

PIONEER FARMOUT #1, LTD.

IBLA 83-378

Decided October 20, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease application. W 82235.

Affirmed.

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

An executed lease agreement and first year's rental payment must be filed in the proper BLM office within 30 days of receipt of the notice. Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mail does not constitute filing.

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

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

APPEARANCES: Edwin S. Jerrols, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Pioneer Farmout #1, Ltd., appeals from a decision dated January 12, 1983, by the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease application W 82235, which received first priority for parcel WY 536 in the July 1982 drawing. BLM rejected the application because appellant failed to submit the executed lease agreement and the first year's rental within 30 days of receipt of notice, as required by 43 CFR 3112.4-1(a). 1/ That regulation provides, in pertinent part: "The

1/ Effective Aug. 22, 1983, this regulation was renumbered as 43 CFR 3112.6-1(a) without substantive change. See 48 FR 33648, 33680 (July 22, 1983).

executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice. Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease." 43 CFR 3112.6-1(d) 2/ provides that the application of the first-qualified applicant shall be rejected if an offer is not filed in accordance with 43 CFR 3112.4-1.

Appellant received BLM's request to execute the lease agreement on December 11, 1982. Consequently, the executed agreement and the first year's rental were due in the BLM office on January 10, 1983. They were not received until January 12, 1983.

[1] On appeal appellant explains that the executed lease agreement and first year's rental were mailed either on December 31 or January 3 and that special delivery was used to assure quicker delivery. Appellant asserts that he cannot understand "if or how it took so long to get there" (emphasis in original). The applicable regulation requires the lease and rental to be filed in the proper BLM office within 30 days of receipt of notice. The regulations provide that "filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing." 43 CFR 1821.2-2(f). Thus, the date of receipt of the agreement and the rental and not the date of mailing is controlling. 3/ Moreover, the Board has generally held that the person choosing the means of delivery must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Derrick Fuller, 56 IBLA 33 (1981), and cases cited therein. When appellant failed to submit the lease agreement and rental within the 30-day period, as required by 43 CFR 3112.4-1(a), the application was properly rejected under 43 CFR 3112.6-1(d). Theresa Jibilian, 57 IBLA 354 (1981); Albert J. Fines, 27 IBLA 61 (1976).

[2] Under the provisions of 43 CFR 3112.4-1(a), the executed lease agreement and first year's rental payment must be filed in the proper BLM office within 30 days from the date of receipt of notice. BLM may not accept the forms and rental payment after the 30-day period because the rights of the second- and third-qualified applicants have intervened. Hampton P. Stewart, 72 IBLA 358 (1983); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Strict compliance with the above regulation is mandatory in order to ensure fairness and uniformity to all applicants in the simultaneous drawing. Thomas E. Lewis, 70 IBLA 69 (1983); Warren R. Haas, 66 IBLA 107 (1982).

2/ Effective Aug. 22, 1983, this regulation was renumbered as 43 CFR 3112.5-1(c). See 48 FR 33648, 33679 (July 22, 1983).

3/ It should be noted that even if the date of mailing had been relevant that the postmark on the envelope bearing the agreement and rental was not legible. Appellant has provided no corroborating evidence to support his assertion of a Dec. 31 or Jan. 3 mailing date.

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.

Bruce R. Harris
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

