

UOP INC.

IBLA 77-79

Decided June 30, 1977

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting prospecting permit applications ES 16653 and ES 16654.

Affirmed.

1. Applications and Entries: Generally--Mineral Lands: Prospecting Permits

Where the regulation allows the filing of an application for a prospecting permit on a copy of the approved form not correctly reproduced, and the application contains a statement that the applicant agrees to be bound by the term conditions on the approved form, an application which consists of a copy of only the first page of a two-page form is properly rejected when it is not accompanied by the required statement.

2. Mineral Lands: Prospecting Permits

Where the regulations, 43 CFR 3511.2-4(a) and (b), allow an applicant for a prospecting permit to file a new application if his first was defective, but the defect is curable, the new application has priority only as of the date it is filed and does not retain the priority of the first application.

APPEARANCES: R. J. Weege, Director of Mineral Development, Mineral Sciences, Division of UOP Inc.

OPINION BY ADMINISTRATIVE JUDGE RITVO

UOP Inc. has appealed from a decision of the Eastern States Office, Bureau of Land Management, dated November 29, 1976, rejecting

two applications filed by it for permits to prospect for several minerals on certain land in the Nicolet Forest in Oconto County, Wisconsin, for failure to file the application on the proper form or upon an allowable substitute for it.

The decision states:

The two applications referenced above by serial number[s] were filed in Eastern States Office on November 3, 1976. Each of the seven sets of Form 3510-1 submitted for the two prospecting permit applications were xeroxed copies of only one side of the application form. The reverse side of the application forms containing the terms of the permit were not included. No statement was made which would comply with the regulations under 43 CFR 3511.2-3(b).

An application for prospecting permit must be filed on a form approved by the Director or an exact reproduction thereof. 43 CFR 3511.2-1(a). An application for permit on a form not correctly reproduced but which contains the statement that the applicant agrees to be bound by the terms and conditions of the form in effect at the date of filing will be approved by the authorized officer provided all other requirements are met. 43 CFR 3511.2-3(b).

The applicant having failed to meet the mandatory requirements for filing of an acceptable application, the subject applications must be and hereby are rejected.

Appellant does not deny its failure to reproduce the reverse side of the form. It insists, however that the requirement is a minor technicality. With its appeal, filed with the Eastern States Office, it submitted seven new applications. It requested that this Board find that the defect in the first filing will not prejudice its previous filing and that its new application be given effect as of the date of the previous filings.

[1] The failure to reproduce the reverse side of the proper form is not a minor defect since it contains important provisions pertaining to the permit. Thus the application filed by applicant was not acceptable. As the decision appealed from points out, the regulation allows the use of a form not correctly reproduced if it contains a statement that the applicant agrees to be bound by the terms and conditions of the form in effect at the time of filing. Appellant, however, having failed to submit such a statement, its applications were properly rejected.

[2] Appellant's request to retain the priority date of its first filing cannot be granted. The regulation provides for a filing of a new application within 30 days of service of rejection if the

first one is subject to certain defects deemed curable. 43 CFR 3511.2-4(a) and (b). While the regulation allows the rental and filing fee of the old application to be applied to a new one, it does not provide that the new application will have priority as of the date of the old one. It merely relieves the applicant of the necessity of paying a new filing fee and submitting another rental. Thus appellant's new offers, if regular, and entitled to the benefits of the regulation, can have priority only as of the day they were filed. However, the new application is not before us and we do not pass upon whether it qualifies for consideration under the regulation, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Eastern States Office decision is affirmed insofar as it held the first applications defective.

Martin Ritvo
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge