

HICKORY CREEK OIL CO.

IBLA 81-614

Decided April 27, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application U-46652.

Affirmed as modified.

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

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

2. Oil and Gas Leases: Applications: Filing--Regulations: Applicability

An alleged ambiguity in a regulation can excuse compliance with the terms of the regulation only where the failure to comply has been caused by the alleged ambiguity.

APPEARANCES: Robert G. Pruitt, Jr., Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Hickory Creek Oil Company appeals from the April 2, 1981, decision of the Utah State Office, Bureau of Land Management (BLM), which rejected its oil and gas lease application, U-46652. Appellant's application received first priority for parcel UT-70 in a drawing of simultaneously filed oil and gas lease applications. BLM rejected the application for inadequate compliance with 43 CFR 3102.2-5. According to the decision, appellant failed to

furnish a complete list of corporate officers, as required by 43 CFR 3102.2-5(a)(3). In addition, BLM held that the information supplied by appellant's majority stockholder, pursuant to 43 CFR 3102.2-5(b), did not include the same showings required by 43 CFR 3102.2-5(a), and thus provided another ground for rejection.

In its statement of reasons for appeal, appellant contends that the regulation is not supported by statutory authority and has no clear purpose. Appellant claims the requirements for disclosure are ambiguous, since the term "corporate officers" is undefined. Moreover, appellant argues that it would be difficult to keep a list of officers up to date, since they are subject to frequent change. Appellant contends that it should not be penalized for lack of compliance with a regulatory change promulgated only shortly before its application was filed. Above all, appellant argues that, by rejecting the application without affording appellant a chance to cure any deficiencies, BLM acted in an arbitrary and capricious manner.

The regulations found in 43 CFR Subpart 3100 were promulgated pursuant to the Act of February 25, 1920, as amended, 30 U.S.C. § 181 (1976). The applicable regulation, 43 CFR 3102.2-5(a), was published in the Federal Register on May 23, 1980, 45 FR 35162, effective June 16, 1980, and reads as follows:

(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.

[1] An oil and gas lease application filed on behalf of a corporation must be accompanied by the information specified by 43 CFR 3102.2-5, including a complete list of corporate officers, identifying those authorized to act for the corporation in Federal oil and gas leasing matters. As has been noted, the purpose of this regulation is to aid in the enforcement of the prohibition against multiple filings. See Adobe Oil & Gas Corp., 63 IBLA 106, 109 (1982). As we noted in Adobe, the purpose of the disclosure "is to determine in what other applications for a particular parcel the corporation may have an interest, by virtue of other filings made by corporate officers." Id.

The regulations permit corporate offerors to file the required information for reference and to refer to assigned serial numbers in lieu of refileing the information, where the evidence of qualifications has been accepted and where the information on file is current. 43 CFR 3102.2-1(c). An oil and gas lease application that is not accompanied by either the required information or a reference by serial number to the BLM file in which the current information can be found is defective and subject to rejection. Samedan Oil Corp., 62 IBLA 228 (1982); Trans-Texas Energy, Inc., 56 IBLA 295 (1981).

Appellant objects to BLM's rejection of its application without allowing it a chance to supply the missing information. A simultaneous oil and gas lease application under 43 CFR Subpart 3112, as distinguished from an over-the-counter offer, cannot be cured by submission of additional information after the drawing. To permit this would infringe on the rights of the second drawn applicant, who automatically becomes the first qualified applicant when the first drawn application is deemed defective. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1966); Cheyenne Resources, Inc., 46 IBLA 277, 87 I.D. 110 (1980). A noncompetitive oil and gas lease for Federal lands may only be issued to the first qualified applicant. 30 U.S.C. § 226(c) (1976); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

[2] Appellant also argues that the failure of the regulations to define "corporate officers" renders the substantive requirements too ambiguous to be enforceable.

The Department has long recognized that, where the failure to comply with a regulation has been caused by the ambiguous language used in drafting the regulation, an individual should not suffer penalties for the drafter's mistake. See Charles J. Rydzewski, 55 IBLA 373, 88 I.D. 625 (1981); A. M. Shaffer, 73 I.D. 296 (1966). The key phrase in this statement, however, is "has been caused by." We agree that the term "corporate officer" is not self-defining. Indeed, as appellant points out, there has been some question whether a general manager or division landman is a corporate officer. See Viking Resources Corp., 48 IBLA 338, 342-43; United States Smelting, Refining & Mining Co., A-29201 (Apr. 23, 1963). Where the question presented by an appeal is whether a specific position qualified as a "corporate officer," and the uncertainty of the scope and expanse of the term was a causative factor in what was ultimately determined to be noncompliance, the question of regulatory ambiguity would properly come into play. This is not such a case.

Appellant does not point to any individual whose name was omitted and contend that it was absent because the corporation was uncertain whether the individual was a corporate officer. Appellant has failed the key test--it has shown no nexus between the ambiguous regulation and its action. Rather, it has based its argument on the fact that this "universally unnoticed" recent change should not be applied so as to prevent corporations from updating their corporate qualifications file after the fact. Absent a showing of a causative relationship between the allegedly ambiguous nature of the regulation and appellant's failure to file a complete list of corporate officers, appellant cannot plead regulatory ambiguity to avoid the mandatory rejection of its application.

Finally, we note that the BLM decision stated that it "interprets" 43 CFR 3102.2-5(b) to require corporate majority stockholders to file the information required of corporate applicants in 43 CFR 3102.2-5(a), particularly a list of officers and the names and addresses of majority stockholders in the majority stockholder. The regulation requires:

(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 [relating to acreage limitations] 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.

43 CFR 3102.2-5(b).

Hanna Mining Company, which owns 100 percent of the stock in appellant Hickory Creek Oil Company, did submit a statement containing the information specified in 43 CFR 3102.2-5(b). The Board finds that this language does not justify rejection of an application for failure to supply additional information. If a state office desires such information it is free to request it after a drawing. Failure to comply, after notice, could serve as a basis for rejection of the application. It is impossible, however, to read the regulatory framework relevant at the time these applications were filed 1/ as requiring such submissions. Thus, to the extent the decision below was predicated on this ground, it is hereby modified.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed as modified.

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James L. Burski  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Gail M. Frazier  
Administrative Judge

1/ By interim final rulemaking published Feb. 26, 1982, Subpart 3102 was amended yet again. Oil and gas lease applications and offers and assignments filed on or after that date are subject to the new requirements published at 47 FR 8544 (Feb. 26, 1982).

