

WILLIAM C. REULING

IBLA 81-304

Decided October 28, 1981

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application. NM 42128.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing -- 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(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

APPEARANCES: Phillip Wm. Lear, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

William C. Reuling has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated November 10, 1980, rejecting his noncompetitive oil and gas lease application, NM 42128, for failure to properly complete his simultaneous oil and gas lease application form in accordance with 43 CFR 3112.2-1(a). Appellant's application was drawn with first priority for parcel number NM 646 in the July 1980 simultaneous oil and gas lease drawing.

The basis for the BLM decision was appellant's failure to answer the questions on the back of his application, items (d), (e), and (f), relating to other parties in interest and multiple filings. 1/

1/ Items (d) through (f) are a series of questions, each of which is followed by boxes to be checked "Yes" or "No" in response. The questions are:

"(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?

In his statement of reasons for appeal, appellant contends that he "complied in every way with the regulatory recitation of acts in 43 CFR 3112.2-1 which constitute completion of the application," i.e., he "entered his name, address, including zip code, parcel number with its 'NM' prefix in the designated spaces therefor, and holographically affixed his signature and the date, also in the designated spaces." 2/ (Emphasis added.) Appellant argues that the regulatory requirement that a simultaneous oil and gas lease application be "completed" should not be construed as strictly as the requirement that it be "fully executed." 3/ The latter requirement appeared in the predecessor of 43 CFR 3112.2-1(a). See 43 CFR 3112.2-1 (1979). Appellant notes that "strict enforcement has recently come under close scrutiny" in Federal court decisions, particularly the case of Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980). In Brick, the court held that the Department may not reject a drawing entry card (now a simultaneous oil and gas lease application form) for failure to enter the offeror's name in the proper order indicated by the instructions on the card -- last name, first name, middle initial -- where the Department's regulations do not specify the precise manner in which cards must be completed and where the Secretary has not applied such a rule consistently.

Appellant also cites the case of Winkler v. Andrus, 594 F.2d 775, 777 (10th Cir. 1979), wherein the court held that the Department may not reject a drawing entry card for failure to properly execute the card where an individual includes the word "agency" in the name of the offeror and omits reference to corporate qualifications where it is clear that the applicant was not a corporation.

In the alternative, appellant argues that any defect in his simultaneous oil and gas lease application was "curable," as is the case with over-the-counter and competitive lease offers. Appellant notes that such lease offers are generally distinguished from simultaneous lease applications but states that "[t]he distinction has no

fn. 1 (continued)

"(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?"

2/ Appellant states that his failure to submit additional evidence with regard to other parties in interest, in accordance with 43 CFR 3102.2-7, is prima facie evidence that he was, in fact, the sole party in interest. Accordingly, answering items (d) and (e) on the application form would have been superfluous.

3/ Appellant argues that some latitude should be allowed for lease applicants to acquaint themselves with the new application form, form 3112-1 (June 1980), employed for the "first time" in the July 1980 drawing. The previous form incorporated the sole party in interest statement "as part of the affirmative certification."

meaning in the instant case" because he was "qualified in fact" and had "filed all that he was required by regulation to file." Appellant states that BLM should have required him to submit "additional information" after the drawing, if it felt that it needed such information. Appellant submits an affidavit of his qualifications with his appeal.

Finally, appellant contends that BLM "waived its rights to object to his application once the application was placed in the drawing tumbler." Appellant argues that BLM thereby "accepted him as a qualified applicant, leaving only priority of position to be determined by the lottery." Appellant states that this waiver operates "where the applicant is qualified in fact and no harmful omission or error has occurred." Appellant argues that he was qualified in fact and that "no rights of the public, government, or subsequent drawees are adversely affected."

[1] The applicable regulation, 43 CFR 3112.2-1(a), is a newly revised regulation (45 FR 35164 (May 23, 1980)), which provides in relevant part: "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." (Emphasis added.)

On a number of recent occasions, this Board has held that an applicant has not complied with 43 CFR 3112.2-1(a) where he has failed to answer questions (d) through (f) on the application form and that failure to do so properly results in rejection of the application. Simon A. Rife, 56 IBLA 378 (1981); Edward Marcinko, 56 IBLA 289 (1981); Vincent M. D'Amico, 55 IBLA 116, appeal filed, D'Amico v. Watt, Civ. No. 81-2050 (D.D.C. filed Aug. 31, 1981).

The regulation states that an application form must be "completed." 43 CFR 3112.2-1(a). In addition, the regulation specifies the manner in which the application form should be filled out with regard to signature, date, address, and parcel sought. 43 CFR 3112.2-1(b) through (e). This list is plainly not exhaustive of those acts which must be done in order to properly complete an application form, nor is there any indication that it is intended to be.

In view of the instructions on the lease application form itself and the underlying rationale for completion of questions (d) through (f), we believe that 43 CFR 3112.2-1(a) unmistakably requires the completion of questions (d) through (f). With reference to items (a) through (g), the application form, Form 3112-1 (June 1980) provides: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)."

Although the Secretary of the Interior has discretion whether to issue an oil and gas lease for a given tract of land, where he has determined to issue an oil and gas lease for lands not within a known geological structure of a producing oil or gas field, he is required by statute, 30 U.S.C. § 226 (1976), to issue the lease to the first-qualified applicant therefore. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary

is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the application form serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification required by the application. As we stated in Simon A. Rife, supra at 380:

Not all persons may be qualified to be lessees, and for that reason all offerors must furnish evidence of their qualifications to hold Federal oil and gas leases. Harry L. Zuckerman, [41 IBLA 372 (1979)] * * *; University of the Trees, 40 IBLA 74 (1979). Completion of the application by indicating the proper answer to items "d," "e," and "f" is essential to determination of the qualifications of the applicant as of the date indicated on the application. Viewed in the light of the underlying rationale, the conclusion is inescapable that completing the answers to items "d," "e," and "f" is essential to completing the application and as such is a rational legal requisite directly affecting the contractual efficacy of the application. See Sorensen v. Andrus, [456 F. Supp. 499 (D. Wyo. 1978)] * * *; Harry L. Zuckerman, supra; Jack L. MacDowell, 34 IBLA 202 (1978); Thomas C. Moran, 32 IBLA 168 (1977); Frank DeJong, 27 IBLA 313 (1976); John Willard Dixon, 28 IBLA 275 (1976); Herbert W. Schollmeyer, 25 IBLA 393 (1976). It therefore must follow that "completed" quite simply and logically means that the applicant must, in order to render the application valid as an application for an oil and gas lease, supply all the information requested thereon. [Emphasis added.]

Moreover, we do not believe that the requirement that questions (d) through (f) be answered is unenforceable under the reasoning in Brick v. Andrus, supra. This case may be distinguished from Brick in the sense that it does not involve a question of the precise manner in which an application must be completed. Rather, it involves a question of whether the application must be completed. 43 CFR 3112.2-1(a) states that an application consists of a "completed" application form. We believe that this language provides ample notice of this requirement. Failure to complete an application by omitting the answers to questions (d) through (f) is simply not compliance. For the same reason, the case of Winkler v. Andrus, supra, is inapposite.

The court in Brick itself distinguished those cases where information was omitted from drawing entry cards. It stated:

[T]here are two important shortcomings in the Department's decision to reject Brick's offer. First, nothing in the Department's regulations themselves indicates that entry cards must be completed in the precise manner specified by the instructions on the card. Nor do the cases cited by the Secretary in which entry cards were rejected because they were improperly completed address this issue.

These cases all involved cards which omitted information required by the cards. See, e.g., Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978) (incomplete date, no day of the month); Grace M. Williams, 26 IBLA 232 (1976) (return address omitted).

8. The regulation involved merely states:

§ 3112.2-1 Offer to lease.

(a) Entry Card. 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. * * * 43 C.F.R. § 3112.2-1(a) (1979). The Secretary interprets the provision that entry cards be "signed and fully executed" as requiring strict compliance with the instructions on the cards. While this phrase may be reasonably construed as requiring responses to all information blanks on the entry card, as IBLA decisions have done, we do not find it immediately obvious that the phrase can be interpreted in a fashion which mandates the decision reached by the IBLA in this case -- that the Department may reject entry cards which contain all the required information simply because the offeror's name is not entered in the proper order. [Emphasis added.]

Brick v. Andrus, supra at 216.

Furthermore, it is well established that a first-drawn application in a simultaneous oil and gas lease drawing which is defective because of noncompliance with a mandatory regulation, may not be "cured" by submission of additional information. Simon A. Rife, supra, and cases cited therein. Giving an unqualified first-drawn applicant additional time to complete his filing infringes on the rights of a qualified second-drawn applicant. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (10th Cir. 1976).

Moreover, appellant acquired no right by virtue of the fact that his application was accepted and included in the July 1980 simultaneous drawing. As we stated in Simon A. Rife, supra at 380:

A first-drawn application to lease in the simultaneous filing program creates no vested right therein; the applicant gains merely a right of priority in consideration. Harry A. Zuckerman, 41 IBLA 372 (1979); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd per curiam, Ballard E. Spencer Trust v. Morton, 544 F.2d 1067 (10th cir. 1976); Barbara A. Joeckel, 30 IBLA 376 (1977); Amy H.

Hanthorn, 27 IBLA 369 (1976); C. Burglin, 21 IBLA 234 (1975). The Department is authorized to accept only the application of the first-qualified applicant, 30 U.S.C. § 226(c) (1976), one who has fully complied with the mandatory regulations. Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978); Harry L. Zuckerman, *supra*; Manhattan Resources, Inc., 22 IBLA 24 (1975); Southern Union Production Co., 22 IBLA 379 (1975).

The regulations provide that an application which is not filed in accordance with 43 CFR 3112.2 shall be rejected following the selection process. 43 CFR 3112.6-1.

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 program, especially in cases involving omitted information. See H. L. McCarroll, 55 IBLA 216 (1981), and cases cited therein. We continue to adhere to the requirement of strict compliance. Vincent M. D'Amico, *supra* at 118.

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

