

TYREX OIL CO.

IBLA 82-1030

Decided June 1, 1983

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting oil and gas lease offer OR 25413 (WA), and partially rejecting offers OR 25407 (WA), OR 25410 (WA), OR 25411 (WA), OR 25412 (WA), OR 25414 (WA), and OR 25415 (WA).

Affirmed.

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

The provisions of 43 CFR 3102.6-2, relating to filing of a signed statement or copy of a written agreement with persons who assist an applicant in a Federal oil and gas leasing program, are strictly construed. In the event an offeror fails to comply therewith, the offer is properly rejected.

2. Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. A defect is not curable to the extent that the rights of third parties have intervened. Accordingly, the lease must be offered to the first-qualified applicant who has complied with the Department's regulations which were operative and controlling at the time.

APPEARANCES: Morris R. Massey, Esq., Casper, Wyoming, for appellant; Don M. Frederic, Esq., Roswell, New Mexico, for A. W. Rutter.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Tyrex Oil Company (Tyrex) has appealed a decision of the Oregon State Office, Bureau of Land Management (BLM), dated June 8, 1982. This decision rejected Tyrex's oil and gas lease offer OR 25413 (WA) in its entirety and

rejected in part lease offers OR 25407 (WA), OR 25410 (WA), OR 25411 (WA), OR 25412 (WA), OR 25414 (WA), and OR 25415 (WA).

Appellant filed noncompetitive acquired lands lease offers on November 18, 1980. At the bottom of each offer form appellant typed the statement "Applicant was assisted by Dolores Yates in the preparation of this offer to lease."

At the time of filing the provisions of 43 CFR 3102.2-6(a) were applicable to parties submitting oil and gas lease offers. 43 CFR 3102.2-6(a) provides:

Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with Subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: A power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.

No personally signed statement as to any understanding or copy of a written agreement between appellant and Yates was filed by appellant.

On February 26, 1982, the Department published interim final regulations revising 43 CFR 3102. The revision effectively eliminated the requirement to file the statement required by 43 CFR 3102.2-6. 47 FR 8544 (Feb. 26, 1982).

Between the date that applicant filed its offers to lease and the effective date of the revision of 43 CFR 3102 (Feb. 26, 1982) third parties filed offers to lease all of the acreage subject to offer OR 25413 (WA) and a portion of the acreage subject to the remaining offers. In its decision BLM acknowledged the change in the regulations but rejected appellant's offers to the extent that there were conflicting junior offers filed prior to February 26, 1982.

[1] The provisions of 43 CFR 3102.6-2, as in existence at the time that appellant filed its offers to lease, are strictly construed, and in the event that an offeror fails to comply therewith the offer is properly rejected. Westates Group No. 8, 69 IBLA 186 (1982); Daniel D. Wyles, 64 IBLA 339 (1982). Appellant asserts that Yates was not a "person or entity in the business of providing assistance to participants in a Federal oil and gas leasing program" as that term is defined by 43 CFR 3100.0-5(d). Appellant asserts that Yates' services were tangentially related to Federal oil and gas lease acquisition. There was, however, enough question in Yates' mind as to whether the services performed by her were more than "tangential" that she made inquiry as to whether or not the services were, in fact, more than tangential (Affidavit of Dolores Yates at 1). Not obtaining a response to her inquiry, she included the statement that "Applicant was assisted by

Dolores Yates in preparation of this Offer to Lease." She states in her affidavit that she did "purely as a precautionary measure in what [she] considered as the remote event the Federal regulations applied to arrangements such as the one [she] had with Tyrex." Her caution is commendable. In any case in which there would be any question as to whether the services performed would fall within the definition found in 43 CFR 3100.0-5(d), the prudent procedure would be to make a disclosure such as that made by Yates. However, once the disclosure is made, a statement or copy of the agreement must be filed in accordance with the provisions of 43 CFR 3102.2-6. Tyrex failed to do so. Such failure was fatal. The regulation requires a personally signed statement as to any understanding or a personally signed copy of any written contract or agreement. Tommy L. Alford, 71 IBLA 29 (1983). Appellant's arguments and affidavits that Yates' services were only tangentially related to appellant's oil and gas lease acquisition are both untimely and to no avail. The statement on the face of the offers to lease, standing alone as it did at the time of filing, raises the opposite conclusion.

[2] Without compliance with 43 CFR 3102.2-6, appellant was not a qualified applicant. A noncompetitive oil and gas lease for Federal lands may be issued only to the first qualified applicant. 30 U.S.C. § 226 (c) (Supp. V 1981). The defect is not curable to the extent that the rights of third parties have intervened. Accordingly, the lease must be offered to the first-qualified applicant who has complied with the Department's regulations which were operative and controlling at the time. Compare Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976); Altex Oil Corp., 61 IBLA 270 (1982); Robert E. Bergman, 53 IBLA 122 (1981). To award appellant the leases despite the defective offers would be unfair to subsequent applicants who are qualified and would be contrary to the regulations.

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.

R. W. Mullen
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Will A. Irwin
Administrative Judge

