

WYOMING OIL & MINERALS, INC.  
(ON RECONSIDERATION)

IBLA 82-110

Decided February 10, 1983

Petition for reconsideration of order dismissing appeal for failure to timely file statement of reasons for appeal. W 76748, W 76749, and W 76752.

Order of dismissal vacated; State Office decision set aside and remanded.

1. Rules of Practice: Appeals: Reconsideration -- Rules of Practice:  
Appeals: Statement of Reasons

Where an appeal is dismissed for failure to timely file a statement of reasons in support thereof, and a petition for reconsideration is filed which essentially argues that the failure to timely file the statement of reasons with the Board was due to ignorance, such a petition for reconsideration has not shown extraordinary circumstances as required by 43 CFR 4.21(e) and is properly denied.

2. Rules of Practice: Appeals: Reconsideration -- Rules of Practice:  
Appeals: Statement of Reasons

Where, during to the adjudication of a petition for reconsideration of a dismissal of an appeal for failure to timely file a statement of reasons, a review of the case file discloses the existence of a document, filed after issuance of the adverse decision from which an appeal was taken, which delineates the points in controversy, such a document may be deemed a statement of reasons and the decision dismissing the appeal will be vacated.

3. Oil and Gas Leases: Applications: Reinstatement -- Rules of Practice: Generally

Where, on appeal, an oil and gas lease offeror alleges facts which, if shown, would entitle him to maintain his priority, a decision rejecting the offers will be set aside and remanded to the state office to afford the offeror an opportunity to show that the facts are as he has alleged.

APPEARANCES: E. James Burke, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

By order of January 28, 1982, this Board dismissed the instant appeal for failure to timely file a statement of reasons for appeal as required by 43 CFR 4.412. On March 1, 1982, appellant filed a petition to reconsider this order.

In its petition, appellant explains that the statement of reasons was served on with the Regional Solicitor, Rocky Mountain Region, Denver, Colorado, on November 4, 1981, in accordance with the October 14, 1981, letter from the Wyoming State Office, Bureau of Land Management (BLM). Appellant contends that the original BLM letter did not include the enclosures detailing legal requirements concerning where to file the statement of reasons and, therefore, appellant did not receive notice that the statement of reasons had to be filed with this Board.

[1] We would point out that the applicable regulation, 43 CFR 4.412, states that "[i]f the appeal, did not include a statement of reasons with the appeal, such a statement must be filed with the Board \* \* \* within 30 days after the notice of appeal was filed." Since appellant had filed its notice of appeal on November 13, 1981, the statement of reasons was due on December 14, 1981, since December 13, 1981, was a Sunday.

We note that the BLM decision of October 14, 1981, included an appropriate appeals paragraph which referenced 43 CFR Part 4, Subpart E, and emphasized that "[t]o avoid summary dismissal of the appeal, there must be strict compliance with the regulations." The record shows that appellant was represented by counsel both in the filing of its notice of appeal and statement of reasons and was given adequate notice of the governing appeal regulations and of the consequence of noncompliance.

Assuming that appellant was not supplied with a copy of the relevant regulations as an enclosure to the State Office decision, appellant's counsel could either have inquired further of the State Office or perused the identified regulations. Counsel did neither, relying instead on assumption and surmise. The resultant failure to comply with the procedural requirements is a product of appellant's own volition and scarcely constitutes the extraordinary circumstances required to sustain a petition for reconsideration. See 43 CFR 4.21(c).

[2] Nevertheless, a review of the case file discloses that on October 27, 1981, a representative of Wyoming Oil & Minerals, Inc., submitted a letter to the Wyoming State Office, objecting to the decision on the ground that only a name change was involved, and pointing out that while the name change was approved by the stockholders on August 10, 1981, it was not approved by the Wyoming Secretary of State until August 18, 1981, 4 days after the instant offers had been filed with BLM.

We note that the letter concluded by stating that "Bea Jones [the named offeror] is sending up the letter you sent here. As soon as we receive it we will file the formal approval." In light of this sentence, BLM did not treat this as a notice of appeal. Because of the unusual circumstances of this case, however, we will treat this document as a statement of reasons, and, as such, it was clearly timely. Accordingly, we will vacate our earlier order and consider this appeal on the merits.

The lease offers 1/ involved in this appeal were filed during a simultaneous filing period for acquired military lands. These offers were signed by one Beatrice A. Jones as offeror. Jones indicated, however, that she was not the sole party in interest. Rather, she indicated that Wyoming Coal Corporation held the entire 100 percent interest in her offer. She referenced qualifications file W 24730. The offers were dated on August 28, 1981.

On September 4, 1981, and September 11, 1981, appellant filed documents, pursuant to 43 CFR 3102.2-7(b), indicating the existence of an agreement between Jones and appellant, whereby Jones agreed to assign 100 percent interest in the offer to "Wyoming Oil & Mineral Inc., formerly Wyoming Coal Corp. Qual #56800."

By decision of October 14, 1981, the State Office rejected the lease offers, noting that while appellant had referred to corporate qualifications file W 56800 this file was incomplete as it contained no documentation of a name change. Therefore, BLM held that Wyoming Oil & Minerals, Inc., had not tendered evidence of its qualifications to hold interest in Federal oil and gas leases and therefore rejected its offers.

[3] Appellant argued in its letter of October 26, 1981, that the filings took place on August 14, 1981. The lease offers are stamped as received on August 28, 1981. This, however, is the result of the Federal Register notice which lifted the moratorium on leasing (see note 1) and which provided that all offers be in sealed envelopes which would not be opened "until the

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1/ There could be some questions whether lease offers or applications to lease were filed in this case. Under present regulations, filings in the simultaneous system technically constitute "applications to lease" and are differentiated from "offers to lease" in that the successful applicant merely obtains the right to make an offer. We note that the Federal Register notice which had lifted the moratorium on the issuance of leases for Federal land acquired for military or naval purpose, established a simultaneous filing period for the submission of oil and gas lease "applications." See 46 FR 37250 (July 20, 1981). In actual fact, however, the documents to be submitted were oil and gas lease offers. Accordingly, we shall treat the documents filed as offers throughout this decision.

close of the filing period on August 28, 1981." 46 FR 37250 (July 20, 1981). While we note that the offers are dated August 28, 1981, we do not think that this necessarily establishes that they were submitted on that date, since it had been a common practice in such simultaneous filings to date the offer as of the last day of the filing period. 2/

We note that the offer, and documents timely filed in support thereof, clearly identified both Wyoming Coal Corporation and Wyoming Oil & Minerals, Inc. Given the unusual fact situation of this appeal, where it is possible that the name was changed during the pendency of the offers, we believe it was error for BLM to reject the offers without affording appellant an opportunity to show that the offers were filed before the name change was approved by the Secretary of State for the State of Wyoming.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, the decision of the State Office is set aside and the case files are remanded to the State Office with instructions to permit the applicant a period of time in which to show that the offers were filed with the State Office on or before August 18, 1981.

James L. Burski  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

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2/ A word of caution is in order here. As we noted above, these simultaneous filings were actually offers to lease. Where an "application" is filed under the simultaneous procedures of Subpart 3112, however, the regulations specifically require that "the application shall be dated at the time of signing." 43 CFR 3112.2-1(c). Thus, were this an application, the dating of an application on a date other than that on which it was signed would necessitate its rejection.

