

**STATEMENT OF AGREEMENT BETWEEN
THE POTASH INDUSTRY AND OIL AND
GAS INDUSTRY ON CONCURRENT
OPERATIONS IN THE POTASH AREA
IN EDDY AND LEA COUNTIES, NEW MEXICO**

Introduction

This Statement of Agreement sets forth the joint agreement of the Potash Industry and Oil and Gas Industry on important issues concerning the concurrent development of potash and oil and gas reserves in Eddy and Lea Counties, New Mexico. It represents the efforts of numerous representatives from each Industry over many months and is intended to resolve many of the disputes that have arisen as a result of concurrent oil and gas drilling activities in the vicinity of underground potash mining.

The parties recognize that this Agreement will not resolve all disputes or disagreements that may arise and that regulatory intervention may still be necessary in some instances. By entering into this Agreement, however, each industry recognizes the right of the other to develop its mineral resources in a safe and economical manner and acknowledges that concurrent development of multiple mineral resources places certain limits on each industry. Each also agrees that these limits can be better defined through good faith discussions among industry representatives familiar with industry technology and practices than repeated and prolonged litigation or administrative proceedings.

OIL CONSERVATION DIVISION	
Case No. 9316	
2	2/18/88

In attempting to accomplish this, each Industry has made concessions on issues considered critical to it in a good faith effort to obtain concessions from the other. For this reason, both Industries agree that the terms of this Statement of Agreement are subject to the following conditions:

1. Upon approval by representatives of each Industry, the terms of the Agreement will be submitted to and must be adopted without substantial change by the New Mexico Oil Conservation Commission ("OCC") in lieu of the current Order R-111A, as amended;
2. The terms of the Agreement will be submitted to and must be adopted without substantial change by the U. S. Department of Interior, Bureau of Land Management ("BLM") in lieu of Section III (E) of the Secretary of the Interior's Order of October 21, 1986 [51 Fed. Reg. 39425];
3. Each Industry will use its best efforts to secure approval of the terms of the Agreement from the OCC and BLM; and
4. In the event the terms in the Agreement are not adopted without substantial change by both the OCC and the BLM, this Statement of Agreement will become null and void and will not be referred to by any Industry representative on the Study Committee in any future proceeding before the OCC or BLM.

It is the intention of the parties to this Agreement that:

(1) certain areas of potash deposits, called "life-of-mine-reserves" or "LMR's," be permanently protected from oil and gas drilling activities; and (2) to make available for oil and gas drilling activities, certain areas within the Potash Area. The area of potash deposits protected will be determined in accordance with this Agreement but, generally speaking, will encompass the yellow, orange and a major portion of the blue

areas shown on the BLM Potash Resources Map as it existed on October 1, 1984. Areas in the Potash Area that will be available for oil and gas drilling activities will be those areas outside the designated LMR's which, generally speaking, will be the red, green, grey and a minor portion of the blue areas shown on the BLM Potash Resources Map as it existed on October 1, 1984, less areas designated as buffer zones by this Agreement.

I. The Potash Area

A. The Area covered by this Agreement shall be known as the "Potash Area".

B. The "Potash Area" includes those tracts of land in Southeastern New Mexico, from the surface downward, which are designated as a "potash area" by the Secretary of the Department of Interior in Section V of the Order dated October 21, 1986 and published in the Federal Register on October 28, 1986 [51 Fed. Reg. 39426]. It shall also include any subsequent revisions to such designations. The terms "potash" and "commercial deposits of potash" shall have the same meaning as assigned by the U. S. Department of Interior.

C. It is the intent of the parties to this Agreement that the "Potash Area" designated by the State of New Mexico be identical to that designated by the U. S. Department of Interior. Accordingly, if the "potash area" designated in the Secretarial Order of October 21, 1986 [51 Fed. Reg. 39425] is revised, the OCC, on its own motion after notice and hearing as

provided by applicable laws and regulations, will adopt the same revision.

II. Designation of Mine Reserves

A. Within ninety (90) days following adoption of this Agreement by the OCC and BLM and annually thereafter by January 31 if revised, each potash lessee, without regard to whether the lease covers State or Federal lands, shall file with the District Manager, BLM, a designation of the potash deposits considered by the potash lessee to be its life-of-mine reserves ("LMR"). For purposes of this Agreement, "life-of-mine reserves" means those potash deposits within the Potash Area reasonably believed by the potash lessee to contain potash ore in sufficient thickness and grade to be mineable using current day mining methods, equipment and technology. Information used by the potash lessee in identifying its LMR shall be filed with the BLM but will be considered privileged and confidential "trade secrets and commercial . . . information" within the meaning of 43 C.F.R. §2.13(c)(4) (1986) and not subject to public disclosure.

B. An authorized officer of the BLM shall review the information submitted by each potash lessee in support of its LMR designation and verify, upon request, that the data used by the potash lessee in establishing the boundaries of its LMR is consistent with data available to the BLM. Any disputes between the BLM and potash lessee concerning the boundary of a designated LMR shall be resolved in accordance with the

Department of Interior's Hearings and Appeals Procedures, 43 C.F.R. Part 4 (1986).

C. A potash lessee may amend its designated LMR by filing a revised designation with the BLM accompanied by the information referred to in Section A above. Such amendments must be filed by January 31 next following the date the additional data becomes available.

D. An authorized officer of the BLM shall commit the designated LMR of each potash lessee to a map(s) of suitable scale and thereafter revise the map(s) as necessary to reflect the latest amendments to any designated LMRs. These maps shall be considered privileged and confidential and exempt from disclosure under 43 C.F.R. Part 2 and will be used only for the purposes set forth in this Agreement.

III. Drilling in the Potash Area

A. All oil and gas wells drilled in the Potash Area after approval of this Agreement by the OCC and BLM, including those currently pending before the OCC and/or BLM, shall be subject to the terms of this Agreement.

B. It is the policy of the OCC and BLM to approve or deny applications for permits to drill (APD's) in the Potash Area in accordance with the following:

1. LMR and Buffer Zone. No oil or gas well shall be allowed from a surface location: (a) within the LMR of any potash lessee; (b) within one-fourth (1/4) mile, or a distance equal to the depth of the ore plus ten percent (10%), whichever is greater, of the LMR of any potash lessee; or (c) where the well casing will pass within one-fourth (1/4) mile, or a distance equal to

the depth of the ore plus ten percent (10%), whichever is greater, of the LMR of any potash lessee.

2. Outside Buffer Zone But Within One-Half (1/2) mile of LMR. An APD for an oil or gas well at a location more than one-fourth (1/4) mile, or a distance equal to the depth of the ore plus ten percent (10%), whichever is greater, but less than one-half (1/2) mile from the LMR of any potash lessee may be approved only if: (a) the bottom hole location does not extend below the base of the Delaware Mountain Group, and (b) the well is drilled in accordance with the cementing and casing requirements set forth in Section V.
3. More Than One-Half Mile But Less Than One Mile From LMR. An APD for an oil or gas well at a location more than one-half (1/2) mile but less than one mile from the LMR of any potash lessee may be approved regardless of the depth of the bottom hole location provided: (a) wells with bottom hole locations below the base of the Delaware Mountain Group are drilled in accordance with the cementing and casing requirements set forth in Section V of this Agreement, and (b) wells to bottom hole locations above the base of the Delaware Mountain Group may be drilled without regard to the requirements in Section V of this Agreement but must be drilled in accordance with then current Industry safety standards.
4. More Than One Mile From LMR. An APD for an oil or gas well at a location more than one mile from the LMR of any potash lessee may be approved regardless of the depth of the bottom hole location and without regard to the requirements of Section V of this Agreement.
5. Open Mine Workings. No oil or gas well shall be allowed from any location where the well casing will pass within one-fourth (1/4) mile or a distance equal to the depth of the ore plus ten percent (10%), whichever is greater, of any open mine workings.
6. Abandoned Mine Workings. No oil or gas well shall be allowed from any location where the well casing will pass through or within one-fourth (1/4) of a mile or a distance equal to the depth of the ore plus ten percent (10%), whichever is greater, of any abandoned mine workings that are connected to an existing mine by an opening or barrier of one-hundred (100) feet or less unless the APD is accompanied by the sealing and safety plan and certification described in Paragraph C below.

7. An APD for a directionally drilled oil or gas well to a bottom hole location underlying the LMR of any potash lessee may be approved subject to the limitations and requirements set forth in Paragraphs 1 - 6 above. Directionally drilled holes shall be drilled vertically until they have completely penetrated Marker Bed No. 126 (U.S.G.S.) of the Salado Formation at which time they may be deviated.

C. An oil and gas operator desiring to drill a well to a bottom hole location that does not extend below the base of the Delaware Mountain Group from a surface location where the well casing will pass through or within one-fourth (1/4) of a mile or a distance equal to the depth of the ore plus ten percent (10%), whichever is greater, of abandoned mine workings that are connected to an existing mine by any opening or a barrier of one-hundred (100) feet or less shall prepare and submit to all affected potash lessees a plan and program for sealing off the area to be penetrated from other mine workings. Approval of any such plan shall be in the sole discretion of the affected potash lessees. Any approved plan shall be attached by the oil and gas operator to the APD for filing with the OCC, and/or BLM. The oil and gas operator shall also complete a certification in the form prescribed by the OCC and/or BLM that the drilling of such well will not create a safety hazard to affected potash lessees.

D. It is the belief of both parties that the provisions of this Agreement eliminate the need for drilling islands and three-year mining plans and, therefore, both agree that no drilling islands will be established in the Potash Area and the filing of three-year mining plans will be eliminated.

IV. Location of Wells and Notice to Potash Lessee

A. The BLM, upon request, will advise oil and gas lessees of the surface locations where wells will be allowed to develop the leases. Oil or gas leases covering areas designated a LMR by a potash lessee will be unitized to the extent possible with other areas where drilling is allowed.

B. An oil or gas operator desiring to drill an oil or gas well in the Potash Area or within one (1) mile of a potash lease shall prepare and file an APD with the OCC and/or BLM along with a map or plat showing the location of the proposed well. One copy of the APD and map or plat shall be served by registered mail, return receipt requested, on all potash leaseholders within one (1) mile of the proposed well location. However, if the APD is for an oil or gas well that will penetrate abandoned mine workings, all potash leaseholders in the Potash Area shall be notified. Proof of such service shall be attached to the APD and filed with the OCC and/or BLM. Within twenty (20) days of service of an APD and required documents, any potash leaseholder within one (1) mile of the proposed well location (or any affected potash lessee if the proposed well will penetrate abandoned mine workings) may file an objection with the OCC to the proposed well. If the objections cannot be resolved by agreement of the parties, the matter shall be referred for hearing before the OCC.

C. The failure of a potash leaseholder to object to a well location or its agreement to the drilling locations

referred to in this Agreement shall not constitute a release of liability. Oil and gas leaseholders and those persons and/or entities involved in the development of the lease shall be responsible as provided by law for any damages caused by them to any person by the release of gases or liquids into the strata or atmosphere as a result of drilling activities.

V. Drilling and Casing Program

[Same as current R-111-A]

VI. Drilling Fluid for Salt Section

[Same as current R-111-A]

VII. Plugging and Abandonment of Wells

[Same as current R-111-A]

VIII. Filing of Well Surveys

The OCC may require an oil and gas operator to file a certified directional survey from the surface to a point below the lowest known potash bearing horizon on all wells drilled in the Potash Area. All encounters with flammable gases, including H₂S, shall be reported by the operator to the OCC.

IX. Additional Safety Requirements and Emergency Action

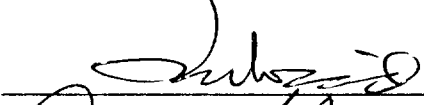

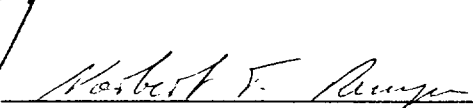
A. All oil and gas drilling activities within the Potash Area shall be performed using appropriate technology, equipment, and procedures to reduce the hazards of such activities to underground mines and miners and be conducted in accordance with the prudent operator standard.

B. Only the minimum number of wells necessary to develop an oil or gas lease will be allowed within the Potash Area.

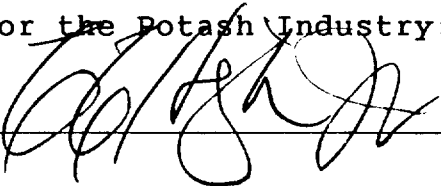
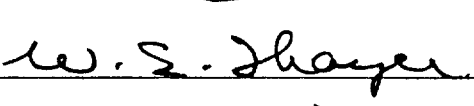
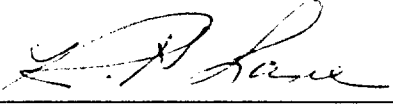
C. In the event the increased oil and gas drilling activities allowed by this Agreement result in a safety hazard or if data developed in the course of such increased activities make it reasonably appear that such activities are or will become a hazard to underground miners or mining activities, the BLM and/or OCC will, upon request, initiate proceedings in accordance with NMSA 70-2-23 and/or other applicable laws and regulations to review such data and take whatever emergency steps are found necessary to eliminate such hazard. Potash lessees may, in addition, initiate actions for injunctive relief under NMSA 70-2-29. The taking or failure to take such action by the OCC or any potash lessee shall not relieve the oil and gas lessee from liability for any damages caused by its oil and gas activities.


AGREED TO AND APPROVED THIS 23rd DAY OF November, 1987, BY THE FOLLOWING REPRESENTATIVES OF EACH INDUSTRY COMPRISING THE POTASH-OIL AREA SPECIAL RULES STUDY COMMITTEE:

For the Oil and Gas Industry:

For the Potash Industry:



1727L-7