

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application M 48695 Acq.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- 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: Linda Osminer, Landman, for Oxy Petroleum, Inc.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Oxy Petroleum, Inc., has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated December 4, 1981, rejecting oil and gas lease application, M 48695 Acq., because the corporation's qualifications file, referenced on the application by number M 065500, had not been updated in accordance with the regulation at 43 CFR 3102.2-5(a)(3) prior to the close of the filing period for the July 1980 list of parcels available for simultaneous filing. The record discloses that appellant's initial application filed for parcel MT 105 was rejected by BLM for failure to submit a proper form of a remittance for the filing fee.^{1/} This rejection was appealed to the Board of Land Appeals which reversed the decision of BLM and remanded the case to BLM for a redrawing pursuant to 43 CFR 3112.3-2 including appellant's application. Oxy Petroleum, Inc., 52 IBLA 239 (1981).

^{1/} Since this was deemed to be an unacceptable filing, it was returned to appellant without inclusion in the initial drawing for parcel MT 105. 43 CFR 3112.5.

Since an application is returned to the applicant when it is rejected prior to the drawing as was appellant's first application, that application is no longer available in the record. Thus, appellant filed the substitute application dated August 3, 1981, which was drawn with first priority in the redrawing on August 27, 1981.

Review of the case file discloses that evidence of appellant's corporate qualifications was filed in May of 1976 under reference file number M 065500. While this information listed those officers authorized to act on behalf of the corporation in oil and gas leasing matters, it did not disclose the names of all corporate officers as required by the subsequently amended regulation at 43 CFR 3102.2-5(a)(3). 45 FR 35162 (May 23, 1980) (effective June 16, 1980). ^{2/} This reference file was updated with corporate qualifications including the names of all corporate officers on August 7, 1980, prior to the redrawing of August 27, 1981, but subsequent to the July 1980 simultaneous filing period for parcel MT 105. Appellant explains in the statement of reasons for appeal that the required updated qualifications information was filed with the California State Office, BLM, prior to the deadline for the July 1980 filing.

In light of the absence from the record of the original application filed by appellant for parcel MT 105, this Board by order of November 5, 1982, requested appellant to identify the corporate qualifications file referenced on the original application. Appellant responded by letter of November 22, 1982, disclosing that the reference on the original application was to M 065500.

[1] The regulations in effect at the time of the July 1980 simultaneous drawing clearly required that a "complete" list of corporate officers be submitted with a noncompetitive oil and gas lease application, 43 CFR 3102.2-5, or, in lieu thereof, that the application contain a reference by serial number to a BLM file containing evidence of corporate qualifications, including a list of officers. 43 CFR 3102.2-1(c). This latter regulation further provides that: "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." 43 CFR 3102.2-1(c). The Board has held that the failure to submit evidence of qualifications including a complete list of

^{2/} 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).

corporate officers with the application, or to reference such a list, requires rejection of the application. Wilco Properties, Inc., 68 IBLA 215 (1982); Adobe Oil & Gas Corp., 63 IBLA 106 (1982). Even though the qualifications may have been updated timely in the California State Office, appellant's reference was to a reference file which did not contain the necessary information.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge