43 CFR 3123.2. Appellant claims that a reference printed on the form approved by the Director of the Bureau of Land Management to 43 CFR 3123.2, "a non-existent regulation after June 13, 1970," creates an ambiguity to be construed against the United States. Appellant concludes that the Government may not properly reject an offer which fails to comply with such an ambiguous regulation. Finally, appellant states that its corporate qualifications to hold oil and gas leases under the Mineral Leasing Act had previously been filed with and accepted by the Wyoming land office, citing case numbers AA-3273 and Wyoming 26305, 26306, 26308, 26309, and 26311. Although appellant does not explain why it failed to make reference to such material with the filing of its offer for Parcel No. 315, it now requests that the Department accept its reference to this material with its appeal and that the lease be granted.

Appellant's lease offer was filed in the Wyoming land office on October 22, 1970, on a simultaneous oil and gas drawing entry card (Form 4-1664). On the reverse side of the card a note specified "Compliance must be made with the provisions of 43 CFR 3123.2." The

cited regulation sets forth the requirements for filing an oil and gas lease offer and what information must accompany an offer when it is filed. Subparagraph (g) (now 43 CFR 3102.4-1) provides that:

If the offeror is a corporation, the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens or those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. Where the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

The language of the cited regulation is clear and unequivocal. Where the necessary corporate qualification papers are not filed with the drawing entry card or the appropriate reference is not made to case records where such showings have previously been filed the oil and gas offer does not comply with the mandatory provisions of the regulations and must be rejected. See Love Enterprises, 1 IBLA 248 (1971); George N. Keyston, Jr., Ltd., 70 I.D. 156 (1963). The record shows appellant's offer was not accompanied by the required evidence, nor did it contain any reference to the serial number of a case record in which such material had previously been filed. Under these circumstances the offer clearly did not comply with the regulations and was properly rejected.

Appellant's argument that the cited regulations are ambiguous is totally without merit. On June 13, 1970, a recodification and redesignation of the regulations of the Department of the Interior relating to lands administered by the Bureau of Land Management, contained

in Chapter II of Title 43 of the Code of Federal Regulations, were published in Volume 35, Number 115 of the Federal Register. The Federal Register Act, 49 Stat. 500, as amended; 44 U.S.C. § 301 (1964) provides that publication of regulations in the Federal Register is deemed to be constructive notice of their content. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Hotch v. United States, 212 F.2d 280 (9th Cir. 1954). Appellant, therefore, cannot plead ignorance of the publication in the Federal Register. It is charged with constructive notice of the reorganization and designation of the regulations governing its oil and gas lease offer in this case. The fact that the applicable portion of 43 CFR 3123.2 has been renumbered and rearranged destroys neither its existence nor its clarity. Further it is specifically stated in the introduction to the redesignation table (Volume 35 Federal Register 9502) that "the reorganization and redesignation are effective upon publication in the Federal Register. It is the Department's intent in this revision to make no substantive changes in the regulations."

The redesignation table which follows these introductory remarks on pages 9502-9511 of Volume 35 of the Federal Register is relatively easy to comprehend. Any diligent applicant could ascertain which regulatory requirements apply to his specific circumstances with a minimum of effort. Compliance with these regulations is not excused, nor are the regulations rendered ambiguous merely because forms in current usage refer to them by their previous numbers.

Appellant readily admits that prior to the filing of this offer it did file the required corporate information with the Wyoming land office in connection with other oil and gas lease offers. Appellants were also bound by the mandatory provisions of the regulations to supply similar corporate information or make an appropriate reference to their earlier filing when their oil and gas lease offer was first filed in this case.

Appellant has asked, alternatively, that its offer be reinstated with priority from the date of its filing of the serial numbers where its corporate qualifications are filed.

Where lands are made available to the simultaneous filing of offers for oil and gas leasing, and the offer first drawn is properly disqualified for noncompliance with the governing regulations, later compliance will not entitle the offer to be reinstated and earn priority from the date of such compliance. In these circumstances the regulations governing simultaneous offers specifically require that the lands in the numbered leasing unit for which such entry card was submitted, shall be included in a simultaneous filing drawing procedure to be held during the next or a following month thereafter. 43 CFR 3112.5-1, 35 F.R. 9692 (formerly 3123.9(c)(3)).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (21 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur.

Martin Ritvo, Member

Francis E. Mayhue, Member.

