

**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. 14131  
ORDER NO. R-12983**

**APPLICATION OF NADEL AND GUSSMAN HEYCO, LLC FOR AN ORDER  
AUTHORIZING THE DRILLING OF A WELL IN THE POTASH AREA, EDDY  
COUNTY, NEW MEXICO.**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing at 8:15 a.m. on May 29, 2008, at Santa Fe, New Mexico, before Examiners David K. Brooks and Terry G. Warnell.

NOW, on this 13th day of August, 2008, the Division Director, having considered the testimony, the record and the recommendations of the Examiners,

**FINDS THAT:**

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) In this application, Nadel and Gussman HEYCO, LLC ("Nadel and Gussman" or "Applicant") seeks approval of an Application for Permit to Drill (APD) for a gas well at a location that is within the "Potash Area," as defined by Commission Order No. R-111-P, issued in Case No. 9316 on April 21, 1988 (Order No. R-111-P), and located within a potash operator's designated Life-of-Mine Reserves (LMR) area, as defined in Order No. R-111-P.

(3) Applicant filed the Application for Permit to Drill (APD) its proposed Heyco State Well No. 2 (the subject well), to be located at a standard Morrow gas well location, 1650 feet from the North line and 1980 feet from the West line (Unit F) of Section 32, Township 20 South, Range 30 East, NMPM, in Eddy County, New Mexico

(the proposed location), with the Artesia District Office of the Division. Because this location is within the Potash Area, Applicant notified Intrepid Potash Company (Intrepid), the owner of a potash lease including the proposed location.

(4) The Division's Hobbs District Office determined that the proposed well location is within an LMR. Ordering Paragraph G(3) of Order No. R-111-P provides that:

Any application to drill in the LMR area, including buffer zones, may be approved only by mutual agreement of lessor and lessees of both potash and oil and gas interests.

Intrepid did not agree to the drilling of the subject well at the proposed location. Accordingly, the District Office denied the APD.

(5) At the hearing, Applicant appeared through its attorney and presented land and geologic testimony as follows:

(a) Applicant proposes to drill the subject well on a State of New Mexico oil and gas lease comprising the W/2 of Section 32, Township 20 South, Range 30 East, to a depth sufficient to test the Morrow formation.

(b) Intrepid holds a potash lease from the State of New Mexico that includes the W/2 of Section 32, Township 20 South, Range 30 East.

(c) There is a producing Strawn well, Applicant's Yates State Well No. 1, in Unit E of Section 32. There is a producing Morrow well, Lynx Petroleum's BD State Well No. 2, in Unit B of Section 32.

(d) There is a producing Strawn well to the north of Section 32, in the SE/4 of Section 29, Township 20 South, Range 30 East. In addition, there are plugged and abandoned wells that either produced from, or were drilled to, the Strawn or Morrow formations to the west, in the NE/4 of Section 31, to the east, in the NW/4 of Section 33, Township 20 South, Range 30 East, and to the south in the SE/4 and SW/4 of Section 32.

(e) Intrepid and HB Potash, LLC, an affiliate of Intrepid with the same address as Intrepid, are the only potash operators that own any potash leases within one mile of the proposed location.

(f) Potash miners believe that potash mining operations cannot safely be conducted within 1/2 mile of any active or abandoned deep-gas well bore.

(g) Virtually all of the area within 1/2 mile of the proposed location, and virtually all of Section 32, is located within 1/2 mile of one or more of the above-identified, existing deep gas wells.

(j) The proposed location is geologically favorable for a Morrow well, as indicated by its structural position in the Morrow and by its proximity to other wells exhibiting favorable Morrow reservoir characteristics.

(6) In addition to its request for approval of its APD for the proposed Heyco State Well No. 2, Applicant seeks an order that would allow the district office to approve APDs for additional wells in Section 32, Township 20 South, Range 30 East, NMPM, without approval of potash lessees.

(7) Intrepid sent a letter to the Division objecting to the granting of Applicant's request for consent to drill the subject well and also specifically objecting to Applicant's request for an order authorizing the district office to approve additional wells in Section 32 without Intrepid's consent. However, neither Intrepid, nor any other party, appeared at the hearing, or otherwise brought to the Division's attention any evidence showing that this Application should not be granted.

The Division concludes that:

(8) Although Ordering Paragraph G(3) of Order No. R-111-P provides that an APD for a well within the LMR or buffer zone can be approved only with the agreement of the affected potash lessees, Finding Paragraph (20) of the same order states:

The Commission cannot abdicate its discretion to consider applications to drill as exceptions to its rules and orders but in the interest of preventing waste of potash should deny any application to drill in commercial potash areas . . . unless a clear demonstration is made that commercial potash will not be wasted unduly as a result of the drilling of the well.

(9) In this case, Applicant has made a clear demonstration that the drilling of the subject well will not cause any undue waste of potash, since virtually all of the area that will be rendered unsafe for potash mining by the drilling of the subject well at the proposed location is already condemned for potash mining due to its proximity to other active or abandoned deep gas wells.

(10) The drilling of the subject well is necessary to prevent waste of natural gas that likely cannot be produced if the well is not drilled, and to protect the correlative rights of the owners of minerals in the W/2 of Section 32. Accordingly, Applicant's APD for the proposed well, if otherwise approvable, should be approved notwithstanding the absence of express consent from Intrepid.

(12) Because virtually all of Section 32, and the immediately surrounding area, is already condemned for potash mining by existing, active or abandoned gas wells, the drilling of additional wells for oil or gas in Section 32 will not cause undue waste of potash. Accordingly, Applicant's request for an order directing the Artesia District Office of the Division to approve otherwise approvable APDs for additional wells in Section 32 without requiring express approval from any potash lessee should also be granted.

**IT IS THEREFORE ORDERED THAT:**

(1) The Artesia District office of the Division shall review Nadel and Gussman HEYCO LLC's Application for Permit to Drill its Heyco State Well No. 2, to be located at a standard gas well location, 1650 feet from the North line and 1980 feet from the West line (Unit F) of Section 32, Township 20 South, Range 30 East, NMPM, in Eddy County, New Mexico. If the District Office finds the APD to be otherwise approvable, including compliance with all provisions of Order No. R-111-P except for the provision of Ordering Paragraph G(3) requiring the agreement of potash lessees, the district office shall approve the same.

(2) If Applicant, or any other oil and gas operator, files an APD to drill a new well within Section 32, Township 20 South, Range 30 East, NMPM, in Eddy County, New Mexico, other than the well described in Ordering Paragraph (1) hereof, the Artesia District Office of the Division shall, if it finds such application to be approvable, including compliance with all provisions of Order No. R-111-P other than the requirement for agreement of potash lessees thereto, shall approve the same, but not before the expiration of twenty days after the oil and gas operator has delivered written notice of the filing of such APD to potentially affected potash lessees in compliance with Ordering Paragraph G(2) of Order No. R-111-P.

(3) All provisions of Order No. R-111-P save and except the provision of Ordering Paragraph G(3) thereof requiring the agreement of potash lessees to the approval of an APD shall continue in full force and affect, and shall apply to the well described in Ordering Paragraph (1) of this order, and likewise to any well approved pursuant to Ordering Paragraph (2) of this Order.

(4) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION



MARK E. FESMIRE, P.E.  
Director



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