

JOHN L. MESSINGER
JAMES M. CHUDNOW

IBLA 82-420

Decided June 21, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, dismissing protest of action against oil and gas lease offer M 51952.

Affirmed.

1. Oil and Gas Leases: Applications: Amendments

A deficient over-the-counter oil and gas lease offer may be cured by the offeror's submission of corrective information prior to a final Departmental decision, but with priority of filing only as of the date the corrective information was filed.

APPEARANCES: John L. Messinger and James M. Chudnow, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John L. Messinger and James M. Chudnow have appealed from a decision of January 12, 1982, by the Montana State Office, Bureau of Land Management (BLM), which dismissed their protest of the amendment to an oil and gas lease offer M 51952.

On July 13, 1981, Joyce H. Gillis filed an "Offer to Lease and Lease for Oil and Gas." The land description read in part: T. 1 N., R. 21 N., Principal meridian. On July 30, 1981, Gillis filed a letter with BLM which reads: "I hereby authorize you to correct the typographical error on the above captioned offer [M 51952] to lease and Lease for Oil and Gas dated July 7, 1981, to read from R-21-N to R-21-W." BLM instituted the amendment on that same day. On January 4, 1982, appellants filed an "appeal" (protest) of that action by BLM.

Appellants contend that the letter submitted by Gillis was "not proper" curative data in keeping with their experience of BLM procedure. Appellants contend that by "precedence and consistency" Gillis was obligated to submit a new corrected offer to lease form. Appellants also assert that the wording of the letter requesting the correction seems to indicate that BLM had contacted Gillis about the prior filing. This assertion is rebutted by a memorandum placed in the case file by a BLM employee, declaring that no one

in the BLM office contacted Joyce H. Gillis, and that Gillis herself had initiated the action to discover and correct the typographical error in the land description. ^{1/}

[1] In NL Industries, Inc., 41 IBLA 38 (1979), the Board stated:

Where the offer has been filed "over the counter," a defect can be remedied prior to the filing of any junior offer and earn priority as of the time the curative data is filed. Bear Creek Corp., 5 IBLA 202 (1972); Ballard, supra, 18 IBLA 28, n. 1. This Department was consistently held that a noncompetitive lease offer which is defective earns no priority on the date of its filing, but where the defect is "curable," priority is established as of the date the defect is remedied. Kenneth E. Sites, 13 IBLA 276 (1973); William D. Sexton, 9 IBLA 316 (1973); William B. Collins, 4 IBLA 8 (1971); Irwin Rubenstein, 3 IBLA 250 (1971); Celia R. Kammerman, 66 I.D. 255, 263 (1959). With its notice of appeal, filed March 6, 1979, the appellant transmitted the necessary documents to cure the defect, and therefore, the offer may be considered with priority as of that date.

Id. at 40.

In NL Industries, supra, the appellant failed to submit the required statement of corporate qualifications with its lease offer. The Board has held that such defects are "curable." In the instant case, we find that the BLM's decision is in accordance with the established procedure. It was not necessary for Gillis to file a new lease offer form "completely done over" (as appellants argue) in order to accomplish the correction.

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:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

^{1/} The memorandum to the file indicates that Gillis had contacted BLM by telephone in an attempt to determine if the error could be corrected by letter.

