

**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. 13325
ORDER NO. R-12056-A**

**APPLICATION OF MYCO INDUSTRIES, INC. FOR COMPULSORY POOLING
AND A NON-STANDARD ATOKA SPACING UNIT, EDDY COUNTY, NEW
MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on September 2, 2004, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 17th day of November, 2004, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

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

(2) The applicant, Myco Industries, Inc. ("applicant"), seeks an order pooling all uncommitted mineral interests from the surface to the base of the Morrow formation underlying the E/2 of Section 14, Township 21 South, Range 27 East, NMPM, Eddy County, New Mexico, in the following manner:

the E/2 forming a standard 320-acre gas spacing and proration unit for all formations or pools spaced on 320 acres within this vertical extent (excluding all Atoka formations or pools), which presently include, but are not necessarily limited to, the Undesignated Alacran Hills-Wolfcamp Gas, Undesignated Burton Flat-Strawn Gas, Burton Flat-Morrow Gas, and Undesignated Cedar Hills-Upper Pennsylvanian Gas Pools;

the SE/4 forming a standard 160-acre spacing and proration unit for all formations or pools spaced on 160 acres within this vertical extent;

the SE/4 forming a non-standard 160-acre spacing and proration unit for all Atoka formations within this vertical extent, which presently include, but are not necessarily limited to the Undesignated South Burton Flat-Atoka Gas Pool; and

the SW/4 SE/4 forming a standard 40-acre spacing and proration unit for all formations or pools spaced on 40 acres within this vertical extent, which presently include, but are not necessarily limited to the East Carlsbad-Bone Spring, Undesignated Northwest Fenton-Delaware, and Undesignated Magruder-Yates Pools.

(3) The above-described units ("the Units") are to be dedicated to the applicant's **Lonetree "14"** State Com Well No. 1 API No. 30-015-32851, located 660 feet from the South line and 1980 feet from the East line (Unit O) of Section 14. This location is non-standard for **Strawn** production in the Undesignated **Burton Flat-Strawn** Gas Pool. This location is standard for all other formations and pools including the Atoka.

(4) The applicant did not apply for permission to produce Strawn gas at this non-standard location.

(5) Two or more separately owned tracts are embraced within the Units, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Units that are separately owned.

(6) Applicant is an owner of an oil and gas working interest within the Units. Applicant has the right to re-enter and proposes to re-enter its **Lonetree "14"** State Com Well No. 1 to a common source of supply at a well location 660 feet from the South line and 1980 feet from the East line (Unit O) of Section 14.

(7) Applicant appeared at the hearing and presented land testimony as follows.

(a) After application of **Mewbourne Oil Company ("Mewbourne")**, the E/2 of Section 14 was force pooled under Division Order No. **R-12056** issued November 25th, 2003, in Case No. 13157, for all uncommitted mineral interests from surface to the base of the Morrow formation. Mewbourne subsequently drilled the **Lonetree "14"** State Com Well No. 1 to the base of the Morrow,

logged, and then plugged the well. Myco then obtained rights from Mewbourne in this E/2 of Section 14, and is interested in re-entering this well primarily to attempt a completion in the Morrow or in the Atoka.

(b) The entire N/2 of Section 14 was **communitized** in 1993 for any Atoka production and Devon Energy Corporation currently operates the Allied State Well No. 1 as an Atoka gas well at a standard location in the NW/4 of Section 14. In addition, Mewbourne has communitized the W/2 of Section 14 for Morrow, Strawn, and **Wolfcamp** production and operates the **Esperanza** "14" State Wells No. 1 and 2 as Morrow gas wells in the W/2 of Section 14.

(c) The applicant cannot form a 320-acre, E/2 of Section 14, spacing unit for Atoka gas, since the N/2 has already been communitized and has a producing Atoka gas well. In addition, the applicant cannot form a 320-acre, S/2 of Section 14, spacing unit for Atoka gas and be the operator, since Division rules prohibit two operators of deep gas spacing units in the Southeast portion of New Mexico. Mewbourne has no objection to this application for a 160-acre, SE/4 of Section 14, non-standard spacing unit for Atoka gas.

(d) Parties affected by this proposed non-standard proration unit in the SW/4 of Section 14 have been notified and no objections were received. The New Mexico State Land Office is the mineral owner in this E/2 of Section 14, has considered this matter, and has decided not to **object** to the proposed non-standard proration unit.

(e) Applicant believes the SE/4 of Section 14 is prospective for Atoka gas production.

(8) Applicant's proposal to form a 160-acre, SE/4 of Section 14, non-standard spacing unit for Atoka gas production should be approved.

(9) There are interest owners in the proposed Units that have not agreed to pool their interests.

(10) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Units the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Units.

(11) Applicant should be designated the operator of the proposed well and of the Units.

(12) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.

(13) Reasonable **charges** for supervision (combined fixed rates) should be fixed at \$6,138 per month while re-entering and \$613.00 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled *"Accounting Procedure-Joint Operations."*

IT IS THEREFORE ORDERED THAT;

(1) Pursuant to the application of Myco Industries, Inc. ("applicant"), all uncommitted mineral interests, whatever they may be, in the oil and gas from the surface to the base of the Morrow formation underlying the E/2 of Section 14, Township 21 South, Range 27 East, NMPM, Eddy County, New Mexico, are hereby pooled, as follows:

the E/2 forming a standard 320-acre gas spacing and proration unit for all formations or pools spaced on 320 acres within this vertical extent (excluding all Atoka formations or pools), which presently include, but are not necessarily limited to, the Undesignated **Alacran Hills-Wolfcamp** Gas, Undesignated **Burton Flat-Strawn** Gas, **Burton Flat-Morrow** Gas, and Undesignated **Cedar Hills-Upper Pennsylvanian** Gas Pools;

the SE/4 forming a standard 160-acre spacing and proration unit for all formations or pools spaced on 160 acres within this vertical extent;

the SE/4 forming a non-standard 160-acre spacing and proration unit for all Atoka formations within this vertical extent, which presently include, but are not necessarily limited to the Undesignated **South Burton Flat-Atoka** Gas Pool; and

the SW/4 SE/4 forming a standard 40-acre spacing and proration unit for all formations or pools spaced on 40 acres within this vertical extent, which presently include, but are not necessarily limited to the East Carlsbad-Bone Spring, Undesignated Northwest Fenton-Delaware, and Undesignated Magruder-Yates Pools.

The above-described units ("the Units") are to be dedicated to the applicant's Lonetree "14" State Com Well No. 1, API No. 30-015-32851, to be re-entered at a well location 660 feet from the South line and 1980 feet from the East line (Unit O) of Section 14.

(2) Prior to any production from the Strawn Gas, the operator shall obtain a permit from the Division for exception to the location rules contained in the special pool rules for the Undesignated Burton Flat-Strawn Gas Pool.

(3) The application to form a non-standard spacing unit within the Undesignated South Burton Flat-Atoka Gas pool for production from the Atoka formation is hereby approved.

(4) The operator of the Units shall commence re-entry operations on the proposed well on or before March 1, 2005 and shall thereafter continue drilling the well with due diligence to test the Morrow formation.

(5) In the event the operator does not commence re-entry operations on the proposed well on or before March 1, 2005, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(6) Should the proposed well not be re-entered and completed within 120 days after commencement thereof, Ordering Paragraph (1) shall be of no further effect, and the unit created by this Order shall terminate unless the operator appears before the Division Director and obtains an extension of time to complete the well for good cause demonstrated by satisfactory evidence.

(7) Upon final plugging and abandonment of the Lonetree "14" State Com Well No. 1, the pooled units created by this Order shall terminate, unless this order has been amended to authorize further operations.

(8) Myco Industries, Inc. is hereby designated the operator of the proposed well and of the Units.

(9) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Units, including **unleased** mineral interests, who are not parties to an operating agreement governing the Units.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Units an itemized schedule of estimated costs of drilling, completing and equipping the proposed well ("well costs").

(10) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(11) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(12) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(13) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and

- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(14) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(15) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$6,138 per month while drilling and \$613 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COP AS form titled "Accounting Procedure-Joint Operations." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(16) Except as provided in Ordering Paragraphs (11) and (13) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(17) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(18) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(19) The operator of the well and Units shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(20) 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.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, P.E.
Director