

Editor's note: overruled to the extent inconsistent -- See 95 IBLA 304 (Jan. 30, 1987)

ENSERCH EXPLORATION, INC.

IBLA 83-59

Decided January 6, 1983

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer, M-54834.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents
In a simultaneous filing situation, the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.4-1 necessitates rejection of the offer. Where the offer form has been signed by one who is designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or a reference to a qualifications file where such authorization has previously been filed, it must be rejected.
2. Regulations: Generally -- Regulations: Validity

The Board has no authority to treat as insignificant or to declare invalid a duly promulgated regulation of this Department.
3. Notice: Generally

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

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Enserch Exploration, Inc. (Enserch), appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated September 5, 1982, rejecting oil and gas lease offer, M-54834, because neither a power of

attorney nor reference to a serial number for a file containing such authorization was provided as required under 43 CFR 3112.4-1(b).

Appellant Enserch filed for parcel MT-11 in the March 1982 drawing for simultaneous filings and was subsequently awarded first priority. Appellant's successful application was signed by G. R. Bryan, identified as attorney-in-fact for appellant, and reference was made on the application to NM-0558400, allegedly appellant's qualifications file. BLM informed appellant of its first-qualified applicant status and provided instructions for completion of the lease offer in a notice of additional requirements dated August 18, 1982. Appellant's rentals and signed lease form offer were received by BLM on September 10, 1982. The offer was signed in the same manner as the application: "(stamped) ENSERCH EXPLORATION INC. (signed) GR Bryan (stamped) G. R. BRYAN, ATTORNEY IN FACT." However, no reference was made thereon to a qualifications file. BLM rejected appellant's offer because it did not comply with 43 CFR 3112.4-1(b) which requires in simultaneous filing situations where the offer is signed by an attorney-in-fact that it be accompanied by a power of attorney or reference to a serial number under which authorization for the attorney-in-fact was previously filed.

Appellant claims that BLM's August 18, 1982, notice was misleading and did not advise appellant of 43 CFR 3112.4 and the procedures thereunder. It argues that section 3112.4 is ambiguous as a guideline and was not intended to be applied to attorneys-in-fact acting on behalf of corporations.

Appellant also states that G. R. Bryan is authorized as a corporate officer of Enserch (Vice President, Land and Marketing) to act on its behalf and that his qualifications as an attorney-in-fact for Enserch were on file under Montana-065500.

[1] 43 CFR 3102.4, 47 FR 8544 (Feb. 26, 1982), reads in part: "Documents signed by anyone other than the potential lessee shall be rendered in a manner to reveal the name of the potential lessee, the name of the signatory and their relationship." G. R. Bryan, signatory on behalf of appellant, supposedly could have appeared as a corporate officer authorized to represent Enserch in Federal oil and gas lease offers, but on both the application and the offer form, that corporate position was not identified. Bryan was identified on the lease application as an attorney-in-fact and reference was made to the corporation's qualification file, NM-0558400. Apparently that file contains his power of attorney, or the application would have been rejected. See 43 CFR 3112.6-1(a), (b). Bryan's relationship to Enserch was identified on the offer form as attorney-in-fact, and there is no indication there or elsewhere that Bryan meant to appear as a corporate officer. Appellant states that M-065500 documents Bryan's authority as a corporate officer. However, that file was never referred to in this offer. Where the signatory's relationship to the offeror under the simultaneous filing procedures is designated as attorney-in-fact, 43 CFR 3112.4-1(b) is invoked.

43 CFR Subpart 3112 concerns the simultaneous filings of oil and gas lease applications. Section 3112.4, Lease issuance occurs after the drawing has been held and the first-qualified applicant is given the opportunity to

submit an offer to lease. Section 3112.4-1(a) states that "[t]imely receipt of the properly signed lease and rental constitutes the applicant's offer to lease" under the Departmental procedures for simultaneous filings, and mandates that "[o]nly the personal handwritten signature of the prospective lessee, or his/her attorney-in-fact as described in paragraph (b) of this section, in ink shall be accepted." The Departmental regulation at issue, section 3112.4-1(b), reads in part:

Any attorney-in-fact signing a lease offer or paying the first year's rental on behalf of the prospective lessee shall file, together with the offer and/or rental, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed over the personal handwritten signature of the prospective lessee in ink.

Without providing for limited or deficient compliance, the regulation clearly states the duties of an attorney-in-fact who completes the lease offer under Subpart 3112. Failure to file an offer in accordance with section 3112.4-1 necessitates rejection of the first-qualified applicant's application. 43 CFR 3112.6-1(d).

[2] Appellant argues that section 3112.4-1 is not applicable to attorneys-in-fact representing corporations because of previous changes in 43 CFR Subpart 3102, Qualifications of Lessees. See 45 FR 35156 (May 23, 1980). Despite elimination of certain attorney-in-fact provisions from Subpart 3102, the specific requirement in section 3112.4-1(b) that all attorneys-in-fact signing an offer form under Subpart 3112 must submit a power of attorney or reference to a serial number was not removed or revised. There is no reason to suppose that any portion of 43 CFR 3112.4-1 has been rendered useless or void.

A regulation, however, must be so clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with it. Maria C. Cawley, 61 IBLA 205 (1982). 43 CFR 3112.4-1 is very clearly stated and comprehensible, and it expresses a distinct rule. Where the rule at issue exists as a Departmental regulation, we cannot depart from its clearly expressed meaning, and we must apply it to appellant's situation. This Board has no authority to treat as insignificant, or to declare invalid, a duly promulgated regulation of this Department. Altex Oil Corp., 61 IBLA 240 (1982).

[3] Appellant's argument that there was no notice given by BLM that failure to comply with section 3112.4-1(b) would result in the rejection of its offer is without merit. Appellant, in 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); 44 U.S.C. §§ 1507, 1510 (1976). Such regulations have the force and effect of law and are binding on the Department. Walter Adomkus, 67 IBLA 177 (1982); Bernard P. Gencorelli, 43 IBLA 7 (1979). Thus, the express directives of a regulation cannot be disregarded on the basis of allegations that such regulation may have been inconsistently applied by BLM or that notice of applicable, mandatory requirements may not have been given to appellant. 43 CFR

3112.6-1(d) is clear notice to first-qualified applicants of the necessary compliance with section 3112.4-1.

We recognize that changes in the regulations no longer require prior submission of the materials retained in a qualifications file. See 47 FR 8544 (Feb. 26, 1982). Contrary to appellant's assertion, an ambiguity has not been created. A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. 30 U.S.C. § 226(c) (1976). An oil and gas lease cannot be issued where the offer does not comply with the regulations and is therefore defective. In a simultaneous filing situation under Subpart 3112 where an oil and gas lease offer is defective, the defect is not curable, because the rights of a third party have intervened. Accordingly, the priority of the second drawee is advanced and the lease must then be offered to the first-qualified applicant who has complied with the Department's regulations which were operative and controlling at the time. See Altex Oil Corp., supra; Robert E. Bergman, 53 IBLA 122 (1981). To award appellant this lease despite its defective offer would be unfair to the second- and third-qualified applicants, and contrary to the regulations. Appellant has failed to establish any reason for a departure from the express and mandatory requirements of the regulations.

Accordingly, 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.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

