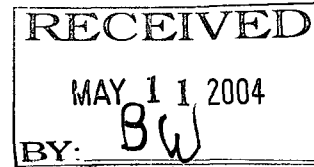




May 8, 2004

IMC Potash Carlsbad Inc.
P. O. Box 71
1361 Potash Mines Road
Carlsbad, New Mexico 88221-0071
505.887.2871

Joanna Prukop
Acting Director
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505



RE: Case Number 13253
Yates Petroleum Corp.

Dear Ms. Prukop:

I have received an additional letter from Yates' lawyer, Mr. Carr, strongly mischaracterizing my position on the Division's subpoena. Since the arguments presented are numerous I will respond in order, numbering my paragraphs to match his arguments.

1. I received a subpoena after work hours on Friday, April 16, for my appearance and for me to bring numerous documents to an examiner hearing on April 29. I disagreed with Mr. Carr in that all the ordered documents were relevant and full compliance would have resulted in more information than could be reviewed in the course of an examiner hearing.

2. On April 22, four working days later, when it became apparent that Mr. Carr was not going to return my phone call, I sent a written reply to everyone concerning the subpoena. Before making reply I discussed the issue with David Brooks, the individual who signed the subpoena. It was his suggestion for me to contact Mr. Carr to see if we could come to a mutual agreement for what documents were required, as well as send a letter to Richard Ezeanyim listing my reservations. As Mr. Carr noted, Rule 1211 allows for subpoenas to be issued but Rule 1212 allows evidentiary rules may be relaxed to better serve "the ends of justice."

3. Mr. Carr has taken the position that he, not the Division, will decide what is relevant to the Application at issue. I clearly stated in my reply that the "subpoena be quashed as to documents required until their need is shown to the satisfaction of the Hearing Examiner."

4. & 5. Procedurally flawed reply? See Rule 1212.

6. I followed proper procedure for objecting to this subpoena as directed by the Assistant General Counsel of the OCD. Examiner Hearings have in the past not **required** representation by counsel. I personally have appeared at previous examiner hearings without counsel and proffered IMC's objections without any impediment [Again, see Rule 1212]. The true issues of this case are not legal and the facts are better presented by those knowledgeable of the issues. [Note: Counsel's request for "reservoir parameters" used.]

7. The basis for IMC to request the subpoena be modified is obvious to anyone familiar with the subject matter. It is not logical that Yates would base their case on several boxes of documents they would not see until the day of the hearing. As for the June 1 expiration date, if Yates is successful before the hearing examiner, IMC intends to appeal to the Oil Conservation Commission for a hearing de novo.

8. IMC does claim it will mine in this area within three years, a claim that will be proven by the information I intended to bring to the hearing. It does not require every map ever drawn of an area to properly show its current circumstance.

9. The information that is shown on the map I was to bring will show, among many other things requested in the subpoena:

- a) that IMC is currently mining and intends to continue to mine the area;
- b) where IMC's current operations are with regard to the proposed wells;
- c) when the acreage was most recently mined;
- d) what grade of ore is indicated in the acreage at issue;
- e) what thickness and quality of ore is indicated in the acreage at issue;
- f) that the ore is currently being economically mined.

10. My copy of Mr. Carr's Motion failed to have this particular paragraph.

11. IMC is in no way playing games, legalistic or otherwise. This process would have progressed much further and much faster if Mr. Carr had not asked the hearing be continued, had made his case for allowing the wells and allowed IMC to show facts as to why the wells should not be allowed. The legalistic maneuvers have only slowed matters and diminished serving "the ends of justice." [Rule 1212]

12. IMC has not refused to obey the lawfully issued subpoena but has respectfully requested moderation in its requirements. IMC is very willing to participate in a prehearing conference, but with Mr. Carr's insistence on dealing only with counsel, scheduling will be difficult. Mr. Charles C. High, Jr., IMC's counsel in these matters has numerous conflicts for the next two weeks which preclude him from being present on the May 13 hearing date.

13. Again, IMC is not disregarding the Division's Order, merely contesting the expansive scope Mr. Carr wrote into the subpoena. IMC is offering to provide fully the information this matter requires.

14. IMC is in no way waiving its right to object nor waiving its right to de novo hearing before the Commission. [Rule 1220]

15. IMC has just now been made aware of Yates willingness to re-evaluate the quantity of materials and documents required to present its case by means of a prehearing conference. The conference is to be held by telephone at 10:00 am, Tuesday, May 11.

Conclusion

Yates, through their attorney, has simply demanded far more information and documents than are reasonable to expect in this matter. As stated in the original objection to the subpoena, IMC continues to "intend to bring such documents" as are pertinent to the case. In particular, Mr. Carr's demand that "All IMC land files" be produced displays a wanton disregard for relevance and his requirement for all "reservoir engineering analysis" displays his lack of familiarity with potash issues.

With Mr. Carr's insistence, IMC now intends to have Charlie High and his associate Walker Crowson, as counsel at the examiner hearing. Due to unavoidable scheduling conflicts, Mr. High cannot appear at the May 13 hearing. IMC hereby requests that the hearing on Case No. 13253 be continued to the May 27, 2004 examiner hearing docket so that counsel can be present.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Morehouse".

Dan Morehouse

Mine Engineering Superintendent

cc: Gail MacQuesten, Assistant General Counsel for the NMOCD
Bill Carr, Counsel for Yates
Charlie High, Counsel for IMC
Richard Ezeanyim, Chief Engineer (Supervisor of Hearing Examiners)

HOLLAND & HART ^{LLP}



William F. Carr
wcarr@hollandhart.com
44519.0095

May 7 2004

RECEIVED

MAY - 7 2004

Gail MacQuesten
Oil Conservation Division
Energy, Minerals & Natural Resources Department
1220 South St. Francis Drive
Santa Fe, NM 87504

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

Re: **Oil Conservation Division Case No. 13253: Application of Yates Petroleum Corporation for an Order Authorizing the Drilling of Three Wells in the Potash Area, Eddy County, New Mexico.**

Dear Ms. MacQuesten:

Yates Petroleum Corporation will appear at the May 11 prehearing conference.

We do not agree with the allegations contained in Mr. Morehouse's May 8, 2004 letter. Our participation in the conference should not be construed as a change in Yates' position regarding the relevance of the documents and materials required to be produced by the subpoena.

I appreciate your attention to this matter.

Very truly yours,

William F. Carr
of Holland & Hart LLP

WFC:keh

Cc Dan Morehouse

Holland & Hart ^{LLP}

Phone [505] 988-4421 Fax [505] 983-6043 www.hollandhart.com

110 North Guadalupe Suite 1 Santa Fe, NM 87501 Mailing Address P.O. Box 2208 Santa Fe, NM 87504-2208

Aspen Billings Boise Boulder Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Salt Lake City Santa Fe Washington, D.C. ♻