Appeal from a decision of the Wyoming State Office, Bureau of Land Management, declaring a simultaneous oil and gas lease application unacceptable because the accompanying remittance was insufficient.

Affirmed.

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

Under 43 CFR 3112.2-2(b), each Part B application form must be accompanied by a single remittance sufficient to cover the filing fee of $75 and first year's rental payment for each parcel included in the application. If the remittance is insufficient, the entire filing is properly deemed unacceptable because an insufficient remittance is not a technical, or nonsubstantive, defect.

APPEARANCES: Mark S. Winters, Senior Landman, CNG Producing Company.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

CNG Producing Company has appealed from a November 27, 1987, decision of the Wyoming State Office, Bureau of Land Management (BLM), which deemed its simultaneous application for parcels NV 125, NV 126, and NV 212 of the October 1987 simultaneous oil and gas lease application filing period unacceptable under Departmental regulations because the remittance of $11,602 submitted with the application form was insufficient.

On appeal, appellant contends that the error in the amount of remittance was clerical in nature and not substantive.

The applicable regulation, 43 CFR 3112.2-2, reads:

Each Part B application form shall, when filed, be accompanied by a single remittance. The remittance shall consist of an amount sufficient to cover for each parcel included on the Part B application form a nonrefundable filing fee of $75 and the first year's rental payment. Failure to submit either a separate remittance for each Part B application form or an amount sufficient to cover all the parcels on each Part B application form, or both, shall cause the entire filing to be deemed unacceptable.

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The regulation clearly provides that the remittance be sufficient to cover a filing fee of $75 and the first year's rental payment for each parcel. BLM states that the three parcels identified on appellant's application form encompass a total of 11,477 acres. Thus, a remittance of $11,702 was due with the application form. Appellant's remittance of $11,602 was insufficient for the parcels identified on the application.

It is well established that if the remittance accompanying a simultaneous application is insufficient, the application is unacceptable and should be returned to the applicant. See Charles Anderson, 76 IBLA 402 (1983); Fred L. Engle, 66 IBLA 94 (1982). There is no authority to allow for correcting an improper remittance, regardless of the reasons offered.

The Board has held on numerous occasions that strict compliance with the requirements of 43 CFR Subpart 3112 is required to protect the rights of other qualified applicants. See Jack Williams, 91 IBLA 335, 93 I.D. 186 (1986). However, following the court's holding in Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), it has been necessary for the Department to distinguish between substantive and technical, nonsubstantive, defects in an application. In Conway, the court concluded that the failure to date a lease application was "de minimis, a non-substantive error," and that it could not form the basis for a per se disqualification of the applicant where the record established the application was in fact signed within the time limitation established by regulation. 717 F.2d at 516. While the Board has already applied the Conway rationale in a number of cases, that does not mean that we will apply it to all defects associated with the filing of simultaneous oil and gas lease applications. See Jack Williams, 91 IBLA at 340, 93 I.D. at 189.

The per se disqualification of a lease applicant is appropriate where the failure to comply with the regulations and BLM's instructions adversely affects the ability of the Department to establish the applicant's eligibility or to protect the integrity of the simultaneous leasing system. See Henry W. Odlozil, Sr., 96 IBLA 286 (1986). Conversely, a Departmental regulation may not be the basis of a per se disqualification if it does not further a statutory purpose. Id. at 288. Unlike the "de minimis" cases to which the Conway rationale has been previously applied, the instant case does not involve the inadvertent misdating or failure to date an application, the failure to complete the identification of the applicant on one part of an application where the applicant was identifiable elsewhere, the failure to complete the written portion of an application form while the machine-readable portion was properly completed, or other situation where the failure to establish the applicant's qualifications, identity, or selection on one part

1/ Prior to August 1983, the regulations in 43 CFR Subpart 3112 read as follows: "Applications shall be examined prior to selection and the application or written notice, together with the filing fee, shall be returned to the applicant for any filing which is: * * * (3) Accompanied by an unacceptable remittance or insufficient filing fees." 43 CFR 3112.5(a)(3) (1982). The pertinent part of 43 CFR 3112.3 now reads: "(a) Any Part B application form shall be deemed unacceptable and a copy returned if, in the opinion of the authorized officer, it: * * * (4) is received with an insufficient fee." See 48 FR 33648, 33675 (July 22, 1983).

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of an application form can be satisfied elsewhere. See Jack Williams, 91 IBLA at 341, 93 I.D. at 190.

The requirement to pay rental according to the Department's instruction is grounded in section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1982), where Congress mandates a lessee to pay the rental "in advance." As an offer is considered incomplete without the payment of the first-year's rental, tender of rental becomes an issue of qualification of the offeror or applicant. Moreover, it has been a long-standing policy that the failure of an offeror or applicant to tender a proper rental payment within the period prescribed by the Department will result in the rejection of that offer or application. E.g., Janet R. Larson, 91 IBLA 151 (1986); F. Miles Ezell, Sr., 86 IBLA 146 (1985). This consistent course of adjudication was remarked upon by the U.S. Court of Appeals for the Tenth Circuit in Dawson v. Andrus, 612 F.2d 1280, 1283 (1980), which affirmed the rejection of a lease offer for failure to timely pay the full amount of advance rental due. Thus, we conclude that an insufficient remittance of the rental payment and other fees is not a technical, or nonsubstantive, defect.

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.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

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