

Editor's note: Reconsideration denied by order dated Aug. 25, 1978; Appealed -- aff'd, Civ.No. 78-1814 (D. D.C. June 8, 1979); reversed and remanded with instructions, No. 79-1766 (D.C. Cir. June 6, 1980), 628 F.2d 213; vacated by order dated Sept. 26, 1980 -- See 36 IBLA 237A & B below; decision also overruled by Robert R. Furman, 49 IBLA 64 (July 21, 1980)

IRVING B. BRICK

IBLA 78-82

Decided August 8, 1978

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting drawing entry card lease offer W 61238.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the name of the offeror is affixed to the card by means of an address label, instead of being inserted in the appropriate spaces of the card in this order: last name, first name, middle initial.

APPEARANCES: Albert Brick, Esq., Brick and Intrater, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Irving B. Brick has appealed from a Wyoming State Office, Bureau of Land Management (BLM), decision dated October 21, 1977, which rejected his drawing entry card (DEC) W 61238, successfully drawn for Parcel WY-76 in the September 1977 simultaneous filings. 43 CFR Subpart 3112. The decision stated:

A Public Notice dated September 9, 1977, was attached to the Notice of Lands Available for Oil and Gas Filings which stated this office will reject any drawing entry cards which are altered or marked in any way so as to alter the feel and appearance of these cards.

Your lease offer is hereby disqualified for the reason that your name and address are shown on an attached paper label, the surface of which is raised above the surface of the card, thereby giving the card a different feel to the touch.

Appellant argues for reversal of the State Office decision for these reasons:

1. Failure to give notice, both actual and implied, to Dr. Irving B. Brick of the change in refusing to accept stickers on the cards instead of a signature.
2. Failure to comply with the laws of the United States concerning change of regulations and particularly with compliance of the Federal Register when a regulation is passed or amended by a Government agency.
3. Denial of due process and the unfairness of rejecting Dr. Brick's winning card.
4. Deprivation of property without Due Process of Law.

The propriety of the State Office notice of September 9, 1977, was considered by this Board in Margaret A. Ruggiero, 34 IBLA 171 (1978), where we held

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.

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.

This position was reaffirmed by the Board in W. C. Yahmel, 34 IBLA 377 (1978), and in Raymond A. Berry, 35 IBLA 386 (1978).

We find, however, that another reason exists for rejection of the subject DEC. The card is prima facie defective in that the expression of the name of the offeror by means of an address label is not in conformance with the printed instructions on the card. The card clearly indicates that the offeror's name must be inserted on the appropriate line only in this fashion: "last name, first name, and middle initial."

[1] This Board has held repeatedly that DEC not wholly in conformance with the regulations must be rejected. See, e.g., Hartley L. Gordon, 32 IBLA 139 (1977), address incomplete; Grace M. Williams, 26 IBLA 232 (1976), address incomplete; Beverly J. Steinbeck, 27 IBLA 249 (1976), no zip code number; Amy H. Hanthorn, 27 IBLA 369 (1976), no zip code number; Raymond F. Kaiser, 27 IBLA 373 (1976), no zip code number.

The address label reading "Dr. Irving B. Brick" does not comply with the instructions, and for that reason, the DEC must be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, that decision appealed from is affirmed as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

September 26, 1980

IBLA 78-82 : 36 IBLA 235 (1978) vacated

IRVING B. BRICK

:
: W 61238
:
: Oil and Gas Lease
:
: Remanded

ORDER

By decision of August 8, 1978, in Irving B. Brick, 36 IBLA 235, this Board affirmed the rejection of the drawing entry card lease offer filed by Brick for parcel WY-76 in the September 1977 notice of lands available for oil and gas leasing as posted by the Wyoming State Office, Bureau of Land Management. The decision held that insertion of the name and address of the offeror on a drawing entry card by use of an address label did not satisfy the regulatory requirements. Reconsideration was denied by Order of August 25, 1978. Brick thereupon initiated litigation to the the Board's decision reviewed by the courts.

By Order of the United States District Court for the District of Columbia in Brick v. Andrus, Civ. Act. No. 78-1814, dated July 17, 1980, the Court decreed that the matter be remanded to the defendant Secretary of the Interior and that he is directed to reinstate the lease offer of Brick for parcel Wy-76.

Both counsel for Brick and the Solicitor for the Department of the Interior have requested the Board to waive the requirements of 43 CFR 4.29, calling for recommendations from the parties as to the procedures for handling a remanded case. Counsel further seek to have the matter immediately remanded to the Wyoming State Office fo appropriate processing.

36 IBLA 237A

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, it is the ORDER of the Board that the decision, Irving B. Brick, 36 IBLA 235 (1978), be vacated, 1/ that oil and gas lease offer W61238 of Irving B. Brick be reinstated with first priority for Parcel WY-76, and that the Wyoming State Office, Bureau of Land Management, take appropriate action thereon consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

James L. Burski
Administrative Judge

1/ Irving B. Brick, 36 IBLA 235 (1978) was overruled by Robert R. Furman, 49 IBLA 64 (1980).

APPEARANCES:

William R. Murray, Jr., Esq.
Division of energy and Resources
Office of the Solicitor
U.S. Department of the Interior
Washington, D.C. 20240

Samuel Inrater, Esq.
1701 K Street, N.W., Suite 1201
Washington, D.C. 20006

