

HERMAN BIRNBAUM

IBLA 81-295

Decided October 8, 1981

Appeal from the New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application NM 42057.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: First-Qualified Applicant

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 applications as the instructions on the application form expressly require.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: First-Qualified Applicant

A first-drawn application that is defective because of noncompliance with 43 CFR 3112.2 cannot be cured by submission of additional information after the drawing.

APPEARANCES: Herman Birnbaum, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Herman Birnbaum filed a simultaneous noncompetitive oil and gas lease application 1/ for parcel NM-575 in the August 1980 drawing by

1/ Under the new simultaneous oil and gas leasing regulations, effective June 16, 1980, a simultaneous filing is properly styled an "application," rather than an "offer." 43 CFR 3112.2, 3112.4-1. We note that BLM incorrectly described Birnbaum's application as an "offer" in its decision.

the New Mexico State Office, Bureau of Land Management (BLM). His application was drawn with first priority and assigned serial number NM 42057.

On November 10, 1980, BLM rejected Birnbaum's application pursuant to 43 CFR 3112.2-1(a), for the following reason:

[A]n application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart.

Herman Birnbaum did not comply with the regulations in that he failed to check the appropriate boxes under items (d) thru (g) 2/ making the application incomplete.

Birnbaum filed a timely appeal of 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 it 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. Janet A. Rodgers, 58 IBLA 275 (1981); 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).

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 [].

"(g) I have read and I understand the criminal warning below, and I have responded to the above questions and statements truthfully and completely, to the best of my knowledge."

Since there is no box to be checked under item (g), BLM's decision incorrectly refers to Birnbaum's failure to check an appropriate box for this item.

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, in October 1980, the Wyoming State Office received 345,602 applications. 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 expense justifies BLM's insistence on strict compliance with its filing procedures.

Appellant states that the reason for his "failure to check the boxes on the application form was due mainly to very poor eyesight." Although appellant's failure to check the boxes on the application may have been inadvertent, it cannot be excused, since strict compliance with regulations governing the drawing is required to protect the rights of the second and third drawn qualified offerors. Olga M. Puglis, 53 IBLA 55 (1981); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

[2] Nor can we accept appellant's attempt to comply by filing this information with his notice of appeal. A first-drawn application that is defective because of noncompliance with 43 CFR 3112.2 cannot be cured by submission of additional information after the drawing. See Cheyenne Resources, Inc., 46 IBLA 277, 87 I.D. 110 (1980); Don C. Bell, Trustee, 42 IBLA 21 (1979). Again, giving an unqualified applicant additional time to correct errors infringes on the rights of other qualified applicants.

Accordingly, 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:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

