

ARTHUR H. KUETHER

IBLA 82-67

Decided June 29, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. U-48773.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

APPEARANCES: John B. Lowy, Esq., New York, New York, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE HARRIS

Arthur H. Kuether has appealed 1/ from a decision of the Utah State Office, Bureau of Land Management (BLM), dated October 2, 1981, rejecting his simultaneous oil and gas lease application, U-48773. 2/ Appellant's application was drawn with first priority for parcel UT 72 in the March 1981 simultaneous oil and gas lease drawing.

BLM rejected appellant's application stating:

The application was executed on behalf of Arthur H. Kuetner [Kuether] by Federal Research Corporation and signed by N. Ciampa. The qualification number shown on the application was C-30719.

On August 21, 1981, this office requested evidence from the Colorado State Office as to the qualifications of Arthur H. Kuetner [Kuether] and Federal Research Corporation under C-30719.

Information received in this office on August 31, 1981 from the Colorado State Office shows that the attorney in fact statement signed by A. H. Kuetner [Kuether] which authorized Federal Research Corporation to act as

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1/ Despite the fact that Federal Research Corporation (Federal Research), which filed the application on behalf of appellant, and counsel for appellant have consistently spelled his name "Kuetner," review of the case file reveals that appellant's name is "Kuether." The simultaneous oil and gas lease application involved in this case is filled out as follows:

Kuetner Arthur H  
161 Laurel  
Arcadia Ca

91006

Appellant's signature on the card is: Arthur H. Kuetner signed by N. Ciampa, Federal Research. Appellant's name, however, is spelled "Kuether," and his address is 161 East Laurel Avenue. 2/ On Oct. 26, 1981, a notice of appeal was filed on behalf of appellant by Federal Research. There is no evidence that Federal Research is qualified to practice before the Department, under 43 CFR Part 1. See 43 CFR 1.3. In such circumstances, the Board has held that an appeal is subject to summary dismissal. Allen Duncan, 53 IBLA 101, 88 I.D. 345 (1981), and cases cited therein. However, in view of the fact that the statement of reasons for appeal was filed by someone qualified to practice, we will proceed to consider the merits of the appeal.

his agent was received on April 1, 1981. [3/] The file also includes a statement signed by Arthur H. Kuetner [Kuether] authorizing Federal Resources Corporation to act as his agent, which was received in the Colorado State Office on August 5, 1980. Inasmuch as the filing for Arthur H. Kuetner [Kuether] was made by Federal Research Corporation and not Federal Resources Corporation in the March 1981 filings, the power of attorney in fact was not valid at the time of filing; therefore, the application is hereby rejected.

Thus, BLM relied on the fact that there was no power of attorney in the qualification file from appellant authorizing Federal Research to act as his agent at the time of the filing.

The relevant regulations governing agent qualifications are set forth at 43 CFR 3102.2-6(a) and (b). 4/ 43 CFR 3102.2-6(a) provides:

(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: a

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3/ Although this statement is made by BLM, examination of a copy of the instrument filed on Apr. 1, 1981, reveals that it is not signed by appellant. Appellant's name and address have been placed on the document by some type of block letter stamp. The regulations, 43 CFR 3102.2-1(a), state: "All statements required by the regulations in this subpart shall be holographically (manually) signed in ink. Rubber stamped or mechanically affixed signatures are not acceptable."

4/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the agent qualifications found in 43 CFR 3102.2-6. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement. [Emphasis added.]

The regulation clearly provides that the required statement or agreement shall be submitted "with \* \* \* the lease application if leasing is in accordance with subpart 3112 of this title." 43 CFR 3102.2-6(a) (emphasis added). In the present case, appellant's application was filed on March 20, 1981. However, the purported power of attorney between appellant and Federal Research was not filed with BLM until April 1, 1981. In addition, it was not personally signed by appellant. <sup>5/</sup> Clearly, appellant did not comply with 43 CFR 3102.2-6(a).

43 CFR 3102.2-6(b) provides an alternative to compliance with 43 CFR 3102.2-6(a). The former section provides:

(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers or applications if leasing is in accordance with subpart 3112 of this title. [Emphasis added.]

Accordingly, in Alvyn G. Novotny, 55 IBLA 196, 198 (1981), we held that "compliance with subpart 'b' obviates the need to comply with subpart 'a.'" Thus, in that case we reversed a BLM decision which had rejected an application where the applicant's agent had otherwise complied with 43 CFR 3102.2-6(b) by submitting a copy of its general agreement and a

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<sup>5/</sup> In his statement of reasons for appeal, appellant argues that the power of attorney between appellant and Federal Resources, on file at the time appellant submitted his application, should be held to be applicable because it authorized the person who later signed his application (N. Ciampa) to act on his behalf, in accordance with 43 CFR 3112.2-1(b). The record indicates that N. Ciampa was, indeed, authorized to act on behalf of Federal Resources, as well as Federal Research. There is a difference, however, between being authorized to sign an application and disclosure of any agreement between the applicant and his agent. In his statement of reasons for appeal, appellant states that the agency was "personal to the agent as opposed to the filing company." However, while N. Ciampi was authorized to act for both Federal Research and Federal Resources, appellant had only authorized Federal Resources to act on his behalf.

list of its clients, but had failed to comply with 43 CFR 3102.2-6(a) by submitting a power of attorney authorizing it to sign on the applicant's behalf.

Pursuant to 43 CFR 3102.2-6(b), a copy of the uniform agreement must be submitted with the lease application; also a list of names and addresses of each applicant participating under the agreement must be submitted within 15 days of the filing of the application. In the present case, a uniform agreement was not submitted with appellant's lease application. Therefore, appellant did not comply with 43 CFR 3102.2-6(b).

[1] There is one final alternative that we must consider. As we stated in Alvyn G. Novotny, *supra* at 198: "[F]iling under 43 CFR 3102.2-1(c) and insertion of the assigned serial number on the drawing entry card constitutes another independent method of complying with the disclosure requirement." See Robert R. Amdahl, 62 IBLA 246, 248 (1982). 43 CFR 3102.2-1(c) permits an applicant otherwise to comply with 43 CFR 3102.2-6 by placing evidence of agency qualifications on file and making reference in future filings, by the assigned serial number, to such evidence, rather than submitting such evidence with each filing. <sup>6/</sup> See R. Hugo Cotter, 58 IBLA 145, 88 I.D. 870 (1981).

With his statement of reasons for appeal, appellant has submitted a copy of a letter addressed to both Federal Research Corporation, Ft. Lauderdale, Florida, and Federal Resources Corporation, Boston, Massachusetts, from Robert D. Dinsmore, Chief, Branch of Adjudication, Colorado State Office, BLM, dated October 6, 1980, that clarifies the nature of qualifications file C-30719, at the time of the filing of appellant's application.

The letter states at page 1:

This acknowledges the receipt of certain material from your respective companies.

<sup>6/</sup> 43 CFR 3102.2-1(c) provides, in relevant part:

"A statement of the qualifications of a[n] \* \* \* agent, if the duration of the authority to act is less than 2 years and is specifically set out (§ 3102.2-6) \* \* \* may be placed on file with a Bureau of Land Management office described in § 1821.2-1 of this title. The office receiving the statement shall indicate its acceptance of the qualifications by assigning a serial number to the statement. Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement."

On August 5, 1980, we received a request, without a letterhead, asking for a serial number for both your corporations. Accompanying that was a letter from Federal Resources Corporation, (hereafter Resources) several powers of attorney (to both your corporations), a letter indicating who could sign for Resources, a blank contract for Resources, a four-page document, titled Client List, a letter from Federal Research Corporation (hereafter Research), a blank contract, and a letter indicating who could sign for Research. \* \* \*

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After receipt of an additional letter from Resources, containing a copy of the new contract used by Research, this office determined that the material qualifies, pursuant to 43 CFR 3102.2-6(a) and 3102.2-1(c) for filing for reference purposes. All the material has been placed in File C-30719.

Pursuant to a request by the Board, BLM submitted copies of the material filed by Federal Resources and Federal Research. While the material referred to in the October 1980 BLM letter qualified for filing under 43 CFR 3102.2-1(c), it does not support appellant's claim that his application in this case was filed properly pursuant to the regulations. At the time appellant's application was filed, the name "Kuether, A" appeared on the client list submitted by Federal Resources and Federal Research. Although it does not appear that any attempt was made by the corporations to distinguish on the list which individuals were clients of which corporation, the corporations did submit with the client list various powers of attorney executed by their clients. The power of attorney on file for Arthur Kuether at the time the application was filed authorized Federal Resources to act as his agent. There was no authorization in the qualifications file for Federal Research to act as Arthur Kuether's agent. Had Federal Resources filed the application in question it could be concluded from the information in the qualifications file that appellant's application was in compliance with the regulations. Appellant's application was filed by Federal Research, however. On April 1, 1981, a document was filed with the Colorado State Office purporting to be a power of attorney from appellant to Federal Research. See n.3, supra. This document was not signed by appellant. Nothing in the qualifications file contained appellant's signature, except the power of attorney to Federal Resources. Therefore, there was no instrument personally signed by appellant linking him to Federal Research. The regulations in effect at the time appellant's application was filed clearly contemplated personal handwritten signatures. See 43 CFR 3102.2-1(a). The Department stated in the preamble to the final rulemaking requiring personal handwritten signatures, as follows (45 FR 35156, 35157 (May 23, 1980)):

Statements of Qualifications -- General Requirements --

Some comments suggested that the requirement in the proposed rulemaking that qualification statements, applications and offers be "manually signed" did not exclude the use of rubber stamped signatures. In order to make it clear that only personal, handwritten signatures will be permissible, language has been added to the final rulemaking requiring "holographically (manually) signed" statements, applications and offers.

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Personal signatures help to eliminate fraud against the United States and those who participate in the leasing system through agents. In many cases, those who participate through agents have limited exposure to materials issued by the Department of the Interior concerning the leasing program. In view of these factors, and in order to impress on the applicant the seriousness of the leasing procedures and the statements the applicant is required to certify, it is appropriate to require a holographic signature.

Thus, the preamble sets forth the rationale for requiring a personal handwritten signature. In this case pursuant to such a signature, appellant had authorized Federal Resources to act as his agent. No such authorization existed for Federal Research to so act. Since Federal Research filed the application in this case, as agent for appellant, there was a failure to comply with the agent qualification regulations (43 CFR 3102.2-6). <sup>7/</sup> BLM properly rejected appellant's application.

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<sup>7/</sup> There was no compliance with 43 CFR 3102.2-6(b) by reference to the qualifications file number. Although there was a uniform agreement on file and a list of clients, no list of client names and addresses for Federal Research was ever filed by appellant or Federal Research. In Robert R. Amdahl, supra at 248, we indicated that there was compliance with the regulations where

"the agreement between appellant and CRI was on file with BLM well before the end of the filing period and because a statement of appellant's name and address and the fact that he was participating under the CRI service agreement was filed with BLM within the 15-day period provided by 43 CFR 3102.2-6(b)."

In this case, however, the "power of attorney" filed on Apr. 1, 1981, could not be considered as supplying the necessary information for compliance with 43 CFR 3102.2-6(b). The reason is that 43 CFR 3102.2-6(b) is an alternative to 43 CFR 3102.2-6(a). Rather than require the information set forth in (a), the Department provided the

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 as modified.

Bruce R. Harris  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

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fn. 7 (Continued)

alternative of allowing the filing of a uniform agreement and a list of client names and addresses. Although no personally signed authorization is specifically required by (b), the assumption is that such an authorization is available. In this case the "power of attorney" established that there was no valid authorization for Federal Research to act as appellant's agent; therefore, there could be no compliance with (b).

