

Appeal from decision of Wyoming State Office, Bureau of Land Management, vacating decision rejecting simultaneous oil and gas lease application. W-83490.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: First-Qualified Applicant--Oil and Gas Leases: Rentals

BLM must reject a first drawn simultaneous oil and gas lease application where the applicant fails to submit the executed lease agreement and first year's rental within 30 days of notice to do so, pursuant to 43 CFR 3112.4-1(a), in spite of any negligence on the part of the Postal Service which delayed return of the lease agreement and rental payment.

Appearances: Jay R. Angle, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Jay R. Angle has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 21, 1983, vacating an earlier decision, which rejected the simultaneous oil and gas lease application, W-83490, of the first-drawn applicant.

By decision dated February 9, 1983, BLM notified Michael R. Bill that he was the first-drawn applicant for parcel WY-151 in the November 1982 simultaneous oil and gas lease drawing and required him to submit an executed lease agreement and the first year's advance rental payment "within 30 days from the date of your receipt of this decision," in accordance with 43 CFR 3112.4-1. The decision was sent to Bill by certified mail, return receipt requested, and received on February 11, 1983. Appellant was the second-drawn applicant for parcel WY-151.

By decision dated March 16, 1983, BLM rejected Bill's simultaneous oil and gas lease application because he had failed to submit the executed lease agreement and first year's advance rental payment within 30 days of receipt of notice of the regulatory requirement, *i.e.*, before March 14, 1983. On March 18, 1983, BLM received the required documents in an envelope postmarked March 10, 1983, in Santa Barbara, California, and bearing a stamp which read: "Found in supposedly empty equipment." In its March 21, 1983, decision, BLM vacated its March 16, 1983, decision rejecting Bill's lease application, concluding that the "late rental was the fault of the post office and beyond your control."

By decision dated April 11, 1983, BLM rejected appellant's simultaneous oil and gas lease application, because a lease had already been issued to the first-drawn applicant. On that date, BLM issued a noncompetitive oil and gas lease to Bill for parcel WY-151, effective May 1, 1983.

In his statement of reasons for appeal, appellant contends that BLM properly rejected the simultaneous oil and gas lease application of the first-drawn applicant because the "risk of mishandling" by the Postal Service in delivering the executed lease agreement and the first year's advance rental payment to BLM was "that of the sender."

[1] The applicable regulation, 43 CFR 3112.4-1(a), provides that a lease agreement, consisting of a lease form and stipulations, "shall be forwarded to the first qualified applicant for signing, together with a request for payment of the first year's rental." Moreover, the regulation provides that: "The 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." *Id.* Failure to submit timely the required documents, in accordance with 43 CFR 3112.4-1(a), properly results in rejection of a simultaneous oil and gas lease application, pursuant to 43 CFR 3112.6-1(d). Longhorn Oil, Ltd., 72 IBLA 45 (1983), and cases cited therein.

The record indicates that the required documents were not received by BLM until March 18, 1983, after the 30-day time period. However, the documents were sent in an envelope postmarked March 10, 1983, which apparently allowed sufficient time for delivery prior to the filing deadline. Thus, it would appear that the failure to deliver the envelope on time was due to negligence on the part of the Postal Service.

However, it is well established that it is the responsibility of the applicant to see that the documents required under 43 CFR 3112.4-1(a) are filed in a timely manner. Robert D. Nininger, 16 IBLA 200 (1974), *aff'd sub nom.*, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975). Any failure of the Postal Service to transmit the documents to BLM by the filing deadline does not excuse noncompliance with the regulation. As we have stated on many occasions, one who chooses the means of delivery must bear the consequences of delay or nondelivery resulting therefrom. *See, e.g.*, Mary Jane Associates, 74 IBLA 43 (1983). The post office is considered the agent of the sender. L. Lee Horschman, 74 IBLA 360 (1983).

Accordingly, we conclude that the simultaneous oil and gas lease application of Michael R. Bill was properly rejected by BLM for failure to comply with 43 CFR 3112.4-1(a), in spite of any negligence on the part of the Postal Service, and that BLM should not have vacated its March 16, 1983, decision. BLM should cancel the lease issued to Bill pursuant to 43 CFR 3112.6-3 and afford appellant an opportunity, as the second-drawn applicant, to make a noncompetitive oil and gas lease offer for parcel WY-151.

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 reversed and the case is remanded to BLM for further action consistent herewith.

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Gail M. Frazier  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

