

SATELLITE ENERGY CORP.

IBLA 83-692

Decided November 17, 1983

Appeal from decisions of the Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications U-52506, U-52510, U-52511, U-52514, U-52515, U-52526, U-52527, U-52539, U-52607, U-52627, and U-52645.

Reversed and remanded.

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

Automated Simultaneous Oil and Gas Lease Application, form 3112-6a (June 1981), commonly referred to as Part B, was designed to facilitate automated processing adopted in order to expedite the issuance of leases and lessen the paperwork of the public. If Form 3112-6a is completed in a manner which allows automated machine processing, is correct with respect to the information read by the computer, and is correct and complete with respect to that information not machine read, the application does not contain a fatal error because the arabic numerals corresponding to those numbered circles blackened by the applicant under the heading "Mark Social Security Number" are not placed in the boxes above the corresponding numbered circles. The required information is contained on the face of the application in readable form. No information is lacking, and no ambiguity has been created by the applicant.

APPEARANCES: George B. McPhillips, Esq., Mineola, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Satellite Energy Corporation appeals from decisions of the Utah State Office, Bureau of Land Management (BLM), dated May 3, 1983, rejecting the above enumerated oil and gas lease applications for failure to properly complete Part B, automated form 3112-6a of the applications.

Since January 1, 1982, the form approved by the Director, BLM, for simultaneous oil and gas drawings with respect to parcels located in Wyoming is the Automated Simultaneous Oil and Gas Lease Application, forms 3112-6 and 3112-6a. 46 FR 55783 (Nov. 12, 1981). The automated form, also used for parcels located in Utah since November 1, 1982 (47 FR 40412 (Sept. 14, 1982)), is designed to accommodate the automated processing of simultaneous oil and gas lease applications. 46 FR 55783, 55784 (Nov. 12, 1981).

Form 3112-6 is titled "AUTOMATED SIMULTANEOUS OIL AND GAS LEASE APPLICATION PART A." Form 3112-6a is titled "AUTOMATED SIMULTANEOUS OIL AND GAS LEASE APPLICATION PART B." Part A, which should be submitted only with the applicant's first filing under the automated process, enables BLM to record the applicant's name, address, "identification" number, and certain other information. Part B identifies all parcels which the applicant desires to lease and a separate Part B is submitted for each drawing. Part B includes a section designated "Mark Social Security Number." This section contains blocks for entering the digits of the number. Under the blocks are rows of numbers in circles. The circles containing the appropriate numbers must be blackened in pencil for computer identification of the applicant and correspond with the number printed in the blocks and entered on Part A. Although

the number is designated "SOCIAL SECURITY NUMBER" on the form, it may be a person's social security number, a business entity's employer identification number, or a number assigned by BLM. On the reverse of Part B under the heading "PART B INSTRUCTIONS," the following instruction is given: "SOCIAL SECURITY NUMBER -- With a lead pencil, print in the appropriate squares the number used by the applicant on Part A and mark the corresponding circles."

Appellant submitted Part B forms for the January 1983 simultaneous oil and gas lease drawing for the State of Utah. In each of the applications identified in the first paragraph of this decision the appellant was designated as the first-priority applicant. On examination, after the drawing, it was found that in appellant's applications the circles identifying its bureau applicant number were blackened, but the numbers had not been entered in the blocks above the circles.

BLM's reason for rejection reads: "Satellite 8301101 failed to fully execute Part B of the simultaneous oil and gas lease application by not totally completing the section regarding the social security/identification/Bureau of Land Management BAN number. Therefore, the application is rejected. 43 CFR 3112.2-1(a); 43 CFR 3112.6-1(a)." 1/

1/ These regulations provide:

"§ 3112.2-1 Simultaneous oil and gas lease applications.

"(a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. The first applicant for a lease, as determined under the regulations in this subpart, who is qualified to hold a lease under the Act and the regulations in this title shall be entitled to submit an offer for the lease as described in § 3112.4-1 of this title.

* * * * *

"§ 3112.6-1 Rejection of an application.

Appellant contends that the blocks on the left side of Part B of the applications are for the convenience of the applicant and are not mandatory. In support of this contention appellant submitted a copy of a decision of the Wyoming State Office, BLM, dated March 28, 1983. This decision dismissed a protest filed by Lane Lasrich, second-priority applicant for parcel WY-127 in the January 1983 simultaneous drawing. In the Lasrich case the protest was based upon the first-priority applicant's failure to fill in the blocks on the left side of Part B of the application. The first-priority applicant for parcel WY-127 is also the appellant in this case. The decision of the Wyoming State Office stated: "The blocks on the left side of Part 'B' of the application are for the convenience of the applicant and are not a mandatory part of the application. As you suggested in your letter, the computer reads only the bubbled (darkened circle) numbers." The decision upheld the validity of the first-priority application.

[1] On November 6, 1981, the Director, BLM, approved forms 3112-6 (Part A) and 3112-6a (Part B) for simultaneous oil and gas lease applications submitted to the Wyoming State Office, BLM. At that time simultaneous

fn. 1 (continued)

"Rejection is an adjudicatory process which follows selection. Filing fees for rejected filings are the property of the United States and shall not be returned.

"(a) Improper filing. Any application which is not filed in accordance with § 3112.2 of this title or any application which is unacceptable, as set forth in § 3112.5 of this title, shall be rejected. Misplacement of name or address or incomplete address on the face of form 3112-1 shall not be a basis for rejection until 30 days from posting the list of priority or return of the documents described in § 3112.4-1 of this title as undeliverable, whichever is later."

The regulations concerning oil and gas leasing were amended effective Aug. 22, 1983. 48 FR 33648 (July 22, 1983). Rejection criteria now appear at sections 3112.5-1 and 3112.5-2.

oil and gas lease applications were submitted to the state offices of the state in which the parcel to be leased was located. Use of forms 3112-6 and 3112-6a began on January 1, 1982. See 46 FR 55783. On September 14, 1982, notice was printed in the Federal Register that effective October 14, 1982, all states except Alaska would use forms 3112-6 and 3112-6a, and that all applications (except for Alaska) would be submitted to the Wyoming State Office, BLM. 47 FR 40412. After October 14, 1982, all automated simultaneous lease applications were processed by the Wyoming State Office, BLM. Until the adoption of forms 3112-6 and 3112-6a all applications were manually processed. The new forms were developed and adopted to "accommodate the automated processing of simultaneous oil and gas lease applications." The development of the automated process was the result of BLM's efforts "to expedite the issuance of leases and lessen the paperwork burden on the public." 46 FR 55783, 55784 (Nov. 12, 1981).

This Board must now resolve the apparent conflict between the application of the regulatory requirements for proper completion of form 3112-6a by the Wyoming State Office and the Utah State Office, BLM.

The "computer read" portion of Part B is that portion represented by the "bubbled numbers" located on the left side of the form. The computer does not "read" those blocks above the numbers and the presence or absence of those numbers in the blocks does not affect the ability of the computer to process the application. The number indicated in the blackened circles is the feature by which the machine distinguishes the application as distinctly that of the applicant, and proper completion of the circles is necessary. See Victor S. Duletsky, 77 IBLA 12 (1983).

The supplementary information in the notice that the "new" forms would be used for Utah parcels stated, with respect to the processing of form 3112-6a, that "Applications filed on the automated form and received in a condition that the authorized officer determines would prevent automated processing will not be acceptable." 47 FR 40412. 2/ It can be assumed that if the application is, in fact, processed, the application is complete as to those items machine read. If this is the case, any error or failure to complete the left hand side of form 3112-6a which does not prevent automated processing will be an inconsequential omission. 3/

In the case before us, the machine did in fact read the applications filed by appellant. As a result, appellant was found to be the first-priority applicant. There is nothing in the record which would indicate in any way that the failure to fill in the blocks with the numbers corresponding with the "bubble numbers" rendered the application unprocessable. Under the circumstances we believe that the Wyoming State Office properly interpreted the regulatory requirements in accordance with the intent expressed at the time of adoption of the forms.

Even though appellant did not fill in the blocks as required by the instructions, we must look to the results of this error. The applications

2/ This requirement is now expressed in regulation 43 CFR 3112.2-1(g), 48 FR 33678 (July 22, 1983).

3/ It is recognized that Part B of the application could be machine processed without the information contained on the right-hand side of the application. However this information is not contained elsewhere on the application, even though it is not used by the machine in the processing of the application. Therefore, if the information on the right side of the application is not completed, and the application is not signed by the applicant as required by the regulations and in the manner described in the instructions, the application will be considered to have a fatal error.

were otherwise complete. The number which was to have been placed in the boxes was contained on the face of the applications immediately below the boxes in the form of blackened numbered circles. None of the information required was absent from the face of the form, and no ambiguity was created. In Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), the Circuit Court of Appeals held that nonsubstantive errors are inappropriate grounds for finding simultaneous oil and gas lease applications fatally defective. In the case now before this Board the omission on the face of the appellant's applications was nonsubstantive and therefore the application should be further processed, all else being in order.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed, and the cases are remanded to BLM for further action consistent with this decision.

R. W. Mullen
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

