

Appeal from a decision of Wyoming State Office, Bureau of Land Management, excluding appellant's drawing entry card from the drawing of simultaneously filed oil and gas lease offers. W 62520.

Reversed.

1. Administrative Practice – Oil and Gas Leases: Applications: Drawings

Where the Director, BLM, in a general instruction to all Bureau offices, has specified which kinds of discrepancies will result in the exclusion of drawing entry cards from a drawing of simultaneously filed oil and gas lease offers, and directs that all other cards are to be included in the drawings, the action of one field office to exclude certain other types of cards will be reversed as being in contravention of such directive.

2. Oil and Gas Leases: Applications: Drawings

The exclusion from the drawing of oil and gas drawing entry cards for trivial and inconsequential alterations which do not affect the appearance or feel of the cards in any significant way and which obviously were not intended to adversely affect the integrity of the drawing is arbitrary and capricious.

APPEARANCES: W. C. Yahmel, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

W. C. Yahmel has appealed from the January 26, 1978, decision of the Wyoming State Office, Bureau of Land Management (BLM), which

refused to include his drawing entry card (DEC) for Parcel WY 222 in the December 1977 simultaneous filing procedures. 43 CFR Subpart 3112. The decision stated the DEC was rejected for the reason that the card had a correction made by an opaque liquid which altered the appearance and feel of the card, in violation of a Notice of September 9, 1977, by the State Director.

This case is identical to those discussed by this Board in Margaret Ruggiero et al., 34 IBLA 171 (March 14, 1978). There the Board said:

[1] Various applicants for oil and gas leases have appealed from the several decisions of the Wyoming State Office, Bureau of Land Management (BLM), by which that office refused to include their respective drawing entry cards (DECs) in drawings for various parcels listed for the simultaneous filing of such offers to lease. 43 CFR Subpart 3112. The State Office decisions declare that each of the subject DEC's were in violation of a public notice issued on September 9, 1977, by the State Director, which notice reads as follows:

PUBLIC NOTICE

Effective immediately, this office will reject any simultaneous oil and gas drawing entry cards filed for Wyoming federal oil and gas leases which are altered or marked in any way, such as by stamping entry cards with embossed seals, by dusting cards with lubricating powder before mailing, by using raised letters on names and addresses on entry cards, by folding cards in any way, or by wetting cards and allowing them to dry with a curl, or by any other method intended to alter the feel and appearance of these cards. Any card so altered or marked will not be included in the drawing and any filing fees accompanying the cards will be retained by the federal government as a service charge. The altered or marked cards will not be returned to the applicant until such time as they are no longer needed as evidence in case of a possible appeal.

It is asserted by BLM that a copy of the "Public Notice" accompanied each copy of the Notice of Land Available to Oil and Gas Leasing. The appellants aver generally 1) that they never were advised of the content

or specific limitations of the "Public Notice," or 2) that they did not alter or otherwise change the feel and appearance of their DEC's in violation of the "Public Notice," or 3) that the State Director is without authority to impose requirements on the public at large which requirements are unique and peculiar only to his office, or 4) that the "Public Notice" constitutes rulemaking in a manner which does not comport with the procedures prescribed by law.

It is well established that oil and gas lease offers (including DEC's) which do not comply with mandatory requirements of the regulations must be rejected without priority and an offeror's unfamiliarity with new regulations which are not referred to in the oil and gas lease offer form required to be used by applicants is no basis for allowing oil and gas lease offers which do not comply with regulations. Genia Ben Ezra, 67 I.D. 400 (1960).

But in all these cases, the governing regulation, 43 CFR 3112.2-1(a), requires only that the offer to lease be filed on a form approved by the Director (of BLM), "Simultaneous Oil and Gas Entry Card." The regulation does not proscribe any of the specifics set out in the "Public Notice." Further, we have not found any directive from the Director, BLM, to the State Offices sanctioning the issuance of a "Public Notice" such as was issued by the Wyoming State Director. Indeed, the "Public Notice" appears to be contrary to BLM Instruction Memorandum No. 75-194, Simultaneous Oil and Gas Lease Offers, April 25, 1975. This Instruction Memorandum, after defining four classes of unacceptable offers which would be returned to applicant together with the filing fee, and one class of unacceptable offers for which the filing fee would be retained by BLM, stated:

[A]ll other entries are to be included in the drawing without pre-adjudication. It is incumbent upon those responsible for the initial sorting of these entry cards to take every precaution that cards are not omitted from the drawing except for the reasons listed above.

None of the DEC's which are the subjects of the appeals before us are of the type which must be excluded from the drawing under the authority of Instruction Memo No. 75-194, supra. As that memo directs that, "All other entries are to be included in the drawing without

pre-adjudication," it would appear that the "Public Notice," and the subsequent actions by the Wyoming State Office pursuant thereto, are in contravention of that directive.

[2] However, even assuming, *arguendo*, that Instruction Memo No. 75-194 did not exist, and that the "Public Notice" was fully authoritative and properly promulgated, we would still be constrained to reverse the decisions of the Wyoming State Office in each of the appeals considered in this opinion. None of the DEC's in question are so marked or altered that they could reasonably be regarded as having been the subject of any "method intended to alter the feel and appearance of these cards," as specified in the "Public Notice." For example, many of the cards were excluded from the drawing because a white, opaque fluid was used to "white-out" a typographical error for correction. This does not significantly alter the appearance or feel of the card in such a way that would distinguish from all the others, and it certainly does not indicate that it was "intended" as a "method" of gaining an advantage in the drawing or to facilitate the perpetration of a fraud. We conclude that the exclusion of DEC's for such trivial alterations was arbitrary and capricious.

We adhere to the position above set forth.

Therefore, 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 reversed, and the case is remanded to the State Director of Wyoming for further action consistent with this decision.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

