

Editor's note: Reconsideration denied by order dated Aug. 30, 1978

CORTELLA COAL CORP.

IBLA 78-125

Decided May 23, 1978

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting application for a consolidated preference lease of coal in two tracts in Alaska, AA-433/A-0677765.

Affirmed.

1. Coal Leases and Permits: Applications -- Coal Leases and Permits: Cancellation -- Mineral Leasing Act: Generally

Where an applicant for a preference-right coal lease fails to respond to a request for further information needed to process his application within a prescribed period of not less than 60 days, under 43 CFR 3521.1(g)(3), BLM properly rejected the lease application.

2. Coal Leases and Permits: Applications -- Coal Leases and Permits: Cancellation -- Mineral Leasing Act: Generally

The failure of an applicant for a preference-right coal lease to respond to a request for further information needed to process his application is not excused because he relied on a third party who failed to recognize that such action was required.

3. Coal Leases and Permits: Applications -- Coal Leases and Permits: Cancellation -- Coal Leases and Permits: Permits: Generally -- Mineral Lands: Prospecting Permits

A prospecting permit for coal is properly canceled under 43 CFR 3511.4-2(a)(1) for failure to pay annual rental on or before the anniversary date, as extended. An

application for a preference-right coal lease is properly rejected if it is based on prospecting permits which have been canceled for failure to pay rental timely.

APPEARANCES: Richard L. Crabtree, Esq., Anchorage, Alaska, for appellant.
OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 21, 1977, the Alaska State Office of the Bureau of Land Management (BLM) issued a decision rejecting the consolidated application of Cortella Coal Corp. (Cortella) for a preference lease of coal in two tracts in Alaska, from which decision the present appeal followed.

On June 8 and November 1, 1966, respectively, Cortella filed mineral prospecting applications A-067765 and AA-433, seeking leave to prospect for coal in these lands. On October 12 and 13, 1967, BLM issued coal prospecting permits to Cortella, and on May 12 and 13, 1970, extended them through October 31, 1971.

On November 13, 1970, BLM notified Cortella that these permits had terminated automatically on November 2, 1970, as annual rental had not been submitted, as required, on or before this date. On December 7, 1970, Cortella paid this annual rental and filed a petition for reinstatement of the permits.

On July 23, 1971, Cortella filed a consolidated application for a preference-right lease based on these prospecting permits, under section 2 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 201(b) (1970), in the event that the cancellation of the permits was rescinded. In the letter to BLM accompanying this application, Cortella indicated as follows: "If further information is needed, would you please direct all correspondence to Cortella Coal Corporation, c/o Inlet Oil Corporation, 345 W. 6th Ave., Anchorage, Alaska[?]"

BLM apparently regarded the prospecting permits as being in effect, despite the late payment of annual rental in 1970, as it notified the Geological Survey (GS) on April 22, 1974, that the permits were still in "legal status." Accordingly, BLM began to consider the merits of Cortella's application for a preference lease.

On April 14, 1972, BLM determined that an environmental analysis was required in order to ascertain if an environmental impact statement under the National Environmental Protection Act of 1969 (NEPA), 42 U.S.C. § 4321 et seq. (1970), was needed, and in order to develop appropriate reclamation stipulations for the lease. Between this date and January 1977, BLM, along with GS and the Forest Service,

assembled information concerning the environmental effects of issuance of the lease and of mining in the area. During this period, Inlet Oil Corporation (Inlet) virtually took over all aspects of the promotion of the pending lease application. It responded to inquiries for information, supplying proposed mining plans and models of proposed mining techniques, and its representatives worked closely with BLM, attending meetings and corresponding with it concerning the proposed operations. While Cortella did contact BLM on several occasions, virtually all information concerning the matter was supplied by Inlet.

On March 19, 1976, BLM sent to Cortella, through Inlet, a request for additional and more detailed information to complete the environmental analysis, which was still in preparation. No response to this inquiry was filed by Inlet. On January 3, 1977, BLM issued Cortella a notice, per 43 CFR 3521.1-1(g)(1), also in care of Inlet, stating that sufficient information was not available to determine whether Cortella's lease application could be considered further, and allowing 60 days from receipt thereof to submit this information. This notice expressly warned that if a request for an extension of time in which to comply was not filed, or if the required information was not received, within 60 days, the application would be rejected under 43 CFR 3521.1-1(g)(3).

On October 31, 1977, BLM issued a decision rejecting Cortella's application, as the requested information had not been received. Cortella (appellant) has appealed from this decision. 1/

[1] Under 43 CFR 3521.1-1, a preference right lease applicant must include in his application certain information showing the amount and type of minerals present in the lands, the mining methods proposed for use, descriptions of ecological and environmental characteristics, etc. If an applicant has not submitted the required information, because, as here, the application preceded the effective date of 43 CFR 3521.1-1, BLM may, under 43 CFR 3521.1-1(g)(1), inform him of his omissions and give him an opportunity to submit it within a prescribed period of not less than 60 days. Under 43 CFR 3521.1-1(g)(3), BLM "shall reject the lease application if the permittee does not respond to a request for information on time."

1/ On April 20, 1977, Triton Oil Corp. (Triton) notified BLM that it had acquired all rights to these prospecting permits. Although no documentation was submitted in support of this claim, it appears likely that Triton succeeded to Inlet's interests in the lease. On January 5, 1978, Triton filed a notice of appeal of BLM's decision, in which it indicated that it would contact this Board to determine the status of the appeal. However, no further contact was made, and no statement of reasons was filed. We accordingly dismiss Triton's appeal under 43 CFR 4.412 and 4.402.

BLM met the requirements of 43 CFR 1810.2 by mailing the notice of January 3, 1977, to Cortella's last address of record, that is, to Inlet. Cortella had expressly provided that Inlet was its agent for the purpose of supplying BLM with further information. Moreover, Inlet had consistently acted in a manner indicating that it was, in fact, Cortella's agent for this purpose. The notice in question was actually delivered to Inlet, albeit on the second mailing from BLM, on January 25, 1977. BLM gave more than 60 days for either Cortella or Inlet to file a response to the request for information, which was the second such request.

Under these circumstances, we conclude that BLM properly rejected Cortella's lease application. BLM's request for information was within its authority under the regulations. BLM acted consistently with Cortella's explicit directions concerning such requests and gave more than adequate time for it or its agent to comply.

Appellant submits that its application should not have been rejected, as its failure to file the requested information was the result of excusable neglect. It asserts that, unbeknownst to it, Inlet had been adjudged and declared bankrupt, and that Triton Oil Corp. (Triton), Inlet's successor, had failed to accept responsibility for the application. It argues that it should not be held accountable for Inlet's bankruptcy, and that the failure to submit the information was inadvertent.

We do not find this argument persuasive. At the time the information was due, Cortella was the applicant of record. On April 21, 1971, Cortella and Inlet entered into an agreement under which Inlet was to be assigned Cortella's interests in the prospecting permits and lease application. The transfer was at Inlet's option and was further conditioned on the Department's waiving of cancellation of the permits for failure to make timely payment of annual rental in 1970. As the record does not show that Inlet in fact exercised its option, and in light of our holding *infra* that the cancellation of the permits ought not to have been waived, it is unclear how much, if any, of Cortella's interests actually passed to Inlet. However, even if it were clear that the agreement passed all of Cortella's interest to Inlet, Cortella was still the sole party of record at all times in question in 1977. Under 43 CFR 3506.2-3, the prospective transferor of a permit or lease continues to be responsible for the performance of all obligations, including the filing of necessary information, until the transfer is approved by BLM. Since the assignment was never submitted to BLM for approval, as required under 43 CFR 3506.3-1, BLM never approved it, and Cortella accordingly remained responsible for filing the necessary information. Inlet was not a transferee, but was instead Cortella's agent throughout this period, undertaking the responsibility of formulating mining plans for the area, and providing BLM with necessary information on Cortella's behalf.

[2] As the applicant of record, Cortella had the responsibility of either complying with the request itself or seeing that the request was otherwise answered. See Clarence Zuspahn, 18 IBLA 1, 3-4 (1974). Its failure to perform is not excused because it relied on Inlet to supply the information. See Lynn Schustermann, 29 IBLA 182 (1977). Nor is the failure to respond excused because Triton, as Inlet's successor, failed to undertake the responsibility of complying. The error of an agent in failing to recognize that action is required does not justify the failure to take it. See Shell Oil Co., 30 IBLA 290 (1977). It was Cortella's responsibility to ascertain that its agent was actively protecting its application, and it is not unjust to require that Cortella accept the consequences of its failure to remain certain that all requirements were being met.

[3] There is an equally valid reason for rejecting Cortella's application. Its failure to make timely payment of annual rental on the underlying prospecting permits should have resulted in cancellation thereof. Under 43 CFR 3511.4-2(b)(1), its failure to pay annual rental timely automatically terminated the permits. International Energy Co., 14 IBLA 348 (1974); Western Standard Corp., 14 IBLA 45 (1973).

As Cortella did not hold valid prospecting permits on July 23, 1971, it could not apply for a preference lease. Having a prospecting permit is an absolute condition for so doing under section 2 of the Mineral Leasing Act, supra. Thus, its application was properly rejected for this reason as well.

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 affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

