

WILCO PROPERTIES, INC.

IBLA 82-183

Decided November 10, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application M 49901.

Affirmed.

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

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3) (1981), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

APPEARANCES: Carolyn Jones, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Wilco Properties, Inc. (Wilco), has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated November 19, 1981, rejecting its noncompetitive oil and gas lease application, M 49901, for failure to file a complete list of corporate officers with its application, pursuant to 43 CFR 3102.2-5(a)(3) (1981). Appellant's application was drawn with first priority for parcel MT 28 in the January 1981 simultaneous oil and gas lease drawing. Its application was signed by W. H. Maloch, Jr., vice president, on January 12, 1981, and referenced its corporate qualifications file under serial number MONTANA 065500.

The case file reflects that appellant's corporate qualifications were accepted by the Montana State Office on July 27, 1967. That filing indicated that the corporate officer authorized to act on Wilco's behalf was William I. Lee, president of appellant corporation. Wilco's updated corporate qualifications list was accepted by BLM on May 9, 1977. That filing indicated that

Wilco's corporate officers were William I. Lee, president; R. B. Liquori, vice president; W. H. Maloch, Jr., vice president; and J. Sanderson, secretary, all of whom were authorized to act on behalf of the corporation.

By notice dated May 5, 1981, BLM informed appellant that its qualifications file was not "current," because it did not contain "a complete list of all corporate officers." (Emphasis in original.) On May 11, 1981, BLM received a letter from appellant, signed by its bookkeeper, which stated in part: "Enclosed please find a copy of Wilco's corporate officers. I have placed a check mark by those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing. If you have any further questions, "please contact me." The list, dated June 21, 1980, indicates the following:

Officers:

- x William I. Lee President and Director
- Jane Durand Lee Vice President and Director
- x R. B. Liquori Vice President, Director,
 Treasurer and Assistant Secretary x W. H. Maloch, Jr. Vice
President and Director
- x J. Sanderson Secretary

On appeal, appellant states that clerical oversight and employee turnover resulted in its failure to amend the statement of qualifications to include Jane Durand Lee's name as a corporate officer prior to the January 1981 drawing.

[1] The applicable regulation, 43 CFR 3102.2-5, ^{1/} published in the Federal Register of May 23, 1980, effective June 16, 1980, provides, in relevant part:

(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/} On Feb. 26, 1982, the Department published interim final regulations revising 43 CFR 3102 and effectively eliminating the requirement to file the statement of qualifications previously required by 43 CFR 3102.2-5. 47 FR 8544 (Feb. 26, 1982). While in certain circumstances the Board may apply revised regulations to a pending matter where it benefits the affected party (see James E. Strong, 45 IBLA 386 (1980)), it is not possible to do so in this case because of the intervening rights of the second and third priority applicants coupled with the obligation to issue a noncompetitive lease only to the first-qualified applicant. 30 U.S.C. § 226(c) (1976); see Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

(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[.]

45 FR 35162 (May 23, 1980). ^{2/}

The applicable regulation, 43 CFR 3102.2-5, in effect at the time of the January 1981 drawing, clearly required that a "complete" list of corporate officers be submitted with a noncompetitive oil and gas lease application. In lieu of submitting such a list with each application, an applicant was entitled to reference by serial number a statement of corporate qualifications, including such a list, on file with a BLM state office. 43 CFR 3102.2-1(c). However, 43 CFR 3102.2-1(c) also provides: "Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current." Thus, appellant was under a clear mandate to keep its qualifications file "current."

In submitting its noncompetitive oil and gas lease application, appellant referenced, by serial number, the records containing its previously filed statements of qualifications. However, the list of corporate officers on file was not complete, in that it did not include the name of Jane Durand Lee. A complete list of corporate officers, bearing the date of June 21, 1980, was not submitted until May 11, 1981, well after the January 1981 drawing.

Under the prior regulation, 43 CFR 3102.4-1 (1979), we consistently held that the requirement of submission of a corporate qualifications statement with an oil and gas lease offer or reference to records where such material had previously been filed was mandatory and that failure to do so would result in rejection of the lease offer. Ari-Mex Oil & Exploration, Inc., 53 IBLA 37 (1981); Cheyenne Resources, Inc., 46 IBLA 277, 87 I.D. 110 (1980). The applicable regulation is similarly couched in mandatory terms, and likewise the Board has held that failure to submit a complete list of corporate officers with the application, or to reference such a list, requires rejection of the application. Adobe Oil & Gas Corp., 63 IBLA 106 (1982); Altex Oil Corp., 61 IBLA 270 (1982); Cimarron Corp., 61 IBLA 90 (1982); see Stephen A. Pitt, 57 IBLA 365 (1981). Moreover, 43 CFR 3112.6-1(b) (1981) provides, in relevant part: "The application of any applicant who * * * has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of this title shall be rejected." (Emphasis added.) Although the apparently inadvertent failure to update the qualifications to comply with the revised regulation might seem insignificant at first glance, especially when the result is rejection of appellant's application, the requirement must be viewed in light of the purpose of the regulatory revision. The purpose of requiring the disclosure of all corporate officers is to permit BLM to identify those

^{2/} The prior regulation, 43 CFR 3102.4-1 (1979), provided, in relevant part: "If the offeror is a corporation, the offer must be accompanied by a statement showing * * * (b) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters."

situations where corporate officers and the corporation may have engaged in a multiple filing, in violation of 43 CFR 3112.6-1. See preamble to proposed revision of 43 CFR Part 3100, 44 FR 56177 (Sept. 28, 1979); Altex Oil Corp., supra at 275 (Burski, A. J., concurring).

Moreover, appellant was not entitled to additional time following the January 1981 drawing to update its corporate qualifications for purposes of this lease application. The regulations clearly require that a complete list of corporate officers be submitted with the lease application or be referenced at the time of submission. Giving an unqualified first-drawn applicant additional time to cure its application by waiving mandatory requirements would illegally infringe on the rights of a second-drawn qualified applicant. Stephen A. Pitt, supra at 368, and cases cited therein.

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:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge