

DENNIS M. JOY

IBLA 82-510

Decided August 17, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application M 48677 (SD).

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

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, are left unanswered.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Administrative Authority: Laches--Estoppel--Oil and Gas Leases: Applications: Filing

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

4. Oil and Gas Leases: Applications: Drawings

Pursuant to 43 CFR 3112.2-1(b), an application not signed by the applicant must bear the holographic signature of the agent. In the case of a corporate agent, this requires the signature of the person signing on behalf of the corporation.

APPEARANCES: William D. Burdett, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Dennis M. Joy appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated December 4, 1981, rejecting his simultaneous oil and gas lease application filed in the July 1980 drawing. His application was drawn with first priority for parcel MT 87. BLM rejected his application because questions (d), (e), and (f) on the application (Form 3112-1 (June 1980)) had not been answered, and therefore, it had not been fully completed as required by 43 CFR 3112.2-1.

Appellant's application was filed by Federal Energy Corporation (FEC), a lease filing service. It appears from the record and the brief on appeal that an attachment submitted with the application contained a blank, unexecuted copy of applicant's service agreement with FEC complete with addendum which contained, among other things, questions similar to those appearing on Form 3112-1. FEC apparently kept an executed copy of this agreement, including answers to the questions, with its business records.

On appeal, appellant asserts that BLM's decision should be reversed for the following reasons:

A. The Montana BLM abused its discretion when it interpreted "completed" as used in 43 CFR § 3112.2-1(a) as requiring that the three questions concerning other interests be answered on the application form itself.

B. It was an abuse of discretion for the Montana BLM to require that the three questions be answered on the form itself, because participants in the program had no notice of this requirement, and because the form itself provides for the attachment of certain information.

C. The BLM's application of the rule requiring that questions concerning other interests be answered on the application form itself has been applied inconsistently, and such inconsistent application is an abuse of discretion.

D. The BLM is estopped from rejecting the application because of the representations of BLM officials that the application was correctly submitted, and the reliance by Mr. Joy and his agent on these representations and on issuance of the lease.

[1] We find that the applicable regulations do require the applicant to check the boxes labeled (d), (e), and (f).

43 CFR 3112.2, .2-1, state in part:

§ 3112.2 How to file an application.

§ 3112.2-1 Simultaneous oil and gas lease applications.

(a) 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.]

The application form clearly contemplated that items (d) through (f) would be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)."  
(Italics in original.) Small boxes appear following each item to be checked in response.

Questions (d) through (f) are included in a list of affirmative statements (to which applicant must certify) and questions on the application dealing with the applicant's qualifications to hold a lease. The answers to the questions relate directly to the qualifications of the applicant to receive a lease. The failure to disclose a party in interest to the lease offer (question (d)) is a violation of the regulation at 43 CFR 3102.2-7 (1981); the assignment of an interest in the lease offer (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3; and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c). Although the Secretary of the Interior has discretion whether to issue an oil and gas lease for lands not within a known geological structure of a producing oil or gas field, he is required by statute, 30 U.S.C. § 226(c) (1976), to issue a lease for such lands to the first qualified applicant therefor. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the application form serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification required by the application. Charles Y. Neff, 64 IBLA 234 (1982); Bonita L. Ferguson, 61 IBLA 178 (1982).

Appellant asserts that the regulations imply that a form can be completed by attaching to it information answering questions (d) through (f) which appear on the oil and gas lease application form. The appellant points out that "[t]he form itself states that the identity of other parties may be shown on the form or 'on a separate attached statement.'" We do not agree with appellant's interpretation of the regulations, as they apply to simultaneous lease application cards. Contrary to appellant's contentions, the applicable regulations clearly require rejection of this application. One regulation, 43 CFR 3112.2-1(a), requires that an application be "completed, signed and filed pursuant to the regulations in this subpart." (Emphasis added.) Another regulation, 43 CFR 3112.6-1(a), provides that any application not filed in accordance with section 3112.2 shall be rejected.

An oil and gas lease application is not completed in accordance with 43 CFR 3112.2-1 or the explicit instructions on the application itself where questions (d) through (f) are left unanswered. Charles Y. Neff, supra; William H. Burruss, 62 IBLA 40 (1982); Terry K. Weed, 61 IBLA 213 (1982); Clyde K. Kobbeman, 58 IBLA 268, 88 I.D. 915 (1981).

Further, this Board has consistently held that an attachment purporting to answer questions (d) through (f) filed with the application does not establish compliance with the regulations. Ottlin D. Hass, 61 IBLA 338 (1982); Robert D. Alexander, 59 IBLA 118 (1981); Clyde K. Kobbeman, supra. The Board stated in Robert D. Alexander, supra at 121:

The information required under items (d), (e), and (f) is part of the certification of qualifications required of all applicants for oil and gas leases. The certification of qualifications is applicable only to the application for which it is made. The certification must be made on all applications for lease and can neither be provided by attachment nor incorporated by reference. See Clyde K. Kobbeman, supra.

As noted in Alexander, supra, the rationale for requiring that the questions be answered on the application itself is clear when it is recognized that this is a certification of the applicant's qualifications with respect to the particular lease application--that all parties in interest in the application have been disclosed and that the applicant has no interest in any competing application for the parcel which would create an improper multiple filing. The problem with providing this information by attachment is that it is provided without reference to any specific lease application and thus cannot be a certification as to the circumstances of that lease application. As was the case in Alexander, supra at 121, the attachments may not have been executed contemporaneously with the lease application. In the present case, the attachment supplied was unexecuted.

The case cited by counsel for appellant, Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980), does not require a different result. In Brick 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.

This case is distinguishable from Brick, supra. This case involves a question of the completion of an application rather than a question of the precise manner in which an application must be completed. The regulation at 43 CFR 3112.2-1(a) states that an application consists of a "completed" approved application form. This language provides ample notice of this requirement. Failure to complete an application by omitting the answers to questions (d) through (f) is simply not compliance.

[2] Appellant's contentions that the regulations have been inconsistently applied by BLM and that he had no notice that questions (d), (e), and (f) were to be answered on the application form itself, are also without merit. Appellant, as a person dealing with the Government, is presumed to

have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Such regulations have the force and effect of law and are binding on the Department. Dr. Jose Trabal, 60 IBLA 97 (1981). Thus, the clear directives of a regulation cannot be disregarded on the basis of appellant's allegation that such a regulation may have been inconsistently applied by BLM. Dr. Jose Trabal, supra. Appellant was on notice of the requirement that the application be completed and should have been aware of the regulatory requirements published in the Federal Register on May 23, 1980. 45 FR 35156.

Appellant seeks to reverse BLM's decision on the basis of estoppel. Specifically, appellant contends that FEC was advised by telephone by an employee of BLM that the answers to items (d) through (f) need not accompany or appear on the lease application, but instead could be retained by FEC in its files. Relying on this advice, appellant states, FEC did not answer items (d) through (f) on the application.

[3] In Vincent M. D'Amico, 55 IBLA 116 (1981), a case presenting facts similar to this appeal, we considered and dismissed the same argument raised by appellant here that BLM is estopped from rejecting his application because it allegedly misinformed FEC that the applications that it had filed for its client were correctly completed. We expressly adopt the holding dealing with this issue and reject appellant's claim of estoppel here as well.

[4] Appellant's application is also subject to rejection for lack of a signature by the filing service submitting the application as appellant's agent. The regulation at 43 CFR 3112.2-1(b) requires that an application not signed by the applicant bear the holographic signature of the agent. In the case of a corporate agent, this requires the signature of the person signing on behalf of the corporation. Vincent M. D'Amico, supra.

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.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

