

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. W-78166.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period.

APPEARANCES: John B. Lowy, Esq., and Martin H. Kaplan, Esq., New York, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

George W. Lewis, Jr., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 2, 1982, rejecting his simultaneous oil and gas lease application, W-78166.

Appellant's application was drawn with first priority for parcel WY-3903 in the November 1981 simultaneous oil and gas lease drawing. In its March 1982 decision, BLM rejected appellant's application because the application had not been dated within the filing period, *i.e.*, between November 2 and November 24, 1981. Appellant's application was dated November 1, 1981, a Sunday.

In his statement of reasons for appeal, appellant contends that his application should be deemed to have been dated on "the next business day," *i.e.*, November 2, in accordance with a well established legal principle. In the alternative, appellant argues that the Board has not "strictly enforced" the requirement that an application be dated within the filing period, citing

Kathryn J. Eckles, 28 IBLA 390 (1977), and that to do so now would be arbitrary and capricious, citing Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980). Appellant also argues that the Board should apply a 10-day grace period with respect to the date appearing on a simultaneous oil and gas lease application, under a rule enunciated in Kathryn J. Eckles, *supra*, and that, as such, his application came within that grace period. Finally, appellant contends that his application cannot be rejected because the Department did not properly notify applicants that failure to date their applications within the filing period would result in rejection. Appellant states that 43 CFR 3112.6-1 notified applicants only that applications "not filed in accordance with § 3112.2 of this title" would be rejected. Appellant concludes that this provision "which provides for the rejection of improperly filed applications cannot be applied to reject an improperly dated application." (Emphasis in original.)

[1] The applicable regulation, 43 CFR 3112.2-1(c), provides, with respect to a simultaneous oil and gas lease application, that: "The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period." (Emphasis added.) We have required strict compliance with the requirement of 43 CFR 3112.2-1(c), holding that an application which bears a date prior to the filing period violates that requirement and is properly rejected. Raymond N. Joeckel, 68 IBLA 195 (1982); 1/ Leonard Thompson, 62 IBLA 236 (1982). None of appellant's contentions persuade us to depart from that holding. Herbert W. Winston, 61 IBLA 199 (1982). Strict compliance with the regulations governing simultaneous oil and gas lease drawings, 43 CFR Subpart 3112, is enforced to protect the rights of the second and third drawn qualified offerors. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), *aff'd*, 544 F.2d 1067 (10th Cir. 1976).

Appellant's first argument is that his application should be deemed to have been dated on Monday, November 2. That date would come within the November 1981 filing period. Appellant states that the Board should apply the rule that where the last day of a filing period is a Saturday, a Sunday, or a legal holiday the period runs until the next business day. Appellant cites the cases of Jones and Laughlin Steel Corp. v. Gridiron Steel Co., 382 U.S. 32 (1965), and Kirby v. United States, 479 F. Supp. 863 (D. S.C. 1979), both of which applied Federal Rule of Civil Procedure 6(a).

The rule cited by appellant has particular applicability to the length of statutory filing periods. By extending the filing period to the next business day, the rule recognizes that no member of the public expects the Government to work on Saturday, Sunday, or a legal holiday and, thus, would be guided by this in submitting documents for filing. See Kirby v. United States, *supra* at 865-66.

The rule, however, has no hearing in the present situation. This case involves the date appearing on a document. We know of no rule of law which permits this Department to alter that date. Moreover, as this Board stated

1/ Appeal pending, Joeckel v. Watt, Civ. No. 83-171 (D. Colo., filed Feb. 2, 1983).

in Walter Adomkus, 67 IBLA 177, 178 (1982): 2/ "[A]ppellant has failed to make any showing that his execution and dating of the application form on a Sunday prior to the filing period is distinguishable in legal effect from an execution and dating of that form on a regular week-day prior to the filing period." Appellant does not dispute the fact that he knew the dates of the filing period for the November 1981 simultaneous oil and gas lease drawing. Notice of the lands available for oil and gas leasing, including the dates of the filing period, were posted in the Wyoming State Office, BLM, on November 2, 1981, in accordance with 43 CFR 3112.1-2. Moreover, he is deemed to have knowledge of duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Accordingly, appellant knew or should have known that the date on his application must "reflect that the application was signed within the filing period," as required by 43 CFR 3112.2-1(c).

Appellant's second argument is that the Board has not strictly enforced the requirement that an application be dated within the filing period. We recognize that the failure to consistently apply a strict construction of the Departmental regulations with respect to simultaneous oil and gas lease filings is arbitrary and capricious. Brick v. Andrus, *supra* at 216-17. However, we can discern no inconsistency in the present case.

The case cited by appellant, Kathryn J. Eckles, *supra*, involved the rejection of a first-drawn drawing entry card (now a simultaneous oil and gas lease application) because the card was dated 7 days prior to the September 1976 filing period. In its decision, BLM concluded that this fact voided the applicant's sole party in interest statement on the card because it was not made contemporaneously with the filing. The Board held that there was no requirement that a drawing entry card be dated as of the day it was filed. However, recognizing that a sole party in interest statement must be reasonably near the filing, the Board adopted the rule applicable to entry applications that such applications must be executed 10 days prior to filing. See 43 CFR 1821.2-2(a). Accordingly, the Board concluded that "a statement made on an oil and gas offer, if made within 10 days of filing, is to be deemed acceptable." Kathryn J. Eckles, *supra* at 393.

The case of Kathryn J. Eckles, *supra*, has no bearing on the present case. It was decided prior to the adoption of 43 CFR 3112.2-1(c), which specifically requires an application to be dated within the filing period. 3/ That regulation was promulgated as part of a general change in the regulations applicable to simultaneous filings, effective June 16, 1980. See 45 FR 35163 (May 23, 1980). Therefore, this Board does not view Eckles as a departure from a strict construction of Departmental regulations or well established precedent. Moreover, in view of the clear language of 43 CFR 3112.2-1(c),

2/ Appeal pending, Adomkus v. Watt, Civ. No. 82-260 BLG (D. Mont., filed Dec. 14, 1982). That case involved identical circumstances, issues, and arguments.

3/ Appellant also cites the case of H. L. McCarroll, 55 IBLA 215 (1981), which similarly involved a drawing entry card dated prior to the filing period. In that case, we applied the rule enunciated in Eckles. However, it is important to note that the case involved the February 1980 simultaneous oil and gas lease drawing. We, therefore, applied the rule then in effect.

and in the absence of any other regulatory directive, the Board is without authority to relax the import of that regulation by adopting a 10-day grace period. Walter Adomkus, *supra*.

Appellant, finally, argues that there was no notice that a failure to properly date a simultaneous oil and gas lease application would result in rejection of the application. The applicable regulation, 43 CFR 3112.6-1(a), provides that "[a]ny application which is not filed in accordance with § 3112.2 of this title * * * shall be rejected." Appellant contends that an application which is not properly completed is not the same as one which is improperly "filed."

We decline to give such a narrow reading to 43 CFR 3112.6-1(a). The regulation itself indicates that "[m]isplacement of name or address or incomplete address" is included. 43 CFR 3112.6-1(a). Moreover, this Board long held that 43 CFR 3112.6-1(a) does not apply simply to the act of filing, but, instead, applies to any failure to abide by the directives of 43 CFR 3112.2. See, e.g., Fred L. Engle, 66 IBLA 94 (1982); John Gahr, 65 IBLA 268 (1982); Robert W. Myers, 63 IBLA 100 (1982). To hold otherwise would be to strip 43 CFR 3112.2 of any binding effect. Rather, we conclude that applicants were adequately informed that failure to properly date a simultaneous oil and gas lease application would result in its rejection. Charles Y. Neff, 64 IBLA 234 (1982). A drawing entry card which is improperly dated must be rejected. Walter M. Sorensen, 32 IBLA 345 (1977), *aff'd*, Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978).

Appellant's simultaneous oil and gas lease application was dated November 1, 1981, 1 day prior to the November 1981 filing period. This is a clear violation of 43 CFR 3112.2-1(c). Accordingly, BLM properly rejected appellant's application.

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.

R. W. Mullen
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

