

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:)

CASE NO. 13,325

APPLICATION OF MYCO INDUSTRIES, INC.,)
FOR COMPULSORY POOLING AND NONSTANDARD)
ATOKA SPACING UNIT, EDDY COUNTY,)
NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: WILLIAM V. JONES, JR., Hearing Examiner

September 2nd, 2004

Santa Fe, New Mexico

2004 SEP 16 PM 12:57

This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, JR., Hearing Examiner, on Thursday, September 2nd, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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September 2nd, 2004
 Examiner Hearing
 CASE NO. 13,325

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<u>SHARI A. DARR HODGES</u> (Landman)	
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A P P E A R A N C E S

FOR THE DIVISION:

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By: MICHAEL H. FELDEWERT

* * *

1 WHEREUPON, the following proceedings were had at
2 8:57 a.m.:

3 EXAMINER JONES: Okay, at this time let's call
4 Case 13,325, in the matter of the Application of Myco
5 Industries, Incorporated, for compulsory pooling and
6 nonstandard Atoka spacing unit, Eddy County, New Mexico.

7 Call for appearances.

8 MR. FELDEWERT: May it please the Examiner,
9 Michael Feldewert with the Santa Fe office of the law firm
10 of Holland and Hart appearing on behalf of Myco Industries.

11 EXAMINER JONES: Any other appearances?

12 MR. FELDEWERT: Mr. Examiner, I have one witness.

13 EXAMINER JONES: Will the witness please stand to
14 be sworn?

15 (Thereupon, the witness was sworn.)

16 SHARI A. DARR HODGES,
17 the witness herein, after having been first duly sworn upon
18 her oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FELDEWERT:

21 Q. Ms. Hodges, would you please state your full name
22 and where you reside?

23 A. Shari Darr Hodges, in Artesia.

24 Q. And by whom are you employed and in what
25 capacity?

1 A. Myco Industries, Inc., as their land manager.

2 Q. And have you previously testified before this
3 Division?

4 A. Yes, I have.

5 Q. And had your credentials as an expert in
6 petroleum land matters accepted and made a matter of
7 record?

8 A. Yes, I have.

9 Q. Are you familiar with the Application that's been
10 filed by Myco Industries in this case?

11 A. Yes.

12 Q. And are you familiar with the lands in the
13 subject area?

14 A. Yes, I am.

15 MR. FELDEWERT: Mr. Examiner, at this time I
16 would offer Ms. Hodges as an expert in petroleum land
17 matters.

18 EXAMINER JONES: Ms. Hodges is qualified as an
19 expert in petroleum land matters.

20 Q. (By Mr. Feldewert) Okay, why don't you turn to
21 Myco Exhibit Number 1, briefly identify it for the
22 Examiner, and tell him what Myco seeks with this
23 Application.

24 A. Exhibit 1 is a nine-section plat centered on
25 Section 14, where we are seeking a 320-acre gas spacing

1 unit covering the east half of that Section 14, which is
2 cross-hatched in red, for the purpose of spacing for all
3 formations spaced on 320 acres, and presently that is the
4 Undesignated East Carlsbad-Wolfcamp, the Undesignated Cedar
5 Hills-Upper Pennsylvanian, the Designated Burton Flat-
6 Strawn and the Burton Flat-Morrow Gas Pools; and also as to
7 the southeast quarter for standard 160-acre spacing for
8 formations and pools spaced on the 160, which includes the
9 East Avalon-Bone Spring Gas Pool; and as to the southwest
10 quarter of the southeast quarter to form a 40-acre spacing
11 unit.

12 And secondly, we're here to seek the creation of
13 a 160-acre nonstandard gas spacing unit for the Atoka
14 formation only, in the southeast quarter.

15 Q. Now, what well is Myco -- and let me back up.
16 We've identified the pools that are involved in the
17 application, correct?

18 A. That's right.

19 Q. Okay. What well is Myco proposing to dedicate to
20 these spacing and proration units?

21 A. It's an existing well that's marked with the red
22 dot on that Section 14, and it's named the Lone Tree 14
23 State Com Number 1. It's in the southwest quarter of the
24 southeast quarter, in Unit Letter O.

25 Q. And you seek to -- You're going to re-enter and

1 recomplete this well?

2 A. We are.

3 Q. And in what formation?

4 A. The primary objective is the Morrow, but there
5 also are other zones in that wellbore that we anticipate.

6 Q. Is this at a standard location?

7 A. It is 660 from the south and 1980 from the east.

8 Q. Since this is a re-entry project, why don't you
9 give the Examiner a brief history of this well?

10 A. Okay, this well, the Lone Tree, was originally
11 drilled by Mewbourne Oil Company in the fourth quarter last
12 year under a November, 2003, pooling order from the
13 Division, and around Christmastime they plugged it.

14 And Myco is very active in the area, so we were
15 keeping our eye on that well. And when they plugged it, we
16 approached them to see if we could make some type of deal
17 to take over that well. And so we've done that with
18 Mewbourne.

19 MR. FELDEWERT: Mr. Examiner, I have a copy of
20 the order I can give you after we've completed our case.

21 Q. (By Mr. Feldewert) So Ms. Hodges, if I
22 understand you, Myco seeks to essentially re-pool the
23 parties that were subject to the order that was entered in
24 Case Number 13,157 for a Morrow well on an east-half unit;
25 is that correct?

1 A. That's correct.

2 Q. And then you're also here seeking to create a
3 nonstandard 160-acre spacing unit for the Atoka formation
4 only, comprised of the southeast quarter?

5 A. That's correct.

6 Q. What is the status of the acreage in this area?

7 A. The State owns the entire section.

8 Q. Okay. Now, before we get to the pooling issues,
9 I want to turn to your request for a nonstandard unit.

10 A. Okay.

11 Q. Would you please turn to Myco Exhibit Number 2,
12 identify that for the Examiner, and explain to him the
13 unique ownership reasons for your request for a nonstandard
14 Atoka spacing unit.

15 A. Okay. Exhibit 2 is a cartoon of Section 14. The
16 north half has been communitized under a 1993 com agreement
17 for the Atoka only, and Devon Energy is the operator of
18 that Atoka well. And the west half has been communitized
19 under a 2002 com agreement as to the Morrow, the Wolfcamp
20 and the Strawn only.

21 EXAMINER JONES: The west half --

22 THE WITNESS: -- of the entire section.

23 EXAMINER JONES: -- of the entire section.

24 THE WITNESS: Yes. So they overlap.

25 So in the east half, there's no problem. We can

1 communitize the Morrow, the Wolfcamp and the Strawn because
2 it has not been communitized. But the Atoka in the
3 northeast quarter is committed to the com agreement in the
4 northwest quarter, and so we're faced with the unique
5 situation of those overlapping agreements.

6 Q. (By Mr. Feldewert) This map also shows your --
7 the existing Lone Tree well in the southeast quarter; is
8 that right?

9 A. That's right, it's named the Morrow Number 3.

10 Q. Okay. Now, is Myco Exhibit Number 3 the com
11 agreement that you were talking about for the Atoka, only
12 for the north half of the section?

13 A. Yes, it is.

14 Q. It also has attached to it the C-102; is that
15 right?

16 A. That's correct.

17 Q. Okay. And then is Myco Exhibit Number 4 the com
18 agreement that is covering the west half for the Wolfcamp,
19 the Strawn and in the Morrow?

20 A. Yes, it is.

21 Q. And it likewise has the C-102 attached to it; is
22 that correct?

23 A. That's correct.

24 Q. All right. Now, did Myco discuss the problems
25 associated with this unique ownership situation with the

1 operator in the west half of the section?

2 A. Yes, we did.

3 Q. And who is that?

4 A. Mewbourne.

5 Q. And did you discuss with them your proposal for
6 the creation of a nonstandard Atoka spacing unit comprised
7 of the southeast quarter?

8 A. Yes, we did.

9 Q. And is Myco Exhibit Number 5 a waiver or approval
10 letter from Mewbourne --

11 A. Yes.

12 Q. -- concerning this Application?

13 A. Yes, it is.

14 Q. Okay. Now, in addition to the fact that there's
15 an operator there in the west half, or that covers the
16 southwest quarter, there's also some other working interest
17 owners in that southwest quarter, correct?

18 A. That's correct.

19 Q. And have you likewise received letters approving
20 of this Application from all of the working interest owners
21 in the southwest quarter?

22 A. Yes, we have.

23 Q. And are they likewise attached and comprise Myco
24 Exhibit Number 5?

25 A. They are, yes.

1 Q. Okay. So you have received a waiver of any
2 objection from all of the working interest owners in the
3 southwest quarter of this section?

4 A. Yes, we have.

5 Q. All right. Now, if you turn to Myco Exhibit
6 Number 6, would you just identify that and walk the
7 Examiner through that exhibit, please?

8 A. Exhibit 6 is a list of the owners in that
9 section. The first set of names and numbers are the
10 interest owners in the southwest quarter. The second group
11 are the owners in the east half. You can see the
12 uniqueness in the ownership. They're different in both
13 situations.

14 Q. Okay. Now, the parties you identify in the
15 southwest quarter at the top, there's seven of them, and
16 you received -- you got waiver letters from all seven of
17 those?

18 A. That's correct.

19 Q. Okay. And then the second box shows the working
20 interest owners in the east half, and it indicates that
21 three of those parties are the parties that you're seeking
22 to pool today to form that east-half unit?

23 A. That's correct.

24 Q. All right. Now, you mentioned this was all state
25 land. Has the State of New Mexico been notified of this

1 Application?

2 A. Yes, they have.

3 Q. And is Myco Exhibit Number 7 an e-mail notice
4 from the State Land Office, Mr. Jeff Albers, indicating
5 they had no objection to your creation of a nonstandard
6 Atoka spacing unit?

7 A. Yes, sir, it is.

8 Q. All right. Okay, now, I want to turn at this
9 point, then, to the pooling issues, which involve the east
10 half of this section.

11 A. Okay.

12 Q. Now, your Exhibit Number 6 lists the working
13 interest owners and indicates the three parties you're
14 seeking to pool. Is the ownership common throughout this
15 320 section?

16 A. Yes, it is.

17 Q. And you have three owners that you're seeking to
18 pool today?

19 A. That's right.

20 Q. Have you been able to locate these parties?

21 A. No, we have not.

22 Q. Are these some of the same owners that Mewbourne
23 could not locate in 2003 when they obtained their pooling
24 order from the Division?

25 A. Actually, Mewbourne could not locate five people,

1 but we located two, and these are the three we could not
2 locate.

3 Q. Can you explain to the Examiner what additional
4 efforts you undertook to locate these individuals?

5 A. We hired a private investigator, and he found two
6 of the three for us.

7 Q. And is Myco Exhibit Number 8, is that the report
8 from the private investigator that you hired?

9 A. Yes, it is.

10 Q. Okay. And he was able, according to this report,
11 was able to find an address for one of the interest owners,
12 Kawasaki?

13 A. That's correct.

14 Q. And for the other two interest owners, Ms. Keller
15 and Mr. -- I assume it's Mr. Holden, he was unable to find
16 any addresses?

17 A. That's right.

18 Q. Did you send your re-entry proposal to the
19 address that your investigator was able to find for Mr. and
20 Mrs. Kawasaki?

21 A. Yes, sir, Mr. Kawasaki in Hawaii.

22 Q. In Hawaii, okay. Has that been marked as Myco
23 Exhibit Number 9?

24 A. Yes, it has.

25 Q. Do you know whether that letter was received at

1 that address?

2 A. The tracking of the Federal Express indicates
3 that it was received, and we tried to find a telephone
4 number for Mr. Kawasaki at that address after he received
5 that, and we were not able to find a telephone number or
6 anything.

7 Q. Have you received any response from him?

8 A. No, sir, not at all.

9 Q. Okay. In your opinion, have you made a good-
10 faith effort to locate and obtain a voluntary agreement --
11 Let me back up. In your opinion, have you made a good-
12 faith effort to locate these individuals?

13 A. Yes, we have.

14 Q. Okay, and you've attempted to reach an agreement
15 with Mr. Kawasaki, based on the address that you have?

16 A. That's correct.

17 Q. Now, is Myco Exhibit Number 10 the AFE that you
18 have developed for this re-entry project?

19 A. Yes, it is.

20 Q. And was this sent with the letter to the
21 Kawasakis?

22 A. Yes, sir.

23 Q. All right. And has Myco engaged in similar re-
24 entry projects in Eddy County?

25 A. Yes, they have.

1 Q. And are these costs in line with what Myco has
2 incurred for similar projects?

3 A. Yes, they are.

4 Q. Would you just briefly review for the Examiner
5 what your dryhole and your completed well costs are
6 expected to be?

7 A. The dryhole costs for the re-entry are \$180,100,
8 and completed the total would be \$619,110.

9 Q. Okay. Now, have you made an estimate of the
10 overhead and administrative costs associated with this re-
11 entry project and for producing this well if you are
12 successful?

13 A. Yes, we have.

14 Q. What are those numbers?

15 A. \$6138 a month while drilling and \$613 a month
16 while producing.

17 Q. Okay, now where did you get those figures?

18 A. We actually went to the force-pool order, and it
19 had granted \$6000, which was in line with what Myco would
20 be doing anyway, and we escalated according to the COPAS
21 escalation allowed in the pooling agreement, and that's --
22 we went -- the rates fixed in the pooling agreement were
23 \$6000 and \$600, so we escalated those.

24 EXAMINER JONES: Now, tell me again how much
25 those are?

1 THE WITNESS: \$6138 a month while drilling --

2 EXAMINER JONES: Okay.

3 THE WITNESS: -- and \$613 a month while
4 producing.

5 EXAMINER JONES: Okay, thank you.

6 Q. (By Mr. Feldewert) Are these overhead rates and
7 administrative costs the amounts that are being billed by
8 Myco under the joint operating agreement in effect with
9 this acreage?

10 A. Yes, they are.

11 Q. Okay, and do you request that these figures be
12 incorporated into the order entered in this case?

13 A. Yes, please.

14 Q. And that they be subject to adjustment in
15 accordance with the applicable COPAS guidelines?

16 A. Yes.

17 Q. All right. And the company that seeks to be the
18 operator of this well is the Applicant, Myco Industries,
19 Inc.; is that correct?

20 A. That's correct.

21 Q. And does Myco request that the Division impose
22 the 200-percent risk penalty authorized by statute and
23 Division Rule 35 against these interest owners that you
24 have been unable to locate?

25 A. Yes, please.

1 Q. Is Myco Exhibit Number 11 an affidavit with
2 attached letters giving notice of this hearing?

3 A. Yes, it is.

4 Q. And we have in the package as Myco Exhibit Number
5 12 the affidavit of publication for this matter --

6 A. Yes.

7 Q. -- in the newspaper in Eddy County?

8 A. Yes.

9 Q. Okay. Were Myco Exhibits 1 through 12 prepared
10 by you or compiled under your direction and supervision?

11 A. Yes, they were.

12 MR. FELDEWERT: Mr. Examiner, I would move the
13 admission into evidence at this time of Myco Exhibits 1
14 through 12.

15 EXAMINER JONES: Exhibits 1 through 12 will be
16 admitted to evidence.

17 MR. FELDEWERT: And that concludes my examination
18 of this witness.

19 And before I forget, Mr. Examiner, if I may
20 approach I can give you a copy of the order under which
21 this well was originally drilled.

22 EXAMINER JONES: Okay, thank you.

23 MR. FELDEWERT: Mr. Examiner, that concludes our
24 presentation.

25 EXAMINER JONES: Let me ask Gail a question.

1 (Off the record)

2 EXAMINER JONES: Okay, back on the record.

3 EXAMINATION

4 BY EXAMINER JONES:

5 Q. Ms. Hodges, I think I understand the case here.
6 I guess one question would be, this west half that's --
7 Well, first of all, the north half, let me state it and you
8 can tell me if I'm wrong, was compulsory pooled for Atoka
9 only?

10 A. Yes.

11 Q. 320 acres?

12 A. That's correct.

13 Q. Okay, and the west half was compulsory pooled for
14 Morrow, Atoka and Strawn?

15 A. Morrow, Wolfcamp and Strawn, no Atoka.

16 Q. Okay, so Atoka is not party to the west half?

17 A. That's right.

18 Q. And you can't do a south-half Atoka for the --

19 A. We discussed that with Mewbourne about the
20 problems that would come about by doing that, and with
21 Mewbourne decided the best route to take would be to do the
22 160 in the southeast quarter. We even visited with the
23 north-half operator to see if there is any other way to
24 correct this problem, and we didn't get anywhere there
25 either.

1 Q. Okay, so is one of the concerns that someday they
2 will want to recomplete in the Atoka, and they would have
3 different owners or something in the --

4 A. And also there would be, I believe, an
5 operatorship issue with -- because either way they went, if
6 they tried to communitize the north half they'd run into
7 the existing com agreement problem, and if they tried to
8 communitize the south half, they'd run into another
9 operator, and so there'd be the two operators either way
10 you turned it. It seemed to be one problem or another.

11 Q. Did they indicate that they will come to the
12 Division for an NSP in the Atoka in the southwest quarter?

13 A. I did not ask them about that.

14 Q. They're waiting to look at your well, probably.

15 A. Probably.

16 MR. FELDEWERT: Yeah, if I may step in, I think
17 what -- obviously the problem that they're trying to avoid
18 here is a situation where if -- at some point in time you
19 assume Mewbourne is going to, once the Morrow is depleted,
20 want to come uphole and complete in the Atoka. And if you
21 do a south-half spacing unit, then when they try to
22 recomplete in the Atoka, all of a sudden they lose
23 operatorship of their well, which of course they would not
24 like to do.

25 So to avoid the situation that can be expected

1 where you would have two operators of two wells in the
2 south-half unit, what they have come up with is the
3 creation of nonstandard spacing units, given the unique
4 ownership situation in this area.

5 EXAMINER JONES: And you decided not to do this
6 administratively; you wanted to come to hearing to do --

7 MR. FELDEWERT: Yes.

8 EXAMINER JONES: -- NSP? Okay.

9 MR. FELDEWERT: Since we had to pool.

10 Q. (By Examiner Jones) Okay, and for your notice --
11 Let's see, on your NSP notice you're supposed to notice all
12 of the mineral estate in the spacing unit, normal spacing
13 unit that would not have been included. So did you notify
14 the mineral estate in the southwest quarter?

15 A. Yes, we did.

16 MR. FELDEWERT: That's Exhibit Number 5.

17 EXAMINER JONES: Exhibit Number 5.

18 THE WITNESS: Yes.

19 MR. FELDEWERT: And all we did is, we obtained
20 waiver letters from all of the interest owners, all of the
21 mineral estate owners.

22 Q. (By Examiner Jones) All the mineral estate
23 owners, okay. And all those working interest owners, there
24 is no overriding royalty owners in that, that needed to be
25 noticed? There's just State Land Office and those owners

1 that are on Exhibit 5?

2 A. That's my understanding.

3 Q. Okay.

4 A. On our well we made some deals with some of the
5 owners in here, and they would have overrides, but they're
6 under our contract, and so --

7 Q. Right.

8 A. -- they're aware of it.

9 Q. For some reason, when they did the com agreement
10 or compulsory pooling on the west half, they did not
11 include the Atoka. They must not have thought it was any
12 good.

13 A. No, I think it's because that com agreement was
14 in existence in the north half.

15 Q. Oh, yeah, yeah. I guess so. Okay.

16 MR. FELDEWERT: Rather unusual.

17 Q. (By Examiner Jones) Okay, and as far as the
18 notice goes on the compulsory pooling, these are the three
19 entities you didn't find?

20 A. That's correct.

21 Q. Okay, these are all royalty owners, right? Or
22 these are all working interest owners, or all royalty
23 owners?

24 A. They are owners in the lease.

25 Q. Owners in the lease.

1 A. Yes.

2 Q. Okay.

3 A. They're all state leases.

4 Q. Okay, I've got you, okay. They're all state
5 leases. Okay.

6 Let's see here, do you have an API number for
7 that well? I'll find it.

8 A. Okay. Could you tell by the look on my face I
9 didn't?

10 Q. And you want the 40 acres in the southwest of the
11 southeast? You just want to throw that in to cover the
12 bases?

13 A. Just kind of cover -- Yes, sir, cover the bases.

14 Q. Okay. And the east half, then, would not include
15 the Atoka, would it, because your Atoka is already covered
16 in the north -- well, it would include it in the NSP, but
17 the compulsory pooling for the east half of that section
18 cannot -- needs to exclude the Atoka, right?

19 MR. FELDEWERT: I believe that we need to, for
20 these three parties, since the ownership is common, include
21 them in the pooling. And so we have requested as part of
22 the pooling the 160 spacing, which would be the result of a
23 nonstandard spacing unit in the Atoka.

24 EXAMINER JONES: In the Atoka, but the wording of
25 the compulsory pooling says all formations spaced on 320

1 acres, right?

2 MR. FELDEWERT: Uh-huh.

3 EXAMINER JONES: Which would be normally the
4 Atoka?

5 MR. FELDEWERT: Correct, and then all that are
6 spaced on 160.

7 EXAMINER JONES: And then all that are spaced on
8 160. So -- Okay. I think we can go with the standard
9 wording and --

10 MR. FELDEWERT: I think so.

11 EXAMINER JONES: -- and be okay on that.

12 MR. FELDEWERT: You know, I think what we have
13 here is obviously a unique orientation for this spacing
14 unit, and really an effort by all the operators involved to
15 avoid a future problem in the event that Mewbourne seeks to
16 complete uphole, so this is a rather unusual case.

17 EXAMINER JONES: But the advantage of us granting
18 this would be avoiding problems in the future.

19 MR. FELDEWERT: Operational problems when
20 Mewbourne decides to recomplete their well in the Atoka.

21 Q. (By Examiner Jones) Okay. And these costs are
22 just -- \$6138 for the time of the re-entry, not including
23 the hookup time? Just the drillout time, and run-the-
24 casing time?

25 A. That's correct.

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Q. Okay.

A. That's correct.

EXAMINER JONES: Okay, I don't think I have any more questions. Okay, thank you very much, Ms. Hodges.

THE WITNESS: Thank you.

EXAMINER JONES: That's all my questions.

MR. FELDEWERT: That concludes our presentation.

EXAMINER JONES: Okay. With that, let's take Case 13,325 under advisement.

(Thereupon, these proceedings were concluded at 8:59 a.m.)

* * *

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. _____ heard by me on _____, Examiner
Oil Conservation Division

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL September 2nd, 2004.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006