



The Mining and Lands Commissioner Le Commissaire aux mines et aux terres

File No. OG 006-00

L.Kamerman)
Mining and Lands Commissioner)
L.F.G. Carter)
Deputy Mining and Lands Commissioner)

Friday the 23rd day
of March, 2001.

OIL, GAS AND SALT RESOURCES ACT

IN THE MATTER OF

A referral by the Minister, dated the 6th day of November, 2000, to the Mining and Lands Commissioner pursuant to subsection 14(1) of the **Oil, Gas and Salt Resources Act**, from the purported decision of the Inspector to deny an application for new well licence;

AND IN THE MATTER OF

A series of 28 alleged infractions pursuant to subsection 19(1) of the **Oil, Gas and Salt Resources Act**, as set out in Schedule A attached to and forming part of this Order for Costs.

BETWEEN:

MINISTER OF NATURAL RESOURCES

Referrer

and

METALORE RESOURCES LIMITED

Respondent

ORDER FOR COSTS

UPON reading the documentation filed, the correspondence in the file and hearing from Counsel for the parties;

THIS TRIBUNAL ORDERS that the Minister of Natural Resources be and is hereby ordered to pay costs fixed in the amount of \$800.00.

DATED this 23rd day of March, 2001.

Reasons for this Order are Attached.

Original signed by
L. Kamerman

L. Kamerman
Mining and Lands Commissioner

Original signed by
L.F.G. Carter

L.F.G. Carter
Deputy Mining and Lands Commissioner



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REASONS

Background

On November 6th, 2000, the Mining and Lands Commissioner received a referral of the Minister of Natural Resources pursuant to subsection 14(1) of the **Oil, Gas and Salt Resources Act** (the Act). The referral was sent electronically, under the signature of Ernie Habib, Manager, Petroleum Resources, and is reproduced:

Metalore Resources Limited has applied for a new well licence. The Ministry is inclined to deny this application as well as suspending all of the applicant's registered licences due to the applicant's acts and failures to comply with the Oil, Gas and Salt Resources Act. Prior to doing so, the Ministry is hereby referring the mat[t]er to the Mining and Lands Commissioner for a report.

In an effort to ascertain the particulars of the acts and failures alluded to in the referral, Mr. Daniel Pascoe, Registrar of the Office of the Mining and Lands Commissioner, repeatedly sought clarification. The details of the ensuing and considerable electronic correspondence are not reproduced, but summarized from information obtained from the Ministry. There are 28 items referring to 15 different wells.

SCHEDULE 'A'

Nature of Alleged Infraction	Well	Section of Act or Operating Standard
1. Disposal of brine	#20 Roberts-Sagadahoc	19(1)(e) Act
2. Disposal of brine	#25 New Metalore	19(1)(e) Act
3. Improper pipeline installation	#25 New Metalore	5.7.3 Operating Standard
4. Improper pipeline materials	#25 New Metalore	5.7.1 Operating Standard
5. Leaking gas well	#28 New Metalore	19 (1) (e)
6. Construction of a dike	#29 New Metalore	5.6.1 Operating Standard
7. Improper pipeline installation	#29 New Metalore	5.7.3 Operating Standard
8. Improper pipeline material	#29 New Metalore	5.7.1 Operating Standard
9. Disposal of brine	#34 New Metalore	19(1)(e) Act
10. Construction of a dike	#49 New Metalore	5.6.1 Operating Standard
11. Construction of a dike	#51 New Metalore	5.6.1 Operating Standard
12. Construction of a dike	#61 New Metalore	5.6.1 Operating Standard
13. Construction of a dike	#63 New Metalore	5.6.1 Operating Standard
14. Construction of a dike	#66 New Metalore	5.6.1 Operating Standard
15. Leaking gas well	#66 New Metalore	19(1)(e) Act
16. Improper pipeline installation	#66 New Metalore	5.7.3 Operating Standard
17. Improper pipeline materials	#66 New Metalore	5.7.1 Operating Standard
18. Construction of a dike	#72 New Metalore	5.6.1 Operating Standard
19. Improper pipeline installation	#72 New Metalore	5.7.3 Operating Standard
20. Improper pipeline materials	#72 New Metalore	5.7.1 Operating Standard
21. Construction of a dike	#76 New Metalore	5.6.1 Operating Standard
22. Construction of a dike	#83 New Metalore	5.6.1 Operating Standard
23. Leaking gas well	#83 New Metalore	19(1)(e) Act
24. Construction of a dike	#85 New Metalore	5.6.1 Operating Standard
25. Gamma ray neutron log	#89 New Metalore	3.12.15 Operating Standard
26. Improper pipeline materials	#89 New Metalore	5.7.1 Operating Standard
27. Improper pipeline installation	#89 New Metalore	5.7.3 Operating Standard
28. Site rehabilitation	#89 New Metalore	3.1.8 Operating Standard

On January 10, 2001, the Commissioner was advised that the Minister was withdrawing the referral. Metalore advised that it would be seeking costs in this matter and a hearing on the matter of costs was set down for January 16, 2001.

At the commencement of the hearing on costs and pursuant to a request by Mr. Devereux on behalf of Metalore, that it be stated for the record, it was confirmed by Mr. Gibson on behalf of MNR that the referral had been withdrawn.

Appearances

The Ministry of Natural Resources (the "Minister", "MNR" or the "Ministry") was represented by Mr. Stephen Gibson of the law firm of Hennessey, Bowsher, of St. Thomas, Ontario. Metalore Resources Limited ("Metalore") was represented by Mr. Jeremy Devereux of the law firm of Meighan & Demers in Toronto.

Argument

Mr. Devereux

The Ministry's referral to the Commissioner for a report was made pursuant to subsection 14(1) of the **Oil, Gas & Salt Resources Act**:

14 (1) If a person's act or failure to act is an offence under section 19, the Minister may refuse to grant a licence or permit or may suspend or cancel a licence or permit, but before doing so the Minister may refer the matter to the Commissioner, in which case the Commissioner shall report to the Minister on it.

According to Mr. Devereux, the section anticipates that the Commissioner will make a report to the Minister prior to the Minister taking action. In this case, the action referred to is the refusal to grant a licence and the potential suspension or cancellation of other licences.

The powers governing the proceedings are set out in subsection 1(3) of the **Act**:

1.(3) Part VI of the **Mining Act** applies, with necessary modifications, to the exercise of the Commissioner's powers and the performance of his or her duties under this **Act**.

Mr. Devereux submitted that Part VI of the **Mining Act** and in particular, section 126 of that **Act** empowers the Commissioner to award costs in a specific case. Section 126 is set out:

126. The Commissioner may in his or her discretion award costs to any party, and may direct that such costs be assessed by an assessment officer or may order that a lump sum be paid in lieu of assessed costs.

This matter was referred to the Commissioner, as set out in detail above. The purpose of the referral was for MNR to obtain a report prior to the suspension of any licences. Given the seriousness of the potential for cancellation or suspension of all of its licences, according to Mr. Devereux, Metalore retained counsel.

On December 22nd, 2000, Mr. Devereux wrote to the Commissioner, advising that Metalore would move to quash the referral. Mr. Devereux explained that the basis of this motion would have been that in order for MNR to have the power to proceed, there would have had to be an actual offence committed by Metalore. According to the Court of Appeal, there must be a conviction. Mr. Devereux referred to **Re Gill and Registrar of Motor Vehicles et. al. Re Heffren and Registrar of Motor Vehicles** (1985) 51 O.R. (2d) 705 (C.A.) where Findlayson J.A. states at page 712:

An occurrence does not become an offence until there is a conviction, but once there is a conviction, the terms "conviction" and "offence" can be used interchangeably for the purpose of applying Lord Coke's rule.

Answering the Commissioner's question, Mr. Devereux agreed that the statute involved in **Gill** is not identical. However, what was crucial to the Court of Appeal in that case was that it was abhorrent to consider someone guilty of an offence where the process for determining that guilt had not taken place.

Mr. Devereux stated that there were no convictions against Metalore and so it moved to Quash the referral. He referred to section 19:

19. (1) No person shall

- (a) contravene or fail to comply with an order of an inspector or the Commissioner;
- (b) ...
- (c) fail to carry out the instruction of an inspector;
- (d) ...
- (e) waste, lose or dispose of oil, gas or other hydrocarbons, oil field fluid or brine produced in solution mining, or cause or permit its waste, loss or disposal, in a manner that results in,
 - (i) a hazard to public safety, or
 - (ii) pollution of the natural environment as defined in the *Environmental Protection Act*; or
- (f) ...

Mr. Devereux submitted that in order for section 14 of the Act to operate, the existence of the offence is crucial. Metalore has not been convicted of any offences under section 19, and therefore, the referral is without merit.

Mr. Devereux submitted that the costs incurred by Metalore in responding to the referral are costs which have been thrown away, being analogous to a court proceeding.

Referring to his Brief (Ex. 1), and time docket, he submitted that Metalore should be fully indemnified for its costs, in the amount of \$7,377.50 plus GST for a total of \$7,893.93. The docket extends from November 6th, 2000 to January 4th, 2001. A full explanation of various items are included. Several items have been fully blackened out, and others have been marked down to a portion of the total. Mr. Devereux explained that he was working on more than one file for Metalore and the hand-written corrections or adjustments for those items represent the proportion of his time spent on this subsection 14(1) matter.

Mr. Devereux stated that the full hourly rate is claimed in this application for costs, but it does not represent full indemnity. Metalore sought the advice of Mr. Burton Tait, also a lawyer and had meetings and discussions with that gentlemen which are not claimed. Also, there is no claim for disbursements. Nor is there an amount claimed for preparation for and attendance at the motion.

Mr. Gibson

Mr. Gibson commenced by stating that his letter of January 10th, 2001, summarizes the Ministry's position with respect to costs:

It should be recognized that there are a number of issues in dispute between the parties, not necessarily limited to the Section 14(1) application. Both parties have and will continue to incur costs in respect of these matters. To suggest that the Section 14(1) application should be the subject of a separate costs award is unrealistic.

It should also be noted that Mr. Pascoe [Registrar], in his previous communication, had indicated that the application had not been properly brought before the Commissioner and as such suggested a formal withdrawal of same. In my previous letter, I did not disagree with the comments of Mr. Pascoe or the procedure which he proposed. It is to that end that the withdrawal is now being made. I would suggest that such circumstances also weigh against a cost award in favour of Metalore Resources Inc. in respect of this matter.

If Mr. Devereux and his client wish to pursue the issue of costs, they are free to do so in an appropriate fashion, on a motion brought on proper notice and with appropriate supporting documentation.

Mr. Gibson submitted that a motion to quash the referral is premature, in light of the deficiency of the original referral. It is abundantly clear that the decision of MNR to rescind the referral was on the basis that it was not properly before the Commissioner. There is insufficient information to allow the nature, scope and specificity of the referral to be defined. It was deficient. It does not properly construe the matter to come before the Commissioner. Mr. Gibson invited the Commissioner to find that a deficient referral does not create a proceeding.

On the matter of the cost application, Mr. Gibson submitted that the Commissioner ought to not exercise jurisdiction to award costs in a case which never got off the ground. Rather, the Commissioner should apply the principle that an award of costs in an indemnity for costs in a proceeding. With this purported referral, there was in Mr. Gibson's submission, never a properly constituted proceeding before the Commissioner. All that did take place was a file was opened and a Style of Cause was prepared. No Orders to File documentation were issued by the Commissioner. No exchange or productions or documents were required or took place.

In reviewing the correspondence between the Ministry, Metalore and the Commissioner's Office, there is similarly no exchange of correspondence relating specifically to this referral. Other matters were always named in all correspondence. This demonstrates that there was the intermingling of numerous ongoing matters between MNR and Metalore. This fact is reflected in Mr. Devereux's time docket, where he has blackened out or reduced the docket to a considerable degree. Mr. Gibson submitted that the Commissioner ought to not consider the potential reimbursement for other ongoing issues. In this regard, he invited the Commissioner to look through the time docket for specific itemization connected with the referral. He invited the Commissioner to draw the conclusion that there was a pooling of numerous individual matters.

The application for costs is an attempt to attribute the time expended to a four line e-mail which never went anywhere. Mr. Gibson submitted that this is inconsistent with a properly constituted proceeding before the Commissioner.

Referring to what activities took place, Mr. Gibson stated that, despite the inadequate referral, a flurry of activity followed. While there was what he called a "spectre of meetings" nonetheless, limited steps were actually taken in relation to the referral, as discussed above.

The material on file indicates that there had been a mid-November meeting, with a number of issues discussed. Much of the meeting appears to relate to the underlying incidents or infractions which are still pending in the Ministry. The very

fact that there was such a meeting is a testament to the fact that the relationship is one which is fraught. In his submission, the meeting itself cannot be solely attributable to the referral.

Mr. Gibson stated that he was retained in December, 2000 and in his initial letter to Mr. Pascoe, stated in part:

I note that I have had an opportunity to review Mr. Pascoe's e-mail communication of December 18, 2000, to Mr. Smith and Mr. Habib as to the lack of particularization of the issues giving rise to the referral in question. Although an identification of alleged offences has been provided, I would indicate my agreement with your general comment that the matters in question have not been properly referred to your office. I also concede that consideration should be given to withdrawal of the current referral in favour of possible proper re-submission in the future.

Given the above comments, I believe Mr. Devereux's proposed motion to quash is premature. Even in the absence of such prematurity, however, it would not appear that the Mining and Lands Commissioner has the statutory authority to entertain any such motion. Finally, even if such authority existed and particularly in light of the nature of Mr. Devereux's position, any such motion should be more formally initiated and supported on proper evidence as exchanged between the parties along with delivery of Factums and Books of Authority.

In the circumstances, the Minister does not propose to proceed with the current S. 14(1) application on January 16, 2001 and certainly opposes consideration of any motion to quash such application on that date.

It was brought to the attention of the Commissioner that recently, the 28 individual inspection orders which would underlie any referral pursuant to section 14 have themselves been appealed. In fact, Metalore has requested that the Commissioner be designated by the Minister to hear those appeals as well. The costs which Mr. Devereux is claiming as having been thrown away are in fact costs which would be considered in the 28 underlying individual appeals. Mr. Gibson submitted that Metalore should not to be granted full indemnity for costs unnecessarily incurred and money thrown away. The Orders of the Inspector are still in existence and will have to be addressed.

In conclusion, the costs incurred are in relation to outstanding matters. Very little has been incurred in connection with a very premature section 14 referral. Mr. Gibson submitted that the Commissioner ought not to exercise its jurisdiction to award the costs claimed by Mr. Devereux.

As to the quantum claimed by Mr. Devereux, it is on the basis of a solicitor and his own client. There is no basis on the facts before the Commissioner for that scale of costs to be awarded. The normal principles of costs awards are that costs are awarded as a penalty. There is, in Mr. Gibson's submission, no basis to punish MNR in this case. It is being suggested by Mr. Devereux that MNR made a referral, time was spent in challenging the referral and MNR backed down. This is not what happened. Rather, it is a case where the referral was made through informal steps and following the retainer of counsel, MNR recognized that there was a deficiency and it was determined until such time as the details could properly be known and provided, MNR would withdraw the matter.

This is not similar to the case of a plaintiff who gives up or abandons a proceeding. Mr. Gibson stated that MNR may well refer the matter again, not to mention the possibility of the Commissioner being designated to hear the 28 appeals to the Minister pursuant to section 7.0.2 of the Act.

If the Commissioner determines that costs will be ordered, Mr. Gibson submitted that care must be taken to ensure that only that time which legitimately can be attributed to this matter is included. This would involve the first several items for November, 2000. Mr. Gibson submitted that when one sees a time docket with a considerable number of items blackened out, there should be an explanation of the revisions. There are a number of items with reduced time. There has been no information as to how the items were reduced. Based upon the itemization on the time dockets as presented, Mr. Gibson submitted that the Commissioner would have a difficult time attributing specific items to the section 14 referral, particularly when so much refers to other matters. Mr. Gibson submitted that the tribunal cannot reasonably rely upon the docket summary as specifically relating to this premature section 14 referral. If the Commissioner is inclined to grant an award of costs, the matter should be assessed pursuant to provisions of section 127 of the Mining Act.

Response of Mr. Devereux

One overall comment pervades this referral and this is the gravity of what Metalore was facing by this referral. Mr. Habib was purporting to use the referral to not only deny a new licence, but to pull all of Metalore's licences. Essentially, Metalore was told by MNR that it was going to be shut down. Metalore has been in the business of producing gas in the Province of Ontario for 37 years. This was a serious matter and was referred to the Commissioner.

1. Mr. Gibson is relying on the deficiency of the referral as grounds that a cost award not be made. Mr. Pascoe asked for detail for the referral, but from the first day, Mr. Habib made it clear that he was looking for a report on the conduct of Metalore from the

Commissioner as to whether it should shut it down. This was clear from the outset, which was why action was taken so quickly to arrange the first meeting at the Office of the Commissioner. Whatever deficiencies did exist could have been clarified. It is surprising that MNR would admit to this and yet oppose the motion for costs.

2. There is a categorical difference between matters still pending and a section 14 referral, which requires a report of the Commissioner to support the revocation of licences. The inspector's orders, which are pending do not compare to a proposed denial of new and revocation of existing licences. Metalore has dealt with numerous inspector's orders and appeals, before the Commissioner and otherwise. A section 14 referral may be based on section 7 orders or it may be based on something else. The withdrawal of the section 14 referral removes a proceeding which would otherwise take place. A hearing regarding the particular infractions and technical arguments is very different from the looming matter of Metalore's conduct generally, leading to revocation of all its licences.
3. As to the allocation of time as implied by Mr. Gibson, the dockets are neither incorrect nor too difficult to rely upon. These are Mr. Devereux's own dockets, dating back no further than November 6th, being the date of the referral. Actual recorded time was reviewed and reduced according to time attributable to other matters. Those not connected were blackened out. Mr. Devereux submitted that he has produced as complete a document as he could. It was admitted that the process was not scientific. It is not unusual in an assessment by an assessment officer to pull out time spent on a motion when preparing a case for trial, for example. Mr. Devereux submitted that this is the only way it can be done. 22.7 hours were spent on a matter of the greatest seriousness to Metalore, including meetings and discussions with the parties.
4. Mr. Devereux submitted that costs on the basis of a solicitor and his own client are wholly appropriate. Metalore has not claimed full indemnity. There are numerous matters not included. Given the seriousness of the matter for Metalore, and given MNR's admission of deficiencies, it is a proper case for costs. Whether it is a matter which was not properly constituted, or due to a motion that the referral be quashed, MNR realized that it could not proceed and withdrew the referral.

Findings

Jurisdiction

In cases before the Commissioner under the **Oil, Gas and Salt Resources Act**, pursuant to the provisions of subsection 1(3), Part VI of the **Mining Act** applies to the exercise of the Commissioner's powers and the performance of his or her duties.

Subsection 116(1) empowers the Commissioner to:

- (a) give directions for having any matter or proceeding heard and decided without unnecessary formality;

- (c) give such other directions respecting the procedure and hearing as he or she considers proper.

Is There a Proceeding or What Commences a Proceeding?

When the Commissioner's Office receives a document does it automatically follow that an Order to File will be issued immediately? The *Procedural Guidelines for Hearings Before the Mining and Lands Commissioner* indicate that the Commissioner may issue an Order to File. It does not necessarily follow that the Order will be issued immediately.

Mr. Gibson has advocated formality which frankly does not exist in the Office. The bulk of the work of the Office is under the **Mining Act**. Appeals are made by completing and filing an approved form for the Notice of Appeal. Aside from referrals from the Minister of Northern Development and Mines, many applications are made by unrepresented parties and/or those without legal training, being either prospectors or junior mining companies. These letters are oftentimes vague disclosing no cause of action. They may require some action on the part of the Office, such as seeking additional information or clarification, or of providing an explanation of the scope of the applicable provisions.

The Commissioner has taken the position that section 116 of the **Mining Act** allows any manner of proceedings as may be appropriate to the facts and circumstances of the case, without undue formality. It would be impossible to name all of the different ways in which a various matter can and has been processed or handled. There are cases when Order to File documentation is issued immediately. In others, the Office proceeds on the basis of informal discussions, letters and meetings. Again, in most cases, the procedural steps taken are those agreed upon through consultation with the parties. There are cases in which it is necessary to proceed with jurisdictional and procedural motions as well.

As for the referral in this case, when the Commissioner receives a referral from a Minister of the Crown, even if the powers of the Minister have been delegated to a Ministry official, it is not something which is ignored, minimized or even dismissed. If the referral is bald, vague or lacking in details, the Commissioner's office will provide the same processing as it does the vague letters of application which are received from time to time from other parties. In the case of this referral, the Commissioner allowed the matter to proceed without undue formality, namely through the meetings organized by the Registrar which took place in the Commissioner's Courtroom. The Commissioner also allowed the Registrar to pursue and seek additional information and particulars. This is in keeping with the practice of the Office and within the jurisdiction set out under clause 116(1)(a) of the **Mining Act**.

The informality of the Office, should not be used to deflect the Commissioner in looking at what actually took place in this matter. The Commissioner finds that, from the date the referral was received through electronic mail transmission, there was a referral before the Commissioner. Whether that referral was deficient or premature is not relevant. What is relevant is that the Office had a matter which required attention to move the matter forward.

In retrospect, it may have better served these parties to have issued a Direction for the Filing of Particulars immediately. The Commissioner concludes that its alternative and less formal processes are not suited to cases involving MNR and Metalore, and that a strictly adversarial process is what is required. In this regard, MNR should consider proceeding in these matters only with the assistance of Counsel.

The Referral

The Commissioner finds that the words of the referral itself are bald and lacking in particulars. It does not itemize the actual offences or acts and failures upon which the Minister is proposing to make the Order. The referral does not name the proposed new well and speaks of being inclined to suspend all licences.

The particulars of the acts and failures to comply with the legislation, meaning the Act, O. Reg. 245/97 and Operating Standards, were provided on December 18, 2000. The list is of decisions of the inspector concerning non-compliance with various Operating Standards. Also included are six references to clause 19(1)(e) of the Act. It is noted that the various (28) decisions of the inspector listed are dated November 6th, 2000 (three); December 12th, 2000 (24) and December 18th, 2000 (one). Specifically, the allegation concerns the disposal of brine or leaking wells, which is a hazard to public safety or pollution of the natural environment, as defined by paragraph (ii). Subsection(2) is reproduced:

(2) A person who contravenes subsection (1) or contravenes or fails to comply with any other provision of this Act or any provision of a regulation is guilty of an offence and, on conviction, is liable to a fine or not less than \$1,000 and not more than \$500,000 or to imprisonment for a term of not more than one year, or to both.

Borrowing the phrasing used by J.A. Findlayson in *Gill*, the Commissioner finds that subsection 14(1) requires that in order for "the person's act or failure to act" to be an offence under section 19, there must be a conviction.

There was no evidence filed that any prosecutions have taken place, but given the recent dates of the actual inspection orders, the referral predates them all. Therefore, it is not unreasonable to conclude that there have been no prosecutions at the time of the hearing of the motion for costs. At the very least, this would mean that the referral is premature. However, it would be a matter of speculation as to whether, if prosecuted, there would be actual convictions or findings that an offence has been committed by Metalore. The only document filed in support of this motion for costs is the affidavit of Mr. Devereux and his docket.

Seriousness of Referral

A referral by the Minister under section 14 is a very serious matter. The purpose behind this particular referral is to shut down Metalore's operations through suspension of all of

its licences. Again, this is no small matter. A necessary prerequisite is an act or failure which has resulted in a prosecution and conviction under section 19 of the Act. The Commissioner finds that the seriousness of the outcome of the referral is such that it should not have been taken lightly by the Minister. The fact is, on the date of the Minister's referral, November 6, 2000, there were three inspector's orders and apparently no prosecutions. On December 12th, there were an additional 24 inspector's orders and on December 18, the final inspector's order.

At the time this matter commenced, namely November 6th, and up to and including December 11th, Mr. Devereux claims to have spent 14.7 hours on this matter alone. Mr. Gibson has suggested Mr. Devereux could not extract and specify the hours spent on this matter with the certainty shown on the blackened out and marked up docket.

Time Spent on Section 14

MNR correctly states that there are numerous other matters intertwined with the section 14 referral, and similarly, time spent on other matters which Metalore has ongoing with MNR. There are several distinct matters, which the Commissioner finds Mr. Devereux has blackened out or not claimed. These include an application for pooling and an appeal of an inspector's order bearing File No. OG-005-00.

Taking one example, the docket for November 15th states: "Preparing lengthy memo to file regarding settlement meeting of November 14, 2000; Considering issues raised at a settlement meeting regarding the seven wells in question and application for well #90...". Apparently, there were settlement discussions of the issues underlying the referral, to which the Commissioner is not privy. Also, it is noted that as of the 14th of November, only 7 wells were referred to as being discussed in connection with the referral or even settlement of the underlying issues of the referral.

After December 11th, an additional 25 inspector's orders were issued and apparently appealed. Mr. Gibson has suggested that the time spent on either attempting to come to a resolution of the 28 inspector's orders may also be spent in hearing the section 7.0.2 appeals of those orders.

The docket items listed for December 13th, 18th and 19th, 2000, involve a total of 7.2 hours which are reduced by Mr. Devereux to 2 hours. The descriptions state that the dockets were in connection with the additional inspector's orders and plan of action. In particular, that of December 19th states, "Telephone calls with George Chilian regarding ... strategy for dealing with the Ministry's e-mail from Jim Smith regarding application to the Commissioner.

Considering the only e-mail transmission which immediately pre-dates the docket entry and recognizing that the various correspondence and e-mails have not been filed as exhibits, it is reproduced. It was sent by Jim Smith, Audit/Compliance Specialist, Petroleum Resources Centre to Daniel Pascoe and Ernie Habib and cc'd to Mr. Devereux, on December 18th, 2000, in response to that of Mr. Pascoe, which states in part:

To reiterate ... I require ... a proper description of the exact infraction(s) which are alleged to have occurred on each well. Only then can I draft an accurate Title of Proceedings thereby enabling all of us to proceed with these matters.

Mr. Smith's response states:

Dan, I will give you a description attached to this e-mail but MNR has not attention (*sic*) of debating each individual infraction in front of the Commissioner, we are just looking for a ruling on subsection 14(1) of the Oil, Gas and Salt Resources Act.

Attached is a list which details the date of the inspection order, the well and the alleged infraction, and the section of the Act or Operating Standards.

The Commissioner finds that, Mr. Devereux's estimate of time spent up to and including December 11th, 2000, is a total of 14.7 hours, after adjustments. The Commissioner further finds that a portion of this time was spent in attempting to deal with a very serious matter, namely the suspension of all of Metalore's operations or licences. As has been gleaned from the docket, there were settlement discussions and from the letter of Mr. Pascoe, particulars were requested and therefore required. Apparently, settlement negotiations had broken down as a result of the issuance of an additional 25 inspector's orders.

Costs

There can be no question that this referral was problematic. It was perhaps premature and certainly lacking in particulars. However, it is also recognized that, notwithstanding that lack of prosecutions, the issues underlying the referral, namely the facts leading up to the 28 inspector's orders and involving 15 separate wells, are matters which remain outstanding between MNR and Metalore.

Notwithstanding that a minimum of 14.7 hours up to December 11th, is found to be attributable to the referral itself or matters arising out of the referral, the Commissioner finds that it will fix the nominal sum of \$800 as costs payable by MNR to Metalore. This amount is on account of what is found to be a problematic referral. MNR has an obligation to ensure that a Minister's referral is properly constituted. However, the nominal award of costs serves to also recognize the fact that there are ongoing serious matters which underlie the referral. The Commissioner does not find it appropriate to make an award of costs for the amount Mr. Devereux has claimed. At this point, the Commissioner cannot make any findings concerning an indemnity to Metalore by MNR.