

COAL FUELS-WILDE

IBLA 79-160

Decided September 28, 1979

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting coal lease application C-22778.

Vacated and remanded.

1. Coal Leases and Permits: Applications -- Coal Leases and Permits: Leases

Where BLM has rejected a coal lease application because it does not meet court-ordered emergency coal leasing criteria and the record indicates that the applicant should have been given the opportunity to submit additional evidence in support of its application, the rejection will be vacated and the matter remanded to BLM to allow the applicant a reasonable time to provide this evidence. However, where as in this case, the emergency criteria are no longer in effect and regulations governing a new coal management program have been issued, BLM on remand should determine whether it should issue a coal lease to the applicant under the new program, giving the applicant an opportunity to provide additional information if necessary.

APPEARANCES: Randy L. Parcel, Esq., Parcel, Talesnick, Meyer, and Schwartz, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

On June 11, 1975, Coal Fuels-Wilde, a Colorado partnership, applied for a coal lease pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 201-209 (1976 and Supp. I 1977), with the

Colorado State Office, Bureau of Land Management (BLM). On December 6, 1978, BLM rejected Coal Fuel-Wilde's application because it did not meet the emergency leasing criteria negotiated by the Department in the settlement of the appeal of NRDC v. Hughes, 437 F. Supp. 981 (D.D.C. 1977), as amended, 454 F. Supp. 148 (D.D.C. 1978). The District Court ordered the Department of the Interior not to issue any coal leases except:

(1) When the proposed lease is required to maintain an existing mining operation (a) at the average annual level of production existing as of September 27, 1977, or (b) to provide reserves necessary to meet binding contracts (excluding letters of intent and memoranda of understanding) existing on September 27, 1977, and the extent of the proposed lease is not greater than is required to meet criterion (a) or (b) for eight years in the future.

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(2) When the proposed lease is necessary because (a) mining operations existing on September 27, 1977, are being conducted that could remove the coal deposit as part of an orderly mining sequence; and (b) the size, location, or physical characteristics are such that removal of the coal reserves sought to be leased, except in conjunction with ongoing operations, would (i) involve costs demonstrably so high that it would not be sufficiently profitable to develop the deposit in the reasonably foreseeable future or (ii) significantly increase environmental damage.

454 F. Supp. at 151.

The BLM decision stated that "[b]ased on the information in the case record, it has been determined that the application does not meet either of the [emergency leasing] criteria. By Instruction Memorandum 78-481, dated September 5, 1978, the Associate Director ordered that applications clearly not meeting the short-term criteria be rejected."

In its statement of reasons on appeal, Coal Fuels-Wilde argues that the criteria set forth in paragraph 2 of the court order were met as the partnership was conducting mining operations on September 27, 1977, on fee land adjacent to those which are the subject of their lease application. Appellant further argues:

Coal Fuels' mining operations are capable of removing the coal deposit in the area covered by Coal Fuel's Application, as part of an orderly mining sequence. Failure to obtain the lease would result in the bypassing of the coal

deposits within the lands covered by Coal Fuels' Application and prevent anyone from returning to mine those deposits later. The size, location and physical characteristics of the coal deposits within the lands covered by Coal Fuels's Application are such that any removal except in conjunction with Coal Fuels' ongoing operations would involve costs demonstrably so high that it would not be sufficiently profitable to develop the deposits in the reasonably foreseeable future and would significantly increase environmental damage.

Coal Fuels-Wilde further contends that no effort was made by BLM to determine the facts surrounding its application, and thus the decision is arbitrary and capricious.

[1] Coal Fuels-Wilde's initial 1975 application by itself does not support the issuance of a coal lease under the court's emergency leasing criteria because there is no indication in the application that mining operations had begun or were to begin before September 27, 1977. However, other material supplementing the application indicates the possibility that Coal Fuels-Wilde began mining in 1976. In a letter dated June 30, 1976, to the Colorado State Director, Alfred Hoyl, a partner in Coal Fuels-Wilde, stated that "[s]ince plans are in motion to start production on the fee land" Coal Fuels-Wilde was requesting early consideration of certain other lease applications for land which were being combined with Coal Fuels-Wilde's land to form a logical mining unit. We find that the supplementary material submitted in 1976 raised sufficient doubt as to the circumstances in 1977 to have warranted further inquiry by BLM before rejecting the Coal Fuels-Wilde application outright. Change 1 to BLM Instruction Memorandum 78-481 issued on November 28, 1978, advised the Colorado State Office that it should allow applicants a reasonable time to provide information needed to determine if they meet the emergency leasing criteria. Under these circumstances, we believe that Coal Fuels-Wilde should have been given such an opportunity. Cf. Mid-Continent Coal and Coke Co., 41 IBLA 139 (1979).

The court order restricting the Department's issuance of coal leases expired upon the personal review and selection by the Secretary of the Interior of a new Federal coal management program. Regulations governing this new program were issued effective July 19, 1979. See 43 CFR Part 3400 (44 FR 42609 (July 19, 1979)). Therefore, we find it appropriate to vacate BLM's decision and remand Coal Fuels-Wilde's application to BLM for such further consideration as necessary to determine whether a lease should be issued under the new coal management regulations. If additional documentation is needed before such a determination can be made or a decision to reject is made in accordance with 43 CFR 3425.1-8 (44 FR 42626-27 (July 19, 1979)), Coal Fuels-Wilde shall be given, at minimum, 30 days from receipt of notification from BLM to supply additional information in support of their application.

In view of our disposition in this case, the request by Coal Fuels-Wilde for a hearing is denied.

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 vacated and the matter is remanded for action consistent with this opinion.

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James L. Burski  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

