

Editor's note: Reconsideration granted; decision reaffirmed – See Elizabeth Pagedas (On Reconsideration), 40 IBLA 21 (March 9, 1979); Appealed – reversed, Civ.No. 79-2456 (D.D.C. Jan. 22, 1981), appeal voluntarily dismissed, No. 81-1321 (D.C. Cir. June 10, 1981)

ELIZABETH PAGEDAS

IBLA 78-481 Decided November 22, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer W 63647.

Affirmed.

1. Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Applications:
Sole Party in Interest

Where an oil and gas lease drawing entry card contains the names of other parties in interest and the separate statement of interest required to be filed is not signed by the offeror as required by 43 CFR 3102.7, the offer is properly rejected.

APPEARANCES: William R. Hamm, Esq., Thomas W. Ehrmann, Esq., Robert H. Diaz, Jr., Esq., Quarles & Brady, Milwaukee, Wisconsin, for appellant;
C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for intervenor.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Elizabeth Pagedas has appealed from a decision dated May 17, 1978, by the Wyoming State Office, Bureau of Land Management (BLM), which rejected her oil and gas lease offer for failing to affix her signature to a separate statement listing other parties in interest.

The pertinent regulation is 43 CFR 3102.7 which states in relevant part: "If there are other parties interested in the offer a separate statement must be signed by them and by the offeror * * *."

Appellant asserts in her statement of reasons that since her entry card made an express reference to the separate statement and was attached thereto, the two documents must be considered as one

instrument. Appellant has submitted an affidavit stating that she "by signing her entry card below the express reference to the attachment (separate statement), 1/ intended the entry [card] and attachment to constitute one document satisfying all formal requirements of the applicable federal regulations." Appellant also appears to contend that 43 CFR 3102.7 is ambiguous and "does not require the offeror to place his signature below the statement explaining the interest of the other participants in the offer."

The separate statement submitted by appellant is a printed form entitled "Attachment to Simultaneous Oil and Gas Drawing Entry Card." The printed paragraphs of the attachment refer to all parties as "applicants" and to the offeror as the "primary applicant." At the bottom of the attachment are blanks for the signatures of four applicants.

[1] Where other parties in interest participate in the offer, section 3102.7 specifically requires a separate statement to be filed and states that such statement must be signed by the other parties in interest and the offeror. We perceive no ambiguity requiring interpretations in the regulation. To hold that the offeror's signature on the drawing entry card suffices because the entry card makes reference and is attached to the separate statement would be to waive a specific requirement of the regulation. By their signatures the parties signing the statement certify that all the statements made on the attachment are true, complete, correct, and made in good faith. In failing to sign the separate statement appellant did not so certify, even if the unsigned statement is incorporated into appellant's filing by reference. Therefore, her offer was properly rejected.

While it may be argued that the deviation here is minuscule and ought to be overlooked, McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955), is dispositive of that argument.

It is argued that, since the Secretary devised the regulation, he alone has the right to say what the consequences of violating it shall be. Whether that is so, we need not decide. The Secretary is bound by his own regulation so long as it remains in effect. * * * He is also bound, we think, to treat alike all violators of his regulation. He may not justify, simply by saying the violation is unimportant, his departure in a single case from an otherwise consistent policy of rejecting applications which do not conform to the regulation. [Footnote omitted.]

1/ On the entry card, the words "see attachment" are stamped in the box labelled "other parties in interest" below and to the right of those parties' names, not above appellant's signature.

See also Boesche v. Udall, 373 U.S. 476 (1963); cf. Tina A. Regan, 33 IBLA 213 (1977).

In Moss v. Andrus, No. 78-1050 (10th Cir. September 20, 1978), affirming Mildred A. Moss, 28 IBLA 364 (1977), the court discussed and upheld the requirements for separate statements in interests as follows:

Both the Interior Board of Land Appeals and this court have consistently ruled that compliance with this regulation, including the filing of required separate statements, is mandatory. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d at 1069-70; Harvey v. Udall, 384 F.2d 883, 885 (10th Cir. 1967); Harry Reich, 27 IBLA 123 (1976); Emily Sonnek, 21 IBLA 245 (1975); James V. Orbe, 16 IBLA 363 (1974); W. D. Girard, 13 IBLA 112 (1973); Hiroshi Mizoguchi, 4 IBLA 249 (1972); Richard Hubbard, 2 IBLA 270 (1971). Thus, plaintiffs cannot argue that the regulation has been applied in an arbitrary or capricious manner or that the agency abused its discretion in requiring strict compliance with the regulation.

The regulation itself is not arbitrary or capricious, but rationally related to the achievement of legitimate administrative goals. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d at 1070. The Secretary is charged with the responsibility of administering many thousands of separate leases under the Mineral Leasing Act covering millions of acres. See Boesche v. Udall, 373 U.S. 472, 484 n.13 (1963). * * * In view of the magnitude of the leasing operations conducted by the Secretary, we cannot say the Secretary acted irrationally in promulgating the regulation in issue to promote an orderly leasing scheme.

Plaintiffs complain that the Entry Card is ambiguous as to whether the primary offeror also must submit a separate statement. This argument is based on the fact that the instructions on the back of the card include the following language:

Other parties in interest—All interested parties must furnish evidence of their qualifications to hold such lease interest.

We note, however, that other language on the back of the card specifies: "Compliance must also be made with the provisions of 43 CFR 3102." (Emphasis in original.) As previously discussed, section 3102.7 unequivocally

requires a separate statement by the offeror, in addition to similar separate statements by other interested parties. All persons dealing with the government are charged with knowledge of duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1970); Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, 384-85 (1947). Moreover, "[t]he reference on the card is to aid an offeror to find the pertinent regulations, but does not limit his duty to comply fully with them." James V. Orbe, 16 ILBA [sic] at 365. In addition, we note that a similar ambiguity argument was rejected in Shearn v. Andrus, No. 77-1228, at 8 (10th Cir. Sept. 19, 1977) (unpublished opinion).

Plaintiffs contend that the information which should have been provided in a separate statement signed by Moss could be inferred from the statements filed by the other four interested parties. Plaintiffs reason that since the number of all the other interested parties is four, and each has a 20 per cent interest in any lease granted to the offeror, there is an inference that the named offeror holds the remaining 20 per cent interest, and that an agreement to this effect exists among the offeror and the other interested parties. Although this argument is certainly reasonable, it is not the law. The employees of the BLM are under no duty to complete a lease offer for any applicant or to advise the applicant of any defect in his application. See Burglin v. Morton, 527 F.2d 486, 490 (9th Cir.), cert. denied, 425 U.S. 973 (1976). Moreover, the inference which plaintiffs urge is not compelling. It is reasonably possible that all interested parties may not be disclosed or that faulty arithmetic may result in an aggregate interest greater or lesser than 100 per cent of the lease. The filing of a separate statement insures against these errors.

Plaintiffs also argue that the only mandatory provisions of the regulation in question are those dealing with the qualifications of offerors. From this they reason that the separate statement concerning the nature and quantum of a party's interest in the present application is not essential to a determination of offeror qualifications, and, hence, is not mandatory. This two step argument is erroneous. The Secretary is charged with the responsibility to enforce acreage and other limitations imposed by the Mineral Leasing Act. 30 U.S.C. 181, 184(d)(1) (1970). To do this the Secretary maintains records for each individual and entity participating in federal oil and gas leasing. The statements required by section 3102.7 inform the Secretary of the type and quantum of interest of each of the applicant parties so that each

individual's acreage limitation record can be checked when his application for additional leases attains priority status. This insures that a lease is not awarded to an offeror who is not qualified by reason of the fact that he has exceeded the statutory maximum acreage. A statement indicating the type and quantum of interest in the offer is related to offeror qualifications and is mandatory, even under plaintiffs' restricted view of the regulation's mandatory provisions.

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 affirmed.

Frederick Fishman
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

