

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF PECOS OPERATING COMPANY FOR
APPROVAL OF A NON-COMMERCIAL SALT
WATER DISPOSAL WELL, LEA COUNTY,
NEW MEXICO

CASE NO. 14122
ORDER NO. R-12978-A

ORDER OF THE COMMISSION

THIS MATTER, having come before the New Mexico Oil Conservation Commission ("Commission") on November 6, 2008 at Santa Fe, New Mexico, on Pecos Operating Company's ("Pecos") Motion to Dismiss ("Motion") H & M Disposal Company's ("H & M") Application for Hearing De Novo and, having carefully considered the submissions of the parties and arguments of counsel, now, on this 11th day of December, 2008 the Commission

FINDS THAT:

- (1) Due public notice has been given, and the Commission has jurisdiction over this case and its subject matter.
- (2) On March 25, 2008 Pecos submitted an administrative application to the New Mexico Oil Conservation Division ("Division") asking for approval of Caudill SWD Well No. 1, formerly called the State GA Well No. 7, for salt water disposal.
- (3) On April 10, 2008 prior to issuing a permit, the Division received a letter of protest from H & M.
- (4) On May 15, 2008 the Division conducted a hearing on Pecos' application, in which both Pecos and H & M participated.
- (5) On August 4, 2008 the Division issued an order, *inter alia*, approving Pecos' application ("August 4, 2008 Order").
- (6) On September 18, 2008 H & M filed with the Commission its Application for Hearing De Novo ("Hearing Application"), appealing the Division's August 4, 2008 Order.

(7) On September 25, 2008 Pecos filed its "Motion to Dismiss H & M Disposal's Untimely Application for Hearing De Novo," to which H & M responded on October 3, 2008.

(8) At the November 6, 2008 hearing H & M also distributed a document entitled "Memorandum on the Commission's Authority," without Pecos' objection. This Order is not based on arguments made in that memorandum.

(9) Pecos argues that (i) NMSA 1978, § 70-2-13 (1981) requires that the Hearing Application be filed within thirty days of the date of the August 4, 2008 Order and (ii) the Hearing Application is untimely because it was filed forty-five days after the date of the August 4, 2008 Order.

(10) H & M argues that (i) the Division did not mail a copy of the August 4, 2008 Order to each attorney of record within ten business days of the issuance of the order, as required by 19.15.14.1222 NMAC (2008), (ii) the day that H & M counsel became aware that the August 4, 2008 Order had been entered, which was September 18, 2008 H & M's counsel filed its Hearing Application, and (iii) the Commission should not hold H & M to the thirty day period in NMSA 1978, § 70-2-13 (1981) because H & M's failure to comply with the statute was the result of the Division's failure to comply with 19.15.14.1222 NMAC.

(11) Pecos does not dispute that the Division did not timely mail a copy of the August 4, 2008 Order, as alleged by H & M. Nor does Pecos claim that H & M had actual knowledge of the entry of the August 4, 2008 Order.

(12) Neither Pecos nor H & M argue that, as a matter of law, H & M having missed the thirty day limit set forth in NMSA 1978, § 70-2-13 (1981) deprives the Commission of jurisdiction.

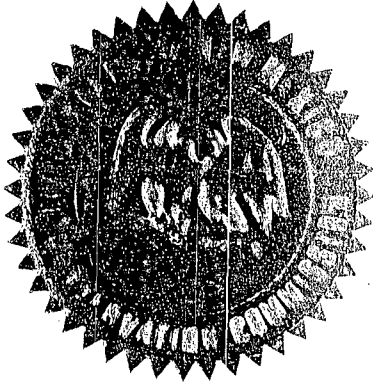
(13) One of the objectives of the Commission's procedural rules is to "assure that division and commission hearings are conducted in a fair and equitable manner." 19.15.14.6 NMAC (9/30/05).

IT IS THEREFORE ORDERED THAT:

- A. Under the facts and circumstances of this case, dismissing H & M's Hearing Application on the basis of untimely filing would be inconsistent with the objectives of the Commission's procedural rules;
- B. Pecos Operating Company's Motion to Dismiss H & M Disposal Company's Application for Hearing De Novo is denied;
- C. The holding and result of this Order are limited to the peculiar facts and circumstances presented by Pecos' Motion and H & M's response, and at the hearing of same.

DONE at Santa Fe, New Mexico on the 11th of December, 2008.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION




JAMI BAILEY, CPG, MEMBER


WILLIAM OLSON, MEMBER


MARK E. FESMIRE, P.E., CHAIR

SEAL