

Editor's note: Reconsideration denied by order dated Dec. 18, 1980

ALLIED MATERIALS CORP.

IBLA 80-720

Decided October 16, 1980

Appeal from decision of the Geological Survey, GS-161-O&G, affirming the rejection of a late-filed application to purchase onshore royalty oil.

Affirmed.

1. Applications and Entries: Generally--Applications and Entries: Filing--Oil and Gas Leases: Contracts for Sale of Royalty Oil or Gas

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

APPEARANCES: Daryl J. Hudson III, Esq., Bracewell & Patterson, Washington, D.C., for appellant; Kenneth G. Lee, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for Geological Survey.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Allied Materials Corporation appeals from decision GS-161-O&G, dated May 14, 1980, wherein the Acting Chief, Conservation Division, Geological Survey (Survey), affirmed the Southern Rocky Mountain Area Oil and Gas Supervisor's rejection of Allied's application to purchase Federal onshore royalty oil because the application was received February 26, 1980, after the date stated in the notice of sale, which was February 25, 1980.

On January 14, 1980, a notice of availability of onshore royalty oil to eligible refineries, pursuant to 30 CFR 225, was published in

the Federal Register at 45 FR 2830. The notice spelled out that the closing date for receipt of applications by Geological Survey was February 25, 1980, and that all applications received after that date would be, without exception, rejected automatically. Among the six geographical areas listed in the notice was the Southern Rocky Mountain Area for which the contracting official is J. W. Sutherland, Oil and Gas Supervisor, P.O. Box 26124, Albuquerque, New Mexico, 87102.

Allied, an eligible qualified refiner, submitted bids to purchase royalty oil to four of the Survey area offices listed in the January 14 notice. Transmittal of the application from allied to the Survey offices was by Federal Express, an overnight courier service for documents and packages. The applications were given into the custody of Federal Express on February 22, a Friday, for delivery to several addressees on February 25, a Monday. The package addressed to the Albuquerque office of Survey showed only the Post Office box number set out in the January 14 notice. Federal Express, however, delivers only to street addresses, a situation allegedly unknown to Allied when it transmitted the applications. For this reason, appellant alleges, delivery of the package was delayed until Federal Express was able to ascertain the street address of the Oil and Gas Supervisor in Albuquerque. ^{1/} The applications sent to Survey in Tulsa, Los Angeles, and Anchorage were timely delivered by Federal Express on February 25, despite the fact that the Anchorage package bore only a Post Office box number as the address of the contracting official.

The decision of Survey set out these conclusions:

The Oil and Gas Supervisor was correct in rejecting the application. The Federal Register announcement clearly and unequivocally stated that applications not timely filed would be rejected "* * * automatically without exception." (45 F.R. 2830). As stated in the notice (45 F.R. 2831), acceptance of royalty oil applications filed or received later than the advertised filing date would unduly interfere with the orderly conduct of the royalty oil program.

The Department decided on a closing date of February 25, 1980, for this royalty oil sale because the intervening time is needed to properly process all applications before the contract effective date. During this time,

^{1/} Assuming the facts alleged by appellant, a repetition of the instant facts and their unfortunate consequences could be avoided by including on future notices for royalty oil sales the street address of all contracting officials. We so recommend.

questions of eligibility of applicants must be resolved (45 F.R. 2830) and a drawing must be held to select leases (45 F.R. 2831) from which each applicant's oil would be taken. The applicants need time to negotiate exchange agreements and obtain bonding (45 F.R. 2831). All requirements for a contract must be completed before it can be signed and the lessee-operators can be given the required 30-day notice that the Government will be taking royalty in kind (45 F.R. 2832). Because of a need to process through this timetable in a systematic and thorough manner, the Department requires that an applicant meet the requirements of 30 CFR 225 et seq. and the procedures specified in the January 14, 1980, Federal Register notice, as of the cut-off date.

If an exception were made in Allied's case, presumably exceptions would have to be made in other similar cases and the prescribed deadlines would become meaningless. Acceptance of late applications would also be detrimental to the interests of qualified applicants who submitted timely applications. For these reasons, as regards applications to purchase royalty oil, a definite cut-off date must be enforced. A. Johnson and Company, Inc., 38 IBLA 182 (December 6, 1978).

The courier was appellant's agent, and the consequences of its delay, as between Survey and appellant, are properly borne by appellant. A. Johnson and Company, Inc., supra, 38 IBLA 182 (December 6, 1978).

Appellant makes the argument that the rationale employed by the Office of the Director to uphold the Supervisor's decision is utterly groundless. Appellant attempts to distinguish A. Johnson & Co., 38 IBLA 182 (1978), cited by Survey, by noting that the Board therein commented that "[a]ppellant has not explained why the courier was delayed in delivering the application." Appellant contends that its explanation why Federal Express was delayed in delivering the application should excuse it from the consequences of a late delivery, as it made every reasonable effort to ensure timely delivery.

The copy of the label on the package at issue shows the consignee's address as follows:

J. W. Sutherland 505-766-2841 [phone]
Dept. of Interior
P.O. Box 26124
Albuquerque, New Mexico 87102

This address is not precisely as shown in the January 14 notice, which used the phrase "Southern Rocky Mountain Area Oil & Gas Supervisor"

instead of "Dept. of Interior." In any event, the lack of a street address should not have unduly delayed appellant's package, because the telephone number of the addressee's office was shown on the address label. It is beyond the limit of credulity to accept that it took an entire day for Federal Express to call the indicated telephone number and ascertain the street address of Survey in Albuquerque.

Appellant misreads Johnson in suggesting that an explanation of the delay might exculpate it from the penalty for a late filing. As Johnson said immediately following the portion above cited, "In any event, the courier was appellant's agent and the consequences of its delay, as between Survey and appellant, are properly borne by appellant. See Mar-Win Development Co., 20 IBLA 383 (1975)." 38 IBLA at 184. Johnson was correctly applied by Survey in this case. ^{2/} See also 54 Comp. Gen 304 (1974).

Appellant adverts to Herbert Herrmann, 45 IBLA 43 (1980), as precedent for Survey's accepting an application based on appellant's substantial compliance with the law, and to Julius F. Pleasant, 5 IBLA 171 (1972), as permitting acceptance of an application where the delay in filing was the result of an obstacle over which appellant had no control. Both of those decisions involve applications for Native allotments in Alaska, which applications were to be certified by the Bureau of Indian Affairs (BIA) prior to filing with the Bureau of Land Management (BLM). On December 18, 1971, the Alaska Native Allotment Act, 43 U.S.C. § 270-1 (1970), was repealed by the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), such that applications thereafter filed with BLM were rejected. Both Herrmann and Pleasant deal with applications filed with BIA, a Department of the Interior agency, for certification prior to December 18, 1971, and each stands for the proposition that a Native allotment application filed with the Department of the Interior in either BIA or BLM prior to December 18, 1971, would be accepted. The Board's invocation of the doctrine of equitable adjudication in these cases is consistent with the longstanding fiduciary relationship this Department enjoys with Native Americans. Cramer v. United States, 261 U.S. 219 (1923); neither Herrmann nor Pleasant may be applied to benefit appellant.

[1] Appellant argues that acceptance of its application would not interfere with the sale of royalty oil and contends that the Supervisor's decision does not suggest that acceptance would disrupt the process of awarding the royalty oil contracts. Orderly conduct of business requires that deadlines be established. The January 14

^{2/} We note that appellant waited until February 22, 1980, a Friday, to place its application with Federal Express. The application was due on Monday, February 25, 1980, some 6 weeks after the notice of disposal of royalty oil was published in the Federal Register.

notice set February 25, 1980, as the deadline for applications for the royalty oil being offered. An application received after February 25, 1980, for whatever reason, is properly rejected, because acceptance of the late application could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the sales program. Johnson, supra. See McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

Finally, appellant argues that an exception for it would not render deadlines meaningless, but would be more consistent with notions of equity accepted by the Federal courts, citing many cases where pleadings before the Federal courts are considered to be filed when mailed. The Department of the Interior has long enforced the doctrine enunciated in United States v. Lombardo, 241 U.S. 73 (1916):

Filing, it must be observed, is not complete until the document is delivered and received. "Shall file" means to deliver to the office and not send through the United States mails. [Citation omitted.] A paper is filed when it is delivered to the proper official and by him received and filed. [Citation omitted.] Anything short of delivery would leave the filing a disputable fact * * *.

Appellant contends it has a substantial interest at stake in the subject royalty oil sale and has instituted litigation contesting the geographical eligibility requirement utilized by Survey in disposing of onshore royalty oil. 30 CFR 225.3. Allied Materials Corp. v. Department of the Interior, Civ. No. 80-273-E (W.D. Okla.). The disposition of that litigation will have no bearing, that we can perceive, on the resolution of this appeal relating only to the rejection of the late-filed application of Allied. 3/

Appellant concludes that the rejection of its late-filed application was merely a matter of the Supervisor's administrative convenience. It requests a hearing before an Administrative Law Judge on the disputed issues of fact. From the record before us, we find no facts relating to the time of filing of the application are in dispute. The request for hearing is denied. Cabax Mills, 32 IBLA 225 (1977). Appellant also seeks to make oral argument before the Board on the legal questions at issue. There are no unresolved legal issues involved under the instant facts. The request for oral argument is denied.

3/ On July 3, 1980, the United States Court of Appeals for the Seventh Circuit decided Laketon Asphalt Refining, Inc., v. Andrus, 624 F.2d 784 (1980) (7th Cir. 1980), wherein Laketon filed suit to challenge the validity of the Department's procedures in allocating royalty crude oil among eligible refiners on a regional basis. Circuit Judge Sprecher, writing for the court, found the challenged procedures to be valid.

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.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

