

GEORESOURCES, INC.

IBLA 83-127

Decided July 19, 1983

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting competitive phosphate lease application M 31926.

Affirmed.

1. Mineral Lands: Prospecting Permits -- Phosphate Leases and Permits: Leases

Where a regulation authorizes BLM's request for certain information regarding a competitive phosphate lease application and a notice to the applicant states that failure to file such information within 60 days will subject the application to rejection, BLM may reject the application at the conclusion of the 60-day term in the absence of a filing extension.

APPEARANCES: Lonnie W. Mollberg, President, GeoResources, Inc., Williston, North Dakota.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

GeoResources, Inc., appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated October 14, 1982, rejecting competitive phosphate lease application M 31926 (Acq.). BLM's rejection was based on its finding that appellant failed to respond to a BLM notice seeking additional information requested by the Minerals Management Service (MMS).

In the notice at issue, BLM referred appellant to the following regulations: 43 CFR 3521.1-4(a)(1), (2), and (b); 43 CFR 3521.2-1(a)(1)(v), (2), and (3); and 43 CFR 3521.2-2(c). The first regulation, 43 CFR 3521.1-4, directs the authorized officer to make a technical examination and environmental analysis of a proposed operation described in a preference right lease application. By its very terms, this regulation is not directly applicable to a competitive lease application, as filed by appellant. Although BLM implies that a technical examination and environmental analysis would be applicable in the present case, it can point to no authority for this proposition.

On appeal, appellant asserts BLM's rejection is "out of hand" based on GeoResources, Inc., 67 IBLA 297 (1982). In that decision, involving other lands, this Board reversed BLM's rejection of a phosphate prospecting permit application where rejection was based upon appellant's failure to submit an exploration plan. Therein, we found that an exploration plan was required by regulation from a permittee, but not from an applicant for a permit. Although we held that BLM could request the information provided in an exploration plan, we found that the failure of an applicant to provide such information could not serve by itself as a sufficient basis for rejection of the prospecting permit application.

In the instant case, we believe a similar approach is in order with respect to BLM's citation to 43 CFR 3521.1-4. The requirements of 43 CFR 3521.1-4 are expressly applicable to a preference right lease application, not to an application for a competitive lease. We find here that although BLM may request information from appellant to aid the authorized officer in his technical examination and environmental analysis, the failure to provide such information cannot serve by itself as a sufficient basis for rejection of the application.

But a different result is appropriate with respect to BLM's requests under regulation 43 CFR 3521.2-1. This regulation is expressly applicable to applicants for a competitive lease. The regulation states that an application should include "[e]vidence that the land is valuable for the mineral for which application is made, with a statement as to the character, extent and mode of occurrence of the deposit." 43 CFR 3521.2-1(a)(1)(v). Subsection 3521.2-1(a)(2) requires the applicant to submit additional statements as to the contemplated investment, the description of the deposits, and the method of mining and processing. Further evidence is sought showing that the amount of phosphate lands held by appellant, including those sought in a pending application, are necessary for development and are needed to supply an existing demand. Finally, evidence is sought showing that an applicant is in good faith and that proposed operations will be in accordance with good conservation practice.

BLM's notice of May 20, 1982, granted appellant 60 days in which to furnish the above information, inter alia, in a technically concise and informative fashion. If additional time were needed, BLM invited appellant to submit a written request for an extension. The final paragraph of BLM's notice stated that appellant's application would be subject to rejection if this information were not received within the time allowed.

Appellant submitted no information and did not request additional time within which to respond. Accordingly, on October 14, 1982, BLM issued the decision on appeal. With respect to BLM's requests under 43 CFR 3521.2-1, we hold that rejection of appellant's application was not improper. Contrary to the situation in GeoResources, Inc., supra, in the present case a regulation authorized BLM's request for certain information set forth therein. No argument is offered by appellant that this regulation was improperly promulgated or is inconsistent with statute. In Wilford Williams, A-26251 (Aug. 31, 1951), an application for a competitive phosphate lease was rejected because the applicant failed to respond to a BLM notice calling upon the applicant

to request adjudication or suffer rejection of his application. We find a similar approach to be appropriate here.

Having found that BLM's rejection of appellant's application was not improper, we need not consider whether appellant's failure to submit information described in 43 CFR 3521.2-2(c) can support rejection. A similar statement may be made with respect to three additional inquiries set forth in BLM's notice.

Accordingly, 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 State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

R. W. Mullen
Administrative Judge