

CHEMICAL PRODUCTS CORP.

IBLA 89-419

Decided June 23, 1989

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring mining claims abandoned and void. A MC 200255 through A MC 200260, A MC 200263 through A MC 200268, and A MC 200295 through A MC 200300.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Recordation

Failure to file in the proper Bureau of Land Management office either evidence of assessment work performed or notice of intention to hold as required by 43 U.S.C. § 1744 (1982) and 43 CFR 3833.2 within the time period prescribed results in a conclusive presumption of abandonment of the mining claim. Under 43 CFR 3833.0-5(m), a document which is mailed will be considered timely filed provided it bears a clearly dated postmark affixed by the U.S. Postal Service on or before the filing deadline. Where an envelope received by BLM after the Dec. 30 end of the filing period does not bear a post-mark date falling within the filing period, the regulation will not apply and the filing is therefore untimely.

APPEARANCES: Jerry A. Cook, Technical Director, Chemical Products Corporation.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Chemical Products Corporation appeals from a March 8, 1989, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring unpatented placer mining claims A MC 200255 through A MC 200260, A MC 200263 through A MC 200268, and A MC 200295 through A MC 200300 (the SR Nos. 1-6, 9-14, and 41-46 mining claims) abandoned and void for failure to file evidence of assessment work performed or notice of intention to hold the claims

during the filing period ending December 30, 1988. A group affidavit of labor for these mining claims was received by BLM on January 5, 1989. BLM concluded in its decision that this document had been received in an envelope postmarked December 31, 1988.

In its statement of reasons, Chemical Products contends that BLM's decision is in error as there is no postmark on the envelope. Jerry A. Cook, Technical Director for appellant, declares that he personally mailed the subject document "mid-afternoon on Friday, December 30, 1988." Appellant asserts that if the post office had properly postmarked the envelope, it would have postmarked it December 30, 1988.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and Departmental regulation 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year following the year in which the claim is located. Such filing must be made within each calendar year, *i.e.*, on or after January 1 and on or before December 30. Ronald Willden, 97 IBLA 40 (1987); Robert C. LeFaivre, 95 IBLA 26 (1986). Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4. Thus, a claimant challenging a determination of abandonment has the burden of pre-senting evidence of timely filing with BLM.

Pursuant to Departmental regulation 43 CFR 3833.0-5(m), a document received by BLM in the mail after December 30 of the calendar year for which the document is filed but prior to the following January 19 will be considered "timely filed," provided the envelope containing the document bears a clearly dated postmark affixed by the U.S. Postal Service on or before December 30 of the subject year. However, the grace period afforded will not apply to situations where the envelope shows a postmark date later than December 30. *See* David H. Holt, 88 IBLA 36 (1985); J.W. Doyle, 87 IBLA 158 (1985). The importance of the postmark date was stated in the preamble to promulgation of 43 CFR 3833.0-5(m) as follows:

This means that the claimant must have completed all annual assessment work and mailed the document evidencing that work to the proper BLM office on or before December 30. Thus, the change in the regulations does not provide a "grace period" for late filing. Filing must still be made on or before December 30th. For the purposes of annual filing, the postmark will constitute evidence of filing. Such filing is conditioned upon subsequent receipt by the Bureau of Land Management. It should be noted that the envelope containing the required documents must be postmarked on or before the December 30 date in order for it to be accepted.

47 FR 56300, 56302 (Dec. 15, 1982).

The difficulty we face in this case is that the envelope in which appellant's annual filing was received does not bear an actual "postmark affixed by the U.S. Postal Service." Rather, it bears a private postage meter label dated December 31, 1988. Appellant states that it was asked to set its postage meter date 1 day ahead by the U.S. Postal Service and has attached to its appeal a memorandum from the Cartersville, Georgia, post office to the effect that the meter date should reflect next-day mailing because of possible next-day pick up from mail drop boxes. Appellant asks the Board to not penalize it for the manner in which the post office handled this situation.

There is a presumption of regularity, which we will apply in this instance to the U.S. Postal Service, to the effect that, all else being regular, public officers are presumed to have properly performed their assigned tasks and functions. See Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); H.S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). As for the lack of an official postmark appearing on the envelope in question, Domestic Mail Manual (DMM), § 144.71 (Dec. 18, 1988), provides:

Dates shown in the meter postmark of any type or kind of mail must be the actual date of deposit, except when the mailpiece is deposited after the last scheduled collection of the day. When deposit is made after the last scheduled collection of the day, mailers are encouraged but not required to use the date of the next scheduled collection. When a .00 postage meter impression is used to correct the date of metered mail, the date in that impression shall be considered to be the actual date of deposit.

This policy is further explained in DMM, § 144.532: "Do not postmark metered mail, except as required in 144.534," and § 144.534: "Metered mail bearing the wrong date of mailing (see 144.47) will be run through a canceling machine or otherwise postmarked to show the proper date." As appellant's private meter is dated December 31, 1988, and that date was not corrected by U.S. Postal Service employees, the conclusion resulting from the presumption of regularity as applied to the above provisions of the DMM is that the item mailed was not deposited with the U.S. Postal Service until after collection time on December 30 or on December 31, and therefore the date shown on the meter label is the official date of mailing.

Regardless, even if we were to assume that the filing was mailed on December 30, the fact that it does not bear an official postmark date within the filing period ending December 30, 1988, is fatal to the filing. It is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). It was therefore incumbent upon appellant to be acquainted with the absolute requirement of 43 CFR 3833.0-5(m) that, where a required filing is received by mail after the deadline, the envelope containing that filing must bear "a clearly dated postmark within the period

prescribed by law" in order to be accepted by the Department as timely filed. See David H. Holt, 88 IBLA at 37; Arne W. Murto, 88 IBLA 19 (1985); Glenn Kroshus, 87 IBLA 213 (1985). Appellant chose the U.S. Postal Service as its means of delivery. Appellant alone was responsible for timely delivery to this carrier to ensure compliance with the regulations. If appellant had reason to suspect that its mailing would not bear a timely postmark, and in this instance the date appearing on the private meter stamp provided reason to worry about the postmark date, appellant should have taken the proper action to assure itself that its filing would satisfy the regulations.

Appellant has not shown that it satisfied the requirement that a document be filed with BLM during the mandatory filing period. As the record before us does not reflect that appellant's assessment affidavit was timely filed on or before December 30, 1988, the subject mining claims were properly deemed to be abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim with or without the benefit of notice from the Department as Congress mandated that failure to file the proper documents in the proper offices within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. Thus, a claim for which timely filings are not made is extinguished by operation of law notwithstanding the claimant's intent to hold the claim. See United States v. Locke, 471 U.S. 84 (1985). As Congress did not provide for waiver of this requirement, the Department is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA at 196, 88 I.D. at 372. Accordingly, the Board may not consider special facts or provide relief in view of mitigating circumstances. Where an annual filing is not timely received, for whatever reason, the consequences must be borne by the claimant.

The purpose of section 314 is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims are being maintained on Federal lands and which have been abandoned. The fact that assessment work was done or that timely filings have been made in other years has no effect on the conclusive presumption of abandonment embodied in the statute. Since the statute is self-operative, a claim must be deemed abandoned when an annual filing is not timely received. See Ptarmigan Co., 91 IBLA 113 (1986). As appellant has not submitted evidence that an annual filing for the subject mining claims was received by BLM during the 1988 filing period, they are properly deemed to be abandoned and void.

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.

Wm. Philip Horton
Chief Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge