

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application NM 56641.

Affirmed.

1. Oil and Gas Leases: Applications: Filing

A first-drawn oil and gas lease application, Form 3112-6a, is properly rejected where there is no proper Form 3112-6 on file with the Bureau of Land Management at the time of the drawing.

APPEARANCES: William E. Thomason, president, T & T Development Co., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

T & T Development Company appeals the June 8, 1983, decision of the New Mexico State Office, Bureau of Land Management (BLM), which rejected its first-drawn oil and gas lease application, NM 56641, for parcel NM 116 in the March 1983 notice of land available. The application was considered invalid because the applicant did not have a proper Part A on file with BLM at the time.

Appellant states it submitted to BLM Parts A and B timely in March 1983. The application bore no Social Security number, employer identification number, or BLM application number (BAN). The Wyoming State Office, BLM, assigned a BAN, A-83030016, and advised applicant by letter of March 17, 1983, stating that the BAN should be used on all subsequent applications. Simultaneously therewith, BLM apparently returned Part A of appellant's application form because the circles required to be marked for entry of appellant's address into the computer were improperly marked and, thus, not machine readable. Appellant concedes that it inadvertently darkened two circles in the same column under the name of its city, both A and Y, but argues that the name of the city, Bryan, Texas, was clearly and correctly spelled in the squares above the columns of circles. Appellant contends that a fair and reasonable conclusion should be to grant it the lease for which its application was drawn with first priority.

Examination of the copy of Part A in the case file discloses that both the A and Y circles were darkened in the column under the "Y" in Bryan. Also,

that two columns were not marked under the P.O. Box number. Because of the duplication of darkened circles under Bryan, the Part A was returned to applicant, which apparently did not resubmit a corrected copy of Part A.

Appellant obviously thinks the correct spelling of Bryan on Part A could override the duplication of darkened circles under the "Y." Unfortunately, that is not the case. The selection of the winning applications is done by computer and the winning Part B's are verified against a Part A on file with BLM. Where the Part A was returned to the applicant because of the duplicate darkened circles, there was no Part A against which to verify the winning Part B, so that the application was rejected.

As the notice of lands available for oil and gas filings stated:

By notice in the Federal Register on November 12, 1981 (46 FR 55783 et seq.), the Bureau of Land Management (BLM) established a requirement that all applications filed on BLM Form 3112-6 and 3112-6a (OMB No. 1004-0065) for noncompetitive oil and gas leases issued by the automated simultaneous drawing system must be completed and received in a condition that the authorized officer determines would permit automated processing.

[1] This Board has held that the instructions on the application forms (Part A and B) must be followed and the proper circles must be marked to permit machine reading of the required information. In the absence thereof, an application is not properly completed and must be rejected. Victor S. Duletsky, 77 IBLA 12 (1983); Deborah B. Moncrief, 76 IBLA 287 (1983); George Dolezal, Jr., 75 IBLA 298 (1983). This Board has consistently held that applications in the simultaneous oil and gas leasing program which are not completed in accordance with the regulations in 43 CFR 3112.2-1 and the instructions on the application form itself must be rejected. Robert B. Lee, 69 IBLA 255 (1982); Herbert I. Ott, 68 IBLA 336 (1982); Duane W. Dowse, 68 IBLA 240 (1982); Nellie E. Colley, 68 IBLA 16 (1982); John Gahr, 65 IBLA 268 (1982); Alfred R. Sonsini, 64 IBLA 83 (1982); Clifford E. Shaw, 63 IBLA 293 (1982).

Since the application of appellant was filed, the regulations governing the simultaneous oil and gas filing procedures at 43 CFR Subpart 3112 have been revised to reflect the automated processing of applications. Since the automated procedures allow filing of one application for numerous parcels with each parcel requiring a \$75 filing fee, the regulation at 43 CFR 3112.3 provides for retention of one \$75 filing fee and return of the balance of the filing fees tendered where, as in this case, an application is returned as unacceptable. 48 FR 33679 (July 22, 1983). Where it benefits the affected party to do so, and where there are no intervening rights which would be affected adversely, an oil and gas leasing regulation which is amended while an appeal is pending may be applied in its amended form. George Dolezal, Jr., *supra*. Accordingly, BLM should refund all except \$75 of appellant's filing fees for the drawing if it has not already done so.

The rejection of appellant's first-drawn application was proper under the Department's regulations, and must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

---

Douglas E. Henriques  
Administrative Judge

We concur:

---

C. Randall Grant, Jr.  
Administrative Judge

---

Anne Poindexter Lewis  
Administrative Judge

