

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application. NM 46038.

Affirmed.

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

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

APPEARANCES: N. June Fajardo, Lowell, Arkansas, pro se.; John H. Harrington, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Mrs. G. C. Fajardo has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated January 14, 1982, rejecting her noncompetitive oil and gas lease application, NM 46038. Appellant's application was drawn with first priority for parcel NM 475 in the simultaneous oil and gas lease drawing held June 22, 1981.

Appellant's application was signed by Valarie Gerhold, Vice President, Petroleum Leasing Services, Inc. (Petroleum), as an agent for appellant. In its January 1982 decision, BLM rejected the application because appellant had failed to comply with the applicable Departmental regulation, 43 CFR 3102.2-6, regarding disclosure of agency qualifications. That regulation requires disclosure of any agreement or understanding with an agent where the applicant

received the assistance of that agent in connection with the simultaneous filing, and the agent is in the business of providing such assistance. ^{1/}

[1] There are three alternative methods of complying with the requirement that an applicant notify BLM of any agreement or understanding with an agent. Arthur H. Kuether, 65 IBLA 184 (1982). Under 43 CFR 3102.2-6(a), an applicant is required to submit with his lease application "a personally signed statement as to any understanding, or a personally signed copy of any written agreement." In the alternative, under 43 CFR 3102.2-6(b), an applicant may submit with his lease application a uniform agreement entered into between several applicants and an agent. In addition, 43 CFR 3102.2-6(b) provides:

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.

Finally, under 43 CFR 3102.2-1(c), an applicant may place evidence of agency qualifications on file and make reference in future simultaneous filings, by assigned serial number, to such evidence.

In rejecting appellant's application, BLM stated that the record indicated that appellant had not complied with either 43 CFR 3102.2-6(a) or 43 CFR 3102.2-1(c). BLM noted that Petroleum had submitted a "blank copy of Agent's Agreement for the filing period of May 1981," but concluded that appellant had not complied with 43 CFR 3102.2-6(b) because a list of clients' names and addresses was not submitted.

In her statement of reasons for appeal, appellant states that she has been assured by Petroleum that all of the required documents were filed. She submits the affidavit of Valarie Gerhold, dated February 18, 1982, in which she states that she "personally prepared * * * customer's lists and personally deposited said customer's lists in the receptacles for mailing service of the United States Postal Service" prior to or on or before May 30, 1981, in addition to filing with the lease applications "a statement of authorization and an agency agreement." In addition, appellant submits the affidavit of Gypsy Kemp, President, Petroleum, dated February 18, 1981, in which she states that Valarie Gerhold did mail the "customer's lists" to BLM "on or about May 30, 1981."

^{1/} 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 the 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.

On March 26, 1982, the Office of the Field Solicitor, on behalf of BLM, filed a response to appellant's statement of reasons which states that despite the fact that BLM's "files and records have been diligently searched," no evidence of submission of the required documents has been uncovered.

Appellant maintains that the required documents, either a "statement of authorization," presumably in compliance with 43 CFR 3102.2-6(a), or a uniform agreement and a list of clients' names and addresses, in compliance with 43 CFR 3102.2-6(b), were submitted to BLM in a timely fashion. This raises the inference that the documents were either lost or misplaced by BLM. However, there is a legal presumption of regularity, albeit rebuttable, which supports the official acts of public officers in the proper discharge of their official duties. United States v. Chemical Foundation, 272 U.S. 1 (1926); Legille v. Dan, 544 F.2d 1 (D.C. Cir. 1976); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). Accordingly, we have long held that in the absence of substantial corroborating evidence to the contrary, it will be presumed that the absence of a document from the case file establishes that the document was never filed rather than that it was lost or misplaced by BLM. Elizabeth D. Anne, 66 IBLA 126 (1982); H. S. Rademacher, supra, and cases cited therein. This is the situation herein. Appellant's uncorroborated statements to the effect that the required documents were submitted timely are not sufficient to overcome the inference of nonfiling. Id.

In the absence of evidence of compliance with 43 CFR 3102.2-6, we conclude that BLM properly rejected appellant's application. Arthur H. Kuether, 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.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge