

PATRICK PETROLEUM CO.

IBLA 79-313

Decided November 6, 1979

Appeal from determination of the New Mexico State Office, Bureau of Land Management, requiring additional partnership qualifications. NM 0558400.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally -- Regulations: Interpretation

The regulation pertaining to the qualifications of an association as an oil and gas lease offeror (43 CFR 3102.3-1) requires, inter alia, separate statements setting forth citizenship and holdings only if there are members who own or control more than 10 percent of such association. If there are no members owning more than 10 percent, such statements need not be furnished.

APPEARANCES: David B. Stein, Esq., Patrick Petroleum Company.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Patrick Petroleum Company appeals from a determination by the New Mexico State Office, Bureau of Land Management (BLM), which rejected its "Statement of Partnership Qualifications" as insufficient under 43 CFR 3102.3-1(a) which provides:

§ 3102.3-1 Statements.

(a) If the offeror is an association which meets the requirements of § 3102.1-1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (1) that it is authorized to hold oil and gas

leases; (2) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (3) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth his citizenship and holdings, shall also be furnished. Where such material has previously been filed, a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted.

Appellant is organized as follows: Patrick Petroleum Corporation of Michigan is the parent of Patrick Oil and Gas Corp., an Ohio corporation. The latter is the general partner in the following two limited partnerships:

- 1) Patrick Oil and Gas Corp. 1975 Combination Program, Limited Partnership No. 2;
- 2) Patrick Oil and Gas Corp. 1975 Drilling Program Limited Partnership No. 2. 1/

On October 18, 1978, the New Mexico Office required appellant to furnish the following information in order for its qualifications to be complete and acceptable:

- (1) Qualifications from the general partner, Patrick Oil and Gas Corporation. an [sic] Ohio Corporation and its parent - Patrick Petroleum Corporation of Michigan.
- (2) Qualifications from the additional partner - Patrick Petroleum Company of Michigan.
- (3) A qualifications statement from all the individual limited partners. Therefore, each individual as shown on your print-out must qualify to hold his interest and such individual must be an American citizen, etc. Qualification statement forms are enclosed for this purpose.
- (4) The information submitted shows that several of the limited partners have subsequently sold their interest to somebody else, therefore, we will require not only the qualifications of the original owner, but also the qualifications of the subsequent owner.

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1/ The appeal appears to be filed by Patrick Petroleum Company on behalf of the two limited partnerships.

Appellant took the position that only partnerships themselves were required to file qualifications forms, not the limited partners, and that additional forms were required only if any limited partners owned more than a 10 percent interest in a partnership.

The record reveals that appellant submitted a statement of qualifications for both limited partnerships. These show that both are organized under Michigan Limited Partnership laws, that each entity is authorized to hold oil and gas leases, and that Patrick Oil and Gas and Patrick Petroleum are authorized to act on behalf of the partners in all oil and gas lease matters. Both qualifications statements indicate that no partner owns more than 10 percent of the partnership. Articles setting forth the partnership agreement were also submitted.

In its statement of reasons appellant contends that BLM is requiring more than called for by the regulation in question. Appellant points out that a statement of citizenship is made on a specific form by each subscribed investor. Appellant reiterates that 43 CFR 3102.3-1(a) does not require qualifications statements for each member of a partnership. It contends that it met the several requirements of that regulation.

[1] We agree. Our review of the documents submitted by appellant persuades us that there has been compliance with the provisions of 43 CFR 3102.3-1(a). Appellant's qualifications statements clearly meet provisions (1), (2), and (3) of the regulation, and articles of the partnership were included, as required. Since there are no members owning or controlling more than 10 percent, additional names, addresses, statements of individual citizenship, and holdings need not be furnished.

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 reversed and the case file is remanded for appropriate action consistent herewith.

Frederick Fishman  
Administrative Judge

I concur:

Douglas E. Henriques  
Administrative Judge

## ADMINISTRATIVE JUDGE THOMPSON CONCURRING SPECIALLY:

The action by the New Mexico BLM State Office appears to be based upon a concern that noncitizens may hold an interest in a limited partnership which has an interest in a Federal mineral lease. There is no provision in the law whereby noncitizens may hold Federal mineral leases except as stockholders in a corporation. As stated in 43 CFR 3102.1-1(a):

Aliens may not acquire or hold any direct or indirect interest in leases, except that they may own or control stock in corporations holding leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to U.S. citizens, its application will be denied.

The first paragraph of 43 CFR 3102.1-1 echoes the statutory language that mineral leases may be issued only to "(a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or any State thereof \* \* \*." Further, the regulation states "association" includes "partnership."

As indicated in the majority opinion, regulation 43 CFR 3102.3-1(a) requiring showings for an association does not require the statements of individual citizenship and holdings except for members owning or controlling more than 10 percent. In this case, it has been shown that to subscribe to the limited partnership the subscription form of the partnership includes a requirement that the subscriber state that he/she is a United States citizen. In view of this, the BLM office's concern appears to be misplaced here. Appellant also states that a certificate signed by the General Partner that the limited partners are United States citizens should suffice here. Absent a more specific regulatory requirement or some substantial reason to question the representations, I see no basis for BLM's requiring these further showings here.

Joan B. Thompson  
Administrative Judge

