

Editor's note: appealed -- aff'd, Civ.No. 82-0249 (D.D.C. May 15, 1984)

BEN M. POWELL III

IBLA 81-712

Decided October 26, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 49053.

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), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.
2. Notice: Generally -- Regulations: Generally -- Statutes
All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Bruce A. Budner, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision dated April 30, 1981, by the Montana State Office, Bureau of Land Management (BLM), rejecting appellant's oil and gas lease offer M 49053.

Appellant's application for parcel MT 45 was drawn with first priority in the September 1980 simultaneous drawing. Appellant's application (on form 3112-1) was filed for him by the Federal Energy

Corporation. On the back of the form, the applicant is asked to respond to the following questions by means of a check in the appropriate box to indicate either "yes" or "no":

(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? * * *

(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? * * *

(f) Does the undersigned have any interest in any other application filed for the same parcel as this application?

BLM rejected appellant's offer because these questions had not been answered on his application as required by 43 CFR 3112.2-1. This revised regulation was published on May 23, 1980, 45 FR 35156. Prior to the revision, regulation 43 CFR 3112.2-1 stated: "Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, 'Simultaneous Oil and Gas Entry Card' signed and fully executed by the applicant or his duly authorized agent in his behalf." The revision changed the language but the substantive requirement is still present. The application must be complete when first filed in order to be a valid application. 43 CFR 3112.2-1(a) and (g). The Board has consistently required strict compliance with the substantive requirements of the regulations concerning the filing of applications in the simultaneous oil and gas leasing procedures. Janet A. Rodgers, 58 IBLA 275 (1981); Clyde K. Kobbeman, 58 IBLA 268, 88 I.D. (1981); Simon A. Rife, 56 IBLA 378 (1981); Edward Marcinko, 56 IBLA 289 (1981); Vincent M. D'Amico, 55 IBLA 116 (1981), appeal docketed, D'Amico v. Watt, No. 81-2050 (D.D.C. Aug. 31, 1981). See, e.g., Rose B. Carrington, 46 IBLA 149 (1980); Margaret H. Wygocki, 45 IBLA 79 (1980); John L. Messinger, 45 IBLA 62 (1980).

Appellant states on appeal that he answered the questions asked on the application in an "Addendum to Service Agreement" allegedly filed with the application. 1/ Appellant contends that BLM abused its discretion in requiring questions (d) through (f) to be answered on the

1/ The file does not contain a document styled "Addendum to Service Agreement." The file contains a "Statements of Qualifications" form which first states: "(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." In addition, it contains statements or questions which if answered would set forth exactly the

application form itself, because appellant had no notice of this requirement and no such requirement appears in the regulations. Appellant contends further that the rule requiring these questions to be answered on the application form itself has been inconsistently applied by BLM. Appellant's statement of reasons amplifies these contentions.

[1] The issue whether questions (d) through (f) must be answered on the application form itself was resolved in Vincent M. D'Amico, supra. The application form clearly contemplates that items (d) through (f) be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)." (Original in italics.) Nowhere do the regulations or the application suggest that items (d) through (f) may be answered by attachment. Small boxes appear following each item to be checked in response. Although the application does contemplate that the names of other parties in interest or amendments to one's statement of qualifications may be submitted by attachment, the questions posed by items (d) through (f) are distinct issues. The statement of qualifications alluded to is addressed at 43 CFR 3102.2.

Failure of applicant to check the appropriate box in response to each of the questions, "d," "e," and "f," created defects in the applications that are far from trivial. The applications simply were not complete, and the regulations do not provide the option of answering these questions by addendum. See Vincent M. D'Amico, supra.

[2] In response to appellant's argument concerning notice we quote from the regulation itself. 43 CFR 3112.2-1 states in part:

(a) An 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. * * *

* * * * *

(g) The properly completed and signed lease application shall be filed in the proper office of the Bureau of Land Management. [Emphasis added.]

In light of the clear requirement that the application form be completed, and the instruction on the form itself ("check appropriate

fn. 1 (continued)

same information sought on the back of the BLM Simultaneous Oil and Gas Lease Application (form 3112-1). The "Statements of Qualifications" form is neither filled out nor signed, and it bears no date stamp showing receipt by BLM. We note that using such document may be part of an invalid procedure, such as we discussed in Clyde K. Kobbeman, supra.

boxes") appellant cannot convincingly allege his ignorance of the proper procedure for completing items (d) through (f). Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980), does not support appellant's position. Brick involved an application on which the applicant had entered his first name first, then his last name, contrary to the instructions on the form which required the last name, first name, then middle initial. Brick is not applicable to the instant case because Brick involves a different factual situation.

Appellant, as a person dealing with the Government, is presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. §§ 1507, 1510 (1976). Such regulations have the force and effect of law and are binding on the Department. Bernard P. Gencorelli, 43 IBLA 7 (1979); Fred S. Ghelarducci, 41 IBLA 7 (1979). Thus, the clear directives of a regulation cannot be disregarded on the basis of appellant's allegation that such a regulation may have been inconsistently applied by BLM. See Trans-Texas Energy, Inc., 56 IBLA 295 (1981). Appellant was on notice and should have been aware of the regulatory requirements published in the Federal Register of May 23, 1980.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative

Judge Douglas E. Henriques
Administrative Judge

