

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer M 51792(SD).

Affirmed.

1. Applications and Entries: Priority -- Oil and Gas Leases:
Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

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

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured. Where an oil and gas lease has issued to a corporate offeror whose offer

lacked priority originally because of noncompliance with 43 CFR 3102.2-5, such lease is properly canceled only where another offer was filed for the same land before the applicant cured the defect in its offer.

APPEARANCES: Peter D. Van Der Jagt, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Peter D. Van Der Jagt appeals the April 2, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), which rejected his noncompetitive oil and gas lease offer M 51792(SD), filed June 22, 1981, because the land sought was included in noncompetitive oil and gas lease M 48920(SD), issued to XPLOR Energy Corporation (XPLOR) effective February 1, 1982, in response to an offer to lease filed September 25, 1980.

Appellant contends XPLOR did not have evidence of its corporate qualifications on file with BLM as required by 43 CFR 3102.2-5 (45 FR 35762 (May 23, 1980)) when its offer was submitted, so it was not qualified to file the offer. Appellant request cancellation of lease M 48920(SD) and issuance of a lease to him in response to his offer M 51792(SD).

Appellant apparently is correct in his allegation that XPLOR did not have a current list of all its corporate officers on file with BLM when the offer M 48920(SD) was filed. The records of BLM, however, reflect that XPLOR filed the required list November 10, 1980, before lease M 48920(SD) was issued, and before offer M 51792(SD) was filed.

[1] Where an application is incomplete because of failure to comply with the regulations, no priority attaches. However, where an over-the-counter lease applicant submits the missing evidence before rejection of the defective application, an effective filing occurs, and priority attaches as of the date of receipt of the curative information. Leon F. Scully, Jr., 50 IBLA 19 (1980); Phillips Petroleum Co., 38 IBLA 344 (1978); Emerald Oil Co., 31 IBLA 119 (1977); A. M. Shaffer, 73 I.D. 293 (1966).

[2] A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of all of its corporate officers as required by 43 CFR 3102.2-5, or a reference to a serial number where the list has earlier been submitted to BLM, the offer receives no priority until the defect is cured. Trans-Texas Energy, Inc., 57 IBLA 32 (1981); Trans-Texas Energy, Inc., 56 IBLA 211 (1981). Further, where an oil and gas lease has been issued to a corporate applicant whose offer lacked priority originally because of noncompliance with 43 CFR 3102.2-5, such a lease is properly canceled only where another offer was filed for the same land before the corporate applicant cured the defect in its offer. Cf. Trans-Texas Energy, Inc., 56 IBLA 295 (1981).

So, in this case, the offer of XPLOR was perfected November 11, 1980, and its priority commenced to run on that date. As the offer of appellant was not filed until June 22, 1981, the offer of XPLOR had priority and lease M 48920(SD) was properly issued. The rejection of appellant's offer M 51792(SD) was correct.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

