

HEMISPHERE OIL GROUP LTD., INC.

IBLA 84-745

Decided December 6, 1984

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. AA-49448.

Affirmed.

1. Oil and Gas Leases: Applications: Filing

BLM may properly reject an over-the-counter noncompetitive oil and gas lease offer which was not filed with the required number of copies, in accordance with 43 CFR 3111.1-1(a).

APPEARANCES: Don Duchrow, president, Hemisphere Oil Group Ltd., Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Hemisphere Oil Group Ltd., Inc., has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 14, 1984, rejecting its noncompetitive oil and gas lease offer AA-49448.

On February 22, 1984, appellant filed a noncompetitive oil and gas lease offer for 640 acres of land situated in sec. 13, T. 13 S., R. 8 W., Kateel River Meridian, Alaska, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). In its June 1984 decision, BLM rejected appellant's lease offer because appellant had failed to file four copies of its offer in accordance with 43 CFR 3111.1-1(a).

In its statement of reasons for appeal, appellant contends that the Board should reverse BLM's rejection of its lease offer because it has substantially complied with Departmental regulations and the failure to submit four copies of its lease offer is "not material in nature." Appellant also notes that it was not specifically informed of the regulatory requirement, except by "fine print" on the back of the lease offer form.

[1] The applicable regulation, 43 CFR 3111.1-1(a), as amended at 49 FR 2113 (Jan. 18, 1984), provided in relevant part, with respect to over-the-counter noncompetitive lease offers, that the "original and 4 copies of

each offer to lease, with each copy showing evidence of having been signed, shall be filed in the proper BLM office." Effective June 15, 1984, the regulation was amended to require that only two copies of each lease offer be filed. 49 FR 20653 (May 16, 1984). These copies are necessary for the efficient processing of a lease offer. The record contains only one completed lease offer form, and appellant admits that it failed to file any copies. It is well established that BLM properly rejects a noncompetitive oil and gas lease offer for failure to file the correct number of copies in accordance with 43 CFR 3111.1-1(a). Helen G. Haggard, 79 IBLA 320 (1984); Curtis Wheeler, 55 IBLA 65 (1981). The effect of such a decision is that an offeror is required to resubmit his offer in compliance with applicable regulations (i.e., with the correct number of copies), and will not be accorded priority with respect to the land sought until he has done so.

While appellant has never submitted the requisite number of copies either under the regulation in effect at the time of filing or under the subsequent regulation, we note that, in the past, the Board has approved of the BLM practice of accepting correction of any deficiency in an over-the-counter lease offer after the filing of the offer, with priority as of the date of correction. In effect, the Board has allowed any deficiency to be treated as a curable defect, even where it did not fall within any of the categories listed in 43 CFR 3111.1-1(e) (1982). See generally Gian R. Cassarino, 78 IBLA 242, 91 I.D. 9 (1984). However, the offer would only be accorded priority as of the date of correction. In Cassarino, decided January 10, 1984, the Board ruled that, for public policy reasons, an offeror would no longer be permitted to resuscitate defective lease offers with new priority by submitting "curative" material after those offers had been properly rejected by BLM, but that such defective offers could be cured prior to their rejection by BLM. Id. at 247, 91 I.D. at 12. The effect of Cassarino is that, where BLM has properly rejected a defective lease offer (e.g., the offeror fails to submit the correct number of copies), the offeror is required to resubmit his offer. We conclude that this is an appropriate, and not very onerous, penalty for failure to abide by the Departmental regulations governing the filing of lease offers.

Appellant also contends that it was not notified of the regulatory requirement other than by the "fine print" on the back of the offer form. We note that instructions on the back of appellant's lease offer form (Form 3110-1 (February 1982)) specifically state that the offer "must be prepared in quintuplicate and filed in the proper land office." At the time appellant filed its lease offer, the instructions and 43 CFR 3111.1-1(a) were unambiguous. The results would not be different if appellant had not had actual notice of the requirement by reason of the instructions contained on the form submitted by it. All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Therefore, we conclude that BLM properly rejected appellant's noncompetitive oil and gas lease offer.

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.

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R. W. Mullen  
Administrative Judge

We concur:

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Wm. Philip Horton  
Chief Administrative Judge

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Franklin D. Arness  
Administrative Judge

