

Editor's note: appealed -- dismissed, Civ.No. 82-1328 (D.D.C. Oct. 5, 1983)

LEROY G. BOUDREAUX

IBLA 81-974

Decided March 15, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application. U 47873.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing

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, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

APPEARANCES: Bruce A. Budner, Esq., Dallas, Texas, for appellant; R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for second-drawn applicant Michael J. Syrrakos.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Leroy G. Boudreaux has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated July 28, 1981, rejecting his noncompetitive oil and gas lease application, U 47873, for failure properly to sign and complete his simultaneous oil and gas lease application form in accordance with 43 CFR 3112.2-1. Appellant's application was drawn with first priority for parcel UT 62 in the November 1980 simultaneous oil and gas lease drawing.

The primary 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 parties in interest other than those elsewhere disclosed, assignments, and multiple filings.
1/

In his statement of reasons for appeal, counsel for appellant contends that appellant's agent, Federal Energy Corporation (FEC),

attached to the application a document entitled "Addendum to Service Agreement," a copy of which is attached hereto and marked as Exhibit "A." It contains a statement that FEC is authorized to sign applications on Mr. Boudreaux's behalf, followed by three statements that appear on the application form itself and by the three questions, differing only in that in the Addendum they specifically mention FEC. It is signed by Mr. Boudreaux. Each of the questions on the Addendum is followed by spaces labeled Yes and No. The "No" space for each question is marked by an X. 2/ [Emphasis added.]

Appellant argues that he has not failed to comply with 43 CFR 3112.2-1(a) because either the regulations do not require that the questions be answered or, if they must be answered, that they be answered on the form. Appellant points out that an applicant is permitted by 43 CFR 3102.2-7(a), requiring the disclosure of other parties in interest, to set forth the names of other parties in interest "on a separate accompanying sheet." Moreover, appellant argues that requiring that the questions be answered on the form itself is arbitrary and capricious because it "has nothing to do with the convenience of administration or integrity of the simultaneous leasing program." Appellant points out that "applications routinely come with attachments," e.g., regarding other parties in interest, and that his attachment is easily

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?

"(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/ The "Addendum to Service Agreement" is signed by appellant and dated July 7, 1980. The relevant questions have, indeed, been answered in the negative. The record, however, does not indicate that this document was filed by appellant with his application. Nevertheless, even if it was so filed, as noted infra, we conclude that BLM properly rejected his application.

read and understood. Finally, appellant argues that requiring that the questions be answered on the form itself is arbitrary and capricious where the Department has neither given notice of such a requirement, either in the regulations or in the application form, nor applied such a requirement consistently. ^{3/} Appellant cites the case of Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980), wherein 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.

Finally, appellant argues that he signed his application in accordance with 43 CFR 3112.2-1 because it bore the holographic signature of an FEC employee who was authorized to act on FEC's behalf and because it revealed the name of the applicant, the name of the signatory, and their relationship. The application bears the typed name of the applicant in the box titled "Applicant's Signature" and the words "by FEC agent by Largin" in the box titled "Agent's Signature." The words "by FEC agent" are typed; the word "Largin" is written holographically.

[1] The applicable regulation, 43 CFR 3112.2-1(a), 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.)

This Board has consistently 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. Ottlin D. Hass, 61 IBLA 338 (1982); James E. Webb, 60 IBLA 321 (1981); Simon A. Rife, 56 IBLA 378 (1981).

Furthermore, we have consistently held that an attachment purporting to answer questions (d) through (f) does not constitute compliance with the regulations. Ottlin D. Hass, supra at 340; James E. Webb, supra at 325, and cases cited therein.

The case cited by appellant, Brick v. Andrus, supra, does not require a different result. This case is not similar to Brick. Brick involved a question of the precise manner in which an application must be completed. This case involves a question of the completion of an application. 43 CFR 3112.2-1(a) states that an application consists of a "completed" approved application form. This language provides ample

^{3/} Appellant points out that the Colorado State Office has "routinely accepted" applications where the questions were answered on an attached sheet and issued leases based on such applications.

notice of this requirement. Failure to complete an application by virtue of omitting the answers to questions (d) through (f) is simply not compliance. ^{4/}

The result is not changed because another BLM state office may have interpreted the regulation differently. Appellant is not entitled to rely on an erroneous interpretation by BLM employees in another state office, violative of 43 CFR 3112.2-1(a), permitting the acceptance of applications which do not contain the answers to questions (d) through (f). See 43 CFR 1810.3(c); Robert D. Alexander, 59 IBLA 118, 122 (1981).

The rule requiring completion of the approved application form promotes the efficient administration of the simultaneous oil and gas leasing program in view of the large number of applications submitted. We note that the November 1980 simultaneous drawing involved 96,669 filings for 150 parcels. The use of an approved form offers the element of uniformity, essential to the processing of large numbers of documents. As we stated in William K. DuKate, 35 IBLA 51, 52 (1978):

The rationale for demanding preciseness of completion by offerors in simultaneous oil and gas drawings is sound. Faced with a great number of filings, the various BLM State Offices have a substantial administrative burden in processing not only the entry cards for oil and gas drawings, but also applications in other matters. Thus, it is necessary for each oil and gas offeror to perform the simple task of carefully filling out the boxes on his entry card if the Department is efficiently and accurately to fulfill its responsibility for administering the oil and gas leasing program. An offeror who fails to satisfy the Department's unburdensome filing demands cannot fairly expect that his offers will be accepted ahead of those later-drawn offers which have been filed with the requisite care.

The Board has uniformly 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 215 (1981), and cases cited therein. We continue to adhere to the requirement of strict compliance.

^{4/} The court in Brick itself distinguished those cases where information was omitted from drawing entry cards when it stated that the phrase "signed and fully executed," which appeared in 43 CFR 3112.2-1(a) (1979), and is similar to "completed, signed and filed" contained in the present version of 43 CFR 3112.2-1(a), "may be reasonably construed as requiring responses to all information blanks on the entry card, as IBLA decisions have done * * *." Id. at 216 n.8.

Given our disposition of the issue of completion of the application, we need not reach the question of whether the application was properly signed. We note, however, that in Vincent M. D'Amico, 55 IBLA 116, 122 (1981), we concluded that the term "signatory" in 43 CFR 3112.2-1(b) referred to "the person signing on behalf of the corporate agent." (Emphasis in original). We also stated at 123:

The additional requirements of 43 CFR 3112.2-1, requiring an application to be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, suggest the following as an appropriate signature of a corporate filing service on behalf of Robert Jones, applicant: John Brown, Vice President, Acme, Inc., agent for Robert Jones.

In D'Amico we held that the handwritten words "FEC agent for D'Amico," appearing in the box labeled "Agent's Signature," on the application form were not acceptable, and rendered the application deficient. In Charles Goodrich, 60 IBLA 25 (1981), we concluded that "NCC/Federal Resources Corp." printed in ink in the box labeled "Agent's Signature" did not comply with 43 CFR 3112.2-1(b) in that it failed to reveal the name of the person signing on behalf of the corporate agent.

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.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

