

Editor's note: Request for clarification granted by order dated Nov. 2, 1981 -- See 58 IBLA 278A & B below.

JANET A. RODGERS

IBLA 81-792

Decided October 8, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous noncompetitive oil and gas lease application W 72862.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes on the application as the instructions on the application form expressly require.

2. Administrative Authority: Laches--Estoppel--Laches

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost through lack of enforcement by some of its officers.

APPEARANCES: Rebecca B. Smith, Esq., Norfolk, Virginia, for appellant. 1/

1/ Rebecca B. Smith, Esq., has filed a notice of appearance but has not filed a statement of reasons in support of Rodgers' appeal. However, the notice of appeal is adequate, albeit barely, to avoid dismissal of the appeal under 43 CFR 4.412.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Janet A. Rodgers filed a simultaneous noncompetitive oil and gas lease application for parcel WY 5292 in the October 1980 drawing in the Wyoming State Office, Bureau of Land Management (BLM). This application was drawn with first priority and assigned serial number W 72862.

On May 21, 1981, BLM issued a decision rejecting Rodger's application because questions (d), (e), and (f) 2/ were not completed on the back of the application by checking appropriate boxes, which violates 43 CFR 3112.2-1(a) and (g) (1980). Rodgers appealed this decision.

[1] We agree that appellant's application was not completed and that BLM therefore properly rejected it. A simultaneous noncompetitive oil and gas lease application must be completed (43 CFR 3112.2-1(a) and (g)) or must be rejected as an improper filing. 43 CFR 3112.6-1(a). Thus, failure to complete items (d), (e), and (f) on the back of the application justifies its rejection. Clyde K. Kobbeman, 58 IBLA 268 (1981); Simon A. Rife, 56 IBLA 378 (1981); Edward Marcinko, 56 IBLA 289 (1981); Vincent D'Amico, 55 IBLA 116 (1981) (appeal pending).

Appellant's application was filed on his behalf by the Federal Energy Corp. (FEC), an oil and gas lease filing service. The present record, and records of other cases involving the application of FEC's clients during the same period, 3/ reveal that FEC adopted a procedure under which it filed general information concerning its clients' applications with BLM State offices in advance of the drawings. FEC apparently retained executed copies of the documents relating to each client in its files.

2/ The portion of the application in question is as follows:

"UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes) [emphasis in original]:

* * * * *

"(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application, or the offer or lease which may result? Yes No .

"(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest? Yes No .

"(f) Does the undersigned have any interest in any other application filed for the same parcel as this application? Yes No ."

3/ We refer to the records in Vincent D'Amico, supra (IBLA 81-186, 81-190), and in Clyde K. Kobbeman, IBLA 81-751, issued with this decision.

Specifically, the package included a blank copy of its standard service agreement with its clients, a copy of its published brochure describing its services, a list of its clients, and a document entitled "Statements of Qualifications," which provides as follows:

"STATEMENTS OF QUALIFICATIONS"

Undersigned certifies as follows:

(a) I hereby grant FEC the authority to sign all "Simultaneous Oil & Gas Lease Applications" (form 3112-1) being submitted on my behalf as if I had signed same.

(b) I am a citizen of the United States; an association of such citizens; a corporation organized under the laws of the United States, or any State or Territory thereof; or a municipality.

(c) I am at least 21 years of age.

(d) Applicant is in compliance with acreage limitations set forth in 43 CFR 3101.1-5 and 3101.2-4. (I do not hold more than 246,080 acres in any one state.)

(e) 4/ Does any party, other than yourself and those identified herein as other parties in interest, own or hold any interest in any applications being submitted on your behalf by FEC, or any offer or lease which may result? Yes
No

(f) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which you have assigned or agreed to assign, any interest in any applications being submitted on your behalf by FEC, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest? Yes No

(g) Are you filing applications or do you have any interest in other applications being filed that may be in conflict with those being submitted on your behalf by FEC? Yes No

Under 43 CFR 3102.2-6(b) (1980), an agency such as a filing service which has a uniform agreement with several applicants may file a single copy of the agreement with BLM in lieu of filing a personally-signed copy of the agreement or a personally-signed statement from each applicant, provided that it also files a list of its clients.

4/ Questions (e), (f), and (g) on the "Statement of Qualifications" correspond approximately to questions (d), (e), and (f) on the application.

Thus, FEC's filing of its service agreement and information brochure apparently conformed to the procedure established by this section.

However, neither this section, which is expressly limited to the question of how to file agency statements, nor any other provision of the regulations, authorizes a filing service to state the qualifications of its clients to apply for a particular parcel by executing general statements with them in advance of drawings and then filing a blank reference copy with BLM along with a list of its clients' names. Nothing in the regulations allows a filing service to invent its own method of application or otherwise to modify the prescribed procedure. BLM's application form expressly directs an applicant to "check appropriate boxes" (emphasis in original) as part of his certification. BLM may properly insist that an applicant comply strictly with the instructions on its application to check the boxes on the application itself and may reject nonconforming applications. To hold otherwise would allow others to invent divergent ways to file applications. In view of the vast number of applications handled by BLM each month, the result of such indulgence could be chaos.

For example, 345,602 applications were filed with the Wyoming State Office, BLM, in October 1980 alone. When such numbers are involved, it is reasonable for the Department not to take extra steps to protect those who do not comply with its application instructions. See Federal Energy Corp., 51 IBLA 144 (1980). The need to process applications efficiently at a minimum of taxpayer expense justifies BLM's insistence on strict compliance with its filing procedures.

[2] The fact that other BLM state offices may have improperly accepted similar filings in the past does not alter the result here. BLM's right to insist on a completed application in accordance with 43 CFR 3112.2-1(a) is not vitiated or lost through lack of enforcement or by the acquiescence of some of its officers or agents. 43 CFR 1810.3(a); Clyde K. Kobbeman, supra; Vincent D'Amico, supra.

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.

Bernard V. Parrette

Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

NOV 2, 1981

IBLA 81-792	:	W 72862
	:	
Janet A. Rodgers	:	Oil and Gas
58 IBLA 275	:	Request for Clarification
	:	
	:	Granted

CLARIFICATION

By letter filed on October 23, 1981, Rebecca B. Smith, Esq., counsel for Janet A. Rodgers, requested that footnote 1 in the above-captioned decision, set out at 58 IBLA 275, be corrected to avoid any impression 1) that Smith had filed "a barely adequate notice of appeal" or 2) that she "could have and should have, but did not, file a statement of reasons in support of the appeal." Although we do not agree with Smith that these impressions necessarily follow from the footnote, and although we continue to regard the footnote as essentially correct, the matter is of sufficient professional concern to merit a clarification of what transpired in connection with the filing of Rodgers' appeal, the failure by either appellant or counsel to file a statement of reasons in support thereof, and the entry of Smith's appearance on Rodgers' behalf.

Rodgers initiated this appeal by filing a notice of appeal pro se on June 29, 1981. No statement of reasons was filed within 30 days after the filing of the notice of appeal as required by 43 CFR 4.412. On August 24, 1981, after the time for such filing had passed, Smith filed a notice of appearance on Rodgers' behalf in the appeal.

Since a statement of reasons was not filed in support of Rodgers' appeal, as required by 43 CFR 4.412, we examined the notice of appeal to see if it specified in what particular(s) the decision appealed from was deficient. The notice of appeal stated that "[t]he basis of my [Rodgers'] decision to file an appeal emanates from the decision on file being adverse to mo and, in my opinion, incorrect." This statement is, as we held in Footnote 1, adequate, albeit barely, to challenge BLM's decision, and so to avoid dismissal of the appeal for failure to file a statement of reasons under 43 CFR 4.412.

Nothing in the footnote indicates that Smith filed a barely adequate notice of appeal on behalf of Rodgers. However, to clarify the

58 IBLA 278A

matter, we point out that it was Rodgers who filed the notice of appeal pro se, not Smith.

Footnote 1 does state that Smith did not file a statement of reasons in support of Rodgers' appeal. While this is true, Smith points out that she did not enter an appearance in the case until after the prescribed time to file a statement of reasons had expired. Thus, we clarify our footnote to remove any impression that the failure to file a timely statement of reasons in the case was the fault of Smith.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

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