

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting first drawn offer for oil and gas lease, NM 45160.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the offeror fails to submit a statement signed by himself and the other interested parties setting forth the nature of their respective interests and a copy of agreements between them.

2. Oil and Gas Leases: Applications: Drawings

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

APPEARANCES: Charles M. Andrews, Esq., Eastlake, Ohio, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Richard M. Sporcic has appealed from a decision of the New Mexico State Office, Bureau of Land Management, dated July 14, 1981, rejecting his oil and gas lease application NM 45160. The application was filed in March 1981 in a simultaneous drawing procedure, pursuant to 43 CFR Subpart 3112.

[1] On his drawing entry card, which was drawn first in the drawing, appellant indicated that Rita Sporcic had an interest in his application. The application was rejected for failure to file the statement of interest required by 43 CFR 3102.2-7. The cited regulation provides:

(b) A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement 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.

In his statement of reasons for appeal, appellant stated that after reviewing the instructions furnished by the Government, and talking to the Government agents, he thought the application had to show he was married. As a result, he merely chose the space designated "other party in interest" because no other space was available on the application form.

Timothy G. Lowry, A-30487 (Mar. 16, 1966), involved a situation quite similar to the one presented in appellant's case. See also Eugene Prato, 5 IBLA 87 (1972). In Lowry, the offeror, Timothy G. Lowry, stated in his offer that Virginia T. Lowry was a party in interest in the offer and lease if issued, but the required statement was not filed. Lowry contended on appeal that at the time of the filing Mrs. Lowry, his wife, was not a party in interest despite his statement that she was. He reasoned that since he had been the sole party in interest at the time of the filing, the regulation requiring information concerning other interested parties did not apply, and therefore, his offer should have been accepted as initially filed. In the decision, the Assistant Solicitor explained that the Department is confined to being advised by the statements made by the offeror and that it cannot pretend that an error never existed or correct it. Regarding the effect of Lowry's error, the Assistant Solicitor continued:

That upon further information on his [appellant's] part, it eventuates that he was the sole party in interest and no statement is required cannot retroactively excuse the appellant. The point is that it is his error which is responsible for his predicament. The Government is willing to permit the appellant to correct his error but it cannot accept his contention that since he was always the sole party in interest, no statement was ever required and therefore his offer was initially valid as submitted. The Government must remain guided by an appellant's own statement until he corrects it. To do otherwise would be to foist a task of clairvoyance on the government that it is not prepared to accept.

[2] Appellant's statement in his appeal that he was, and still is, the sole party in interest in the offer is to no avail. Under the simultaneous filing procedure an applicant may not "cure" the defects in his offer by the submission of additional information after the drawing. Southern Union Production Co., 22 IBLA 379, 382 (1975); Manhattan Resources, Inc., 22 IBLA 24, 26 (1975), and cases cited. See 43 CFR 3112.6-1. "Giving an unqualified first-drawn entrant additional time to file [curative material] does infringe on the rights of the second-drawn qualified offer." Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (10th Cir. 1976).

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.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

