

ZAPPIA EXPLORATION GROUP

IBLA 81-998

Decided December 22, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W 75908.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filings

Where an oil and gas lease applicant files an application with alleged statement of qualifications of a partnership but receives no serial number for the statement of qualifications under the regulation at 43 CFR 3102.2-1(c) and later files an application with no statement of qualifications as required by the regulation at 43 CFR 3102.2-4, the second application must be rejected as incomplete.

APPEARANCES: Craig J. Zicari, Esq., Rochester, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision dated July 31, 1981, by the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease W 75908.

Appellant's offer, first drawn for parcel 2929, list No. May 1981, was rejected for the following stated reason: "43 CFR 3102.4-1 -- Corporate qualification papers did not accompany the card nor was any reference as to serial number where they might be filed stated on the card. See Pan Ocean Oil Corporation, 2 IBLA 156 (1971). (See enclosed copy of your drawing entry card.)"

According to appellant's statement of reasons, the facts are as follows:

In March, 1981 appellant, a New York partnership comprised of James Zappia and Frank C. Zappia and having the name of Zappia Exploration Group, filed oil and gas lease offers in the form of drawing entry cards with the BLM. Accompanying the first card filed was appellant's qualification papers, all of which were executed originals of Exhibits C through H inclusive.

In May, 1981 appellant filed additional oil and gas lease offers with the BLM for Parcel 2929. One of these offers [W 75908] * * * was drawn with priority for that Parcel.

By letter dated July 31, 1981, * * * BLM notified appellant that the Offer was being rejected because the Offer was not considered to be complete by reason of the fact that "corporate qualification papers did not accompany the card, nor was there any reference as to serial number where they might be filed stated on the card." * * *

Subsequent thereto and by letter dated September 1, 1981 * * * BLM notified appellant that all of its qualifications had been received except for a certified copy of the articles of partnership. In that correspondence, BLM requested that a certified copy of the articles of partnership be filed.

In its statement of reasons appellant contends:

BLM alleges that appellant's qualifications lacked a partnership agreement and its Offer lacked a serial number reference. As indicated by appellant, the information contained in its filed qualifications were sufficient to constitute the equivalent of a partnership agreement. Further, a serial number could not have been indicated on the Offer because none was then issued. Moreover, because appellant's qualification papers were submitted to the BLM, BLM had actual knowledge of their existence.

Finally, the filing procedures followed by appellant have been previously accepted by BLM. Appellant reasonably relied on BLM's acceptance of those procedures. Therefore, BLM should be estopped from asserting that appellant has not met the requirements of the applicable regulations.

The issue on appeal is whether oil and gas lease offer W 75908, filed in May 1981, was complete as required by applicable regulations.

The regulation at 43 CFR 3102.2-1(c) sets forth the procedure whereby an association may file a statement of qualifications with BLM for assignment of a serial number to the statement so that in the future no filing is necessary but a reference to the serial number is sufficient. The regulation at 43 CFR 3102.2-4 sets forth what documents associations including partnerships should file along with a lease offer or application. These documents include a copy of the articles of association or partnership. See the appendix for the quoted provisions of these regulations.

In the present case appellant filed the following documents along with the applications filed in March 1981: "A Joint Venture Agreement, Subscription Agreement, Statement of Partnership Qualifications, Statement of Partnership Interest for James Zappia, Statement of Partnership Interest for Frank C. Zappia, Certificate of Partnership." Appellant had been issued no serial number for the documents filed in March 1981. Therefore, appellant had no serial number to refer to when the application W 75908 was filed in May. So, appellant was required to resubmit the documents of qualification with application W 75908 and appellant did not do this. Accordingly, we find that appellant failed to meet the requirements of 43 CFR 3102.2-4 in that it failed to submit the required qualification documents with the filing of lease application W 75908 in May 1981. In view of this finding, we do not reach the question whether the documents submitted in March 1981 were sufficient to constitute articles of partnership as required by 43 CFR 3102.2-4. We also find that it is insufficient for appellant to claim it relied on alleged prior acts of the BLM to the effect that where a serial number had not been issued, the applicant was not required to include one with a lease application.

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.

Anne Poindexter Lewis
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

While in agreement with the majority analysis, I would like to briefly address a possible misperception which the instant case illustrates, namely, that initial compliance with 43 CFR 3102.2-4 in one filing, ipso facto, results in the opening of a permanent file under 43 CFR 3102.2-1(c). Both regulations involve qualification filings. One (43 CFR 3102.2-4) requires that various documents be filed with each application. The other (43 CFR 3102.2-1(c)) implements a mechanism by which partnerships, corporations, and other entities who intend to make many filings may make an initial filing in any state office and, upon receipt of a serial number, merely make appropriate reference to the file in future applications.

The important thing to remember, however, is that these regulations are alternatives. The mere fact that an individual complies with 43 CFR 3102.2-4 does not mean that BLM will open up a qualifications file for that individual under 43 CFR 3102.2-1(c). On the contrary, if an individual merely sends in documents with an application, without evidencing an intent that they be placed on permanent file, these documents will be disposed in due course.

The proper method of complying with 43 CFR 3102.2-1(c) is to file such documents independent of an oil and gas lease application, expressly requesting that the documents be placed on file pursuant to 43 CFR 3102.2-1(c). If an individual desires to initially submit the qualifications with oil and gas lease applications, he should provide two copies of the qualifications (one to accompany the application as required by 43 CFR 3102.2-4, and the other to be placed on file) and clearly indicate with his submissions that he wishes one copy to be placed in his file under 43 CFR 3102.2-1(c). In any event, as the majority points out, until BLM issues a serial number, which serves to inform an applicant that BLM has accepted the qualifications, an individual must comply with 43 CFR 3102.2-4 and submit the required statements with each application. This was not done here. Inasmuch as appellant did not have a qualifications file completed or an assigned serial number and did not, in the alternative, refile the documents with its May filings, BLM correctly rejected the application. Appellant's contention on appeal that the documents it submitted in March were adequate is not material to the question of sufficiency of its May filings. Accordingly, I agree with the majority analysis and disposition of the instant appeal.

James L. Burski
Administrative Judge

APPENDIX

43 CFR 3102.2-1(c):

(c) Filing statements for reference. A statement of the qualifications of a trust or guardianship (§ 3102.2-3), association (§ 3102.2-4), corporation (§ 3102.2-5), agent, if the duration of the authority to act is less than 2 years and is specifically set out (§ 3102.2-6) or municipality (§ 3102.2-9) may be placed on file with a Bureau of Land Management office described in § 1821.2-1 of this title. The office receiving the statement shall indicate its acceptance of the qualifications by assigning a serial number to the statement. Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement. Such a reference shall constitute certification that the statement complies with paragraph (b) of this section. Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current.

[45 FR 35161, May 23, 1980]

43 CFR 3102.2-4:

§ 3102.2-4 Associations including partnerships.

(a) An association which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 this title:

- (1) A certified copy of its articles of association or partnership;
- (2) A statement that it is authorized to hold oil and gas leases; and

(3) A complete list of all general partners or members together with a statement as to their citizenship and identifying those authorized to act on behalf of the association or partnership in matters relating to Federal oil and gas leasing.

(b) A separate statement from each person owning or controlling more than 10 percent of the association, setting forth citizenship and compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title, shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title.

[45 FR 35162, May 23, 1980]

