

**Editor's note: appealed -- dismissed, Civ.No. 82-0424A (D.Utah Oct. 19, 1982)**

ALTEX OIL CORP.

IBLA 81-214

Decided January 29, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease application U-46714.

Affirmed as modified.

1. Oil and Gas Leases: First-Qualified Applicant--Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease may be issued only to the first qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

2. Regulations: Generally--Regulations: Binding on the Secretary--Regulations: Force and Effect as Law

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

APPEARANCES: Thomas A. Nelson, Esq., for appellant.

## OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Altex Oil Company has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated November 24, 1980, rejecting oil and gas lease application U-46714 because the corporation's qualification file, referenced on the application by number U-38700, had not been updated in accordance with regulations 43 CFR 3102.2-5(a)(3) and 3102.2-5(b), effective June 16, 1980.  
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The cited regulation 2/ provides:

(a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title, a statement showing:

- (1) The State in which it is incorporated;
- (2) That it is authorized to hold oil and gas leases;
- (3) A complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing;
- (4) The percentage of voting stock and of all the stock owned by aliens; and
- (5) The names and addresses of the stockholders holding more than 10 percent of the stock of the corporation.

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

Appellant's oil and gas lease application was selected for first priority for parcel UT 132 in the July 1980 simultaneous drawing held by the Utah State Office, BLM. After noting that appellant had not

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1/ Robert P. Hill, Esq., submitted an amicus curiae brief on behalf of Mountain Plains Oil Co., Salt Lake City, Utah. No formal request to participate in this appeal was filed with this Board on their behalf. This brief raises generally the same issues and arguments advanced by appellant and was considered to that extent.

2/ The regulation was published in the Federal Register of May 23, 1980, 45 FR 35162, effective June 16, 1980.

updated its corporate qualification file U-38700, BLM determined that appellant's existing corporate qualification information was not in compliance with the current regulations. <sup>3/</sup>

A review of this file shows that as of the date the application to lease was filed, the file contained the information: (1) That Cecil C. Wall, was president of Altex Oil Corporation, a Utah corporation, authorized to hold oil and gas leases; that he and the vice president, Jerome C. Martinets, Jr., were the authorized officers to act on behalf of the company in all matters relating to oil and gas leases, and that Gerald L. Bader Jr., was assistant secretary; (2) that stockholders holding more than 10 percent of the stock of the corporation were Cecil C. Wall (80 percent) and Jane O. Wall (10 percent); and that these stockholders had executed the necessary statements as to citizenship and acreage holdings. After BLM issued its decision rejecting appellant's offer, appellant filed an update of its corporate qualifications December 1, 1980, <sup>4/</sup> which included a complete listing of officers of the corporation as follows: Cecil C. Wall, president; Jerome C. Martinets, Jr., vice president; Ralph A. Preece, secretary; Gerald L. Bader, Jr., assistant secretary; Arben K. Jolley, assistant secretary; Arben K. Jolley, treasurer. The update indicated only that Cecil C. Wall, president, was the officer authorized to execute any and all instruments on behalf of the corporation.

Appellant maintains that BLM failed to indicate the basis for determining its corporate qualification statement on file was deficient when the application was filed. It asserts in its statement of reasons, essentially, that the new regulations did not require an update of a corporate qualification file where the existing file contained the information required by the new regulation. Appellant maintains there are no specific requirements under the regulation for a refiling of information where the file contained the required information. We agree. The record shows however, that appellant's corporate qualification statement on file did not contain the required information.

[1] A noncompetitive oil and gas lease for Federal lands may be issued only to the first qualified applicant. 30 U.S.C. § 226(c) (1976); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Cotton Petroleum Corp., 38 IBLA 271 (1978). When appellant's lease application was filed, it did not comport with the regulations regarding evidence of corporate qualifications and was, therefore, defective. See Horn Silver Mines Co., Inc., 60 IBLA 107 (1981); Century Oil & Gas Corp., 58 IBLA 227 (1981); Trans-Texas; Energy, Inc., 57 IBLA 32 (1981).

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<sup>3/</sup> Appellant's original corporate qualifications statement filed in 1968 list: Cecil C. Wall--President, Nadeen O. Reed--Vice President, Jane O. Wall--Secretary-Treasurer.

<sup>4/</sup> Appellant's corporate qualifications are now filed under serial number U-46500.

In a simultaneous filing situation under 43 CFR 3112 where an oil and gas lease offer is defective, the defect, as in this application, is not curable because the rights of a third party have intervened. Accordingly, the priority of the second drawee is advanced and the lease must then be offered to the first qualified applicant who has complied with the Department's regulations. See Robert E. Bergman, 53 IBLA 122 (1981).

In this instance our review indicates that appellant's application was defective at the time of filing because it did not have on file a complete list of its corporate officers and the identification of those officers who were authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3). See Black Jack Oil Co., 59 IBLA 163 (1981). The corporation has six officers, one of whom is authorized to execute any or all instruments on behalf of the corporation. The referenced corporate qualification file contained information indicating only three officers and designating two with authority to act for the corporation. A complete list of officers includes all officers and their authority. Clearly appellant's corporate qualification statement did not meet this requirement.

[2] Appellant challenges the substance and the need for such a regulatory requirement. The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department. Ben M. Powell III, 59 IBLA 146 (1981); Bernard P. Gencorelli, 43 IBLA 7 (1979). Thus the clear directives of the regulation cannot be disregarded on the basis of appellant's doubt as to of the need for the requirement. Appellant was on notice and should have been aware of the change in regulatory requirements published in the Federal Register of May 23, 1980.

Appellant's contention that the text of the regulation is too vague for compliance in that a corporation is unable to determine which corporate officers must be listed is similarly unfounded. The term "corporate officers" is not such a difficult and unique concept as commonly used in the general corporate structure to require a detailed explanation under the regulation. Moreover, if any corporate applicant is uncertain as to whether a certain position should be listed, it is a simple matter to merely include that position with its filing. There is no penalty in such circumstances for overcompliance with the regulation.

We do note, however, that the corporate qualification file did contain the required information in the record to show compliance with 43 CFR 3102.2-5(b). A letter filed with BLM February 29, 1968, signed by Cecil C. and Jane O. Wall, contains the required statements. Since there appears no basis for a finding of noncompliance with this section of the regulation, we modify the BLM decision accordingly.

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 as modified.

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Gail M. Frazier  
Administrative Judge

I concur:

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Douglas E. Henriques  
Administrative Judge

## ADMINISTRATIVE JUDGE BURSKI CONCURRING:

While in agreement with the majority analysis of this case, I wish to examine, in greater detail, one of the arguments made by appellant in this appeal. Appellant contends that "the listing of names, without more, of corporate officers when a corporation applies for a simultaneous oil and gas lease serves no discernible purpose of the statute." Appellant supports this conclusion by arguing that, inasmuch as any acreage held by such officers would not be chargeable to corporate holdings, this regulation does nothing to enforce the statutory acreage limitations. Be that as it may, the problem with this analysis is that the requirement of disclosure has nothing to do with policing the acreage restrictions. Rather, the purpose of this disclosure provision is to assist in enforcing the prohibition against multiple filings.

It has been long settled that where an officer files an oil and gas lease offer in competition with his or her corporation such that an usurpation of a corporate opportunity occurs, the officer will hold such lease as a constructive trustee for the corporation. See McKay v. Wahlenmaier, 226 F.2d 35, 44-46 (D.C. Cir. 1955). When such competitive filings are made in a simultaneous filing context, both offers are thus properly rejected as constituting a prohibited multiple filing on behalf of the corporation. See, e.g., William R. Boehm, 36 IBLA 346 (1978); Panra Corp., 27 IBLA 220 (1976); Richard Donnelly, 11 IBLA 170 (1973); cf. June Oil & Gas, Inc. v. Andrus, 506 F. Supp. 1204 (D. Colo. 1981). For the purposes of this analysis, it is, of course, irrelevant whether or not the officer is granted authority to file offers on behalf of the corporation. There must, therefore, be some mechanism by which the Department might discover when such prohibited filings have occurred.

This regulation, 43 CFR 3102.2-5(a)(3), is designed to permit the Department to more accurately police the prohibition against multiple filings. It is not only within the authority of the Department to require the furnishing of such information, but it also fulfills the Department's "duty of protecting other offerors from being put to an unfair advantage and providing each with an equal opportunity of obtaining an interest in the leases." June Oil & Gas, Inc. v. Andrus, *supra* at 1210. When appellant failed to submit the required information its offer was properly rejected. This Board correctly denies the instant appeal.

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James L. Burski  
Administrative Judge

