

EMERALD OIL COMPANY

IBLA 77-121

Decided June 24, 1977

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offer U-35274.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally

The showings required by 43 CFR 3102.4-1 to qualify a corporation to receive an oil and gas lease are mandatory. An oil and gas lease offer by a corporation is properly rejected when it is signed by an officer who is neither authorized to act on behalf of the corporation by the corporate qualification statement on file with the Bureau of Land Management nor authorized to act by a statement accompanying the offer.

2. Federal Employees and Officers: Authority to Bind Government--Oil and Gas Leases: Applications: Generally

As a general rule, an applicant is not entitled to rely upon misinformation or erroneous advice given by departmental employees to acquire any rights in public lands not authorized by law. A corporation filing an oil and gas lease offer, signed by an officer not designated in accordance with 43 CFR 3102.4-1 as authorized to act on its behalf, cannot rely on the fact that the officer's signature was accepted by the Department on documents

filed in unrelated matters to excuse its failure to provide the mandatory authorization.

3. Applications and Entries: Priority--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: First Qualified Applicant

An over-the-counter oil and gas lease offer, properly rejected because it failed to meet the requirements of the regulations, may be considered as having priority as of the date the defect is cured where the curative action was taken during an appeal from the rejection of the offer.

APPEARANCES: G. W. Anderson, President, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The Emerald Oil Company appeals from the December 21, 1976, decision of the Utah State Office, Bureau of Land Management (BLM), rejecting noncompetitive over-the-counter oil and gas lease offer U-35274. The offer was filed on November 4, 1976, and was signed by John R. Anderson, as Vice President of the company. The State Office rejected the offer because the approved corporate qualifications on file in U-0142200 do not show John R. Anderson as authorized to act on behalf of appellant.

Appellant filed its initial corporate qualifications in 1972, authorizing G. W. Anderson, President, to act on behalf of the corporation. On December 30, 1976, following the BLM decision rejecting the lease offer, appellant filed an amended corporate qualifications statement authorizing both G. W. Anderson, President, and John R. Anderson, Vice President, to act on behalf of the corporation. Enclosed with the statement was a certified copy of a resolution passed by appellant's Board of Directors on July 31, 1973, authorizing the Vice President of the corporation to act on its behalf in various matters, including federal oil and gas lease offers.

In its statement of reasons, appellant admits that it never updated its corporate qualifications on file with BLM. It attributes this failure to the fact that BLM never requested such an update, which, appellant alleges, is contrary to BLM practice of regularly requesting updated information. Appellant also asserts that John R. Anderson has been signing documents submitted to the U.S. Geological Survey and BLM since July 31, 1973. It submits copies of two Designation of Operator forms and two oil and gas lease assignments which

were signed by John R. Anderson for the corporation. Appellant argues that BLM never questioned this signature before, thus leading appellant to believe its corporate qualifications were in order.

The requirements that a corporation must meet in order to qualify for an oil and gas lease are set out at 43 CFR 3102.4-1. That regulation states in pertinent part:

If the offeror is a corporation, the offer must be accompanied by a statement showing \* \* \* (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 \* \* \*. 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. [Emphasis supplied.]

[1] The Department of the Interior has consistently held that the above regulation regarding corporate qualifications is mandatory and that offers which do not comply with its requirements must be rejected. Dal Metro Investment Co., 29 IBLA 198 (1977); Manhattan Resources, Inc., 22 IBLA 24 (1976); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (10th Cir. 1976); The Bradley Producing Corp., 15 IBLA 147 (1974). Appellant's offer was admittedly signed by an officer who was not shown as authorized to do so by the corporate qualification statement on file with BLM. The offer was not accompanied by any amendment to the qualifications authorizing the officer to act on behalf of the corporation. The offer therefore did not comply with 43 CFR 3102.4-1 and was properly rejected. Manhattan Resources, Inc., supra.

[2] Appellant's assertion that the Department has accepted the signature of John R. Anderson in other situations will not prevent the rejection of the lease offer. As a general rule, an applicant is not entitled to rely upon misinformation or erroneous advice given by departmental employees to acquire any rights in the public lands not authorized by law. 43 CFR 1810.3. In a similar situation where an appellant claimed that he had been issued an oil and gas lease on an offer containing the same defect which caused a later offer to be rejected, this Board stated:

Even if estoppel were to be regarded as controlling, we do not regard this indirect and stale information as the type of straightforward advice on which to base a claim of reasonable reliance that would justify the waiver of the

mandatory regulation at issue, and bind the Department to take positive action on a defective application. \* \* \*

Leon M. Flanagan, 25 IBLA 269, 271 (1976).

Here, appellant cannot rely on the acceptance of John R. Anderson's signature in unrelated transactions to excuse its failure to comply with regulation 43 CFR 3102.4-1. The other situations are not governed by that regulation. Appellant states that its officers "have been active in oil and gas exploration for many years and have served as officers of a number of other corporations over the years." Appellant then asserts that BLM has never requested updated information of its qualifications although this "has always been a practice" of BLM. Appellant explains neither when or where this procedure was a practice of BLM nor why its officers, since they were aware of this BLM requirement, failed to amend appellant's qualifications. Appellant's failure to file a proper oil and gas lease offer cannot be excused and the BLM State Office had no recourse but to reject it.

[3] Although the decision of the BLM State Office was correct when issued, it may now be set aside. When an offeror corrects on appeal the defect in a rejected oil and gas lease offer, the offer is considered valid as of the date the defect is cured. James H. Scott, 18 IBLA 55, 58 (1974); M. P. Shiflet, 15 IBLA 112 (1974). Assuming appellant's offer is otherwise valid, it receives priority as of December 30, 1976.

Once BLM decides to issue a noncompetitive oil and gas lease for certain lands, it must issue the lease to the first qualified offeror. 30 U.S.C. § 226(c) (1970). Each offer is given priority by the date it is filed by a qualified offeror. Thus, if an offeror files a defective offer and a qualified offeror files an offer for the same land before the first offeror cures the defect, the lease must issue to the second offeror. Michigan Wisconsin Pipe Line Co., 17 IBLA 282 (1974). The case file on appellant's offer indicates that oil and gas lease offers U-34924, U-35275 and U-36089 have been filed for the lands in appellant's offer. The case file does not show the status of these offers. We therefore remand this case to the BLM State Office to determine who will receive oil and gas leases, if leases are issued.

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 set aside and the case remanded for further consideration.

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Joan B. Thompson  
Administrative Judge

We concur:

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Martin Ritvo  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge