

DONALD MILLER

IBLA 79-159

Decided September 11, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer W 66479.

Affirmed.

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

A drawing entry card which is not dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected, notwithstanding an allegation that the date of signing might have been deduced from a check accompanying the offer or from the postmark of the envelope in which the offer was submitted.

APPEARANCES: William P. Franzese, Esq., Boston, Massachusetts, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Donald Miller's drawing entry card (DEC) for parcel WY 3305 was first drawn in the November 1978 drawing by the Wyoming State Office, Bureau of Land Management (BLM), for a simultaneous oil and gas lease. On December 29, 1978, BLM rejected the offer because the DEC was not dated. Miller appeals this decision on the grounds that the date could be gleaned from his check and the envelope in which the card arrived, and that it violates due process to deny him an opportunity to cure the defect.

[1] It is well established that a drawing entry card which is not dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected. Sorenson v.

Andrus, 456 F. Supp. 499 (D. Wyo. 1978). Harry A. Zuckerman, 41 IBLA 372 (1979); Theodore R. Kuhn, 38 IBLA 135 (1978); John G. Keane, 37 IBLA 364 (1978); Anchors and Holes, Inc., 33 IBLA 339 (1978); Thomas C. Moran, 32 IBLA 168 (1977); John Willard Dixon, 28 IBLA 275 (1976); Frank DeJong, 27 IBLA 313 (1976); Herbert W. Schollmeyer, 25 IBLA 393 (1976); Roy Flamm, 24 IBLA 10 (1976). The date is important because it shows that, as of a particular date, the offeror, by his signature, certifies all the statements made on the card. If no date appears on the card, there is no certification, and the entry card must be rejected. Thomas C. Moran, *supra*, and cases cited; see Walter M. Sorensen, *supra*.

As indicated, appellant asserts that the failure to date the card is immaterial, as the envelope in which the card was mailed was postmarked, and as there was a date on the check which accompanied the offer. Even if the date might have been deduced from the check or postmark, the mandatory requirement of the regulation would not have been satisfied. Frank Dejong, *supra* at 314; Herbert W. Schollmeyer, *supra* at 394.

In contending that there has been a violation of due process, appellant attempts to draw analogies from judicial proceedings where courts correct errors or omissions in pleadings and other documents. The circumstances, however, are completely different here. For noncompetitive Federal oil and gas leasing, the right of an applicant to obtain a lease over conflicting applicants is determined by the priority of filing. If, as long provided in the regulations, an offer is not in complete compliance with the regulations it is subject to rejection and consequently has no priority. See, e.g., 43 CFR 3111.1-1(d). The simultaneous filing and drawing procedure provides a means of determining priority of filing for applicants who file within the time prescribed. An offer drawn first which is not in complete compliance with the regulations cannot be cured because it cannot obtain a priority over the second or third drawn offer, and if all three offers are not qualified, the regulation, 43 CFR 3112.5-1, mandates a new drawing procedure. An applicant is subject to the conditions of the leasing regulations and suffers no loss of due process rights where he has failed to comply with those conditions. Thus, it is well settled that a first drawn DEC which is defective because of noncompliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information. Charles J. King, 40 IBLA 276 (1979); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), *aff'd*, B.E.S.T. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

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.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

