



**MONTGOMERY  
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October 3, 2008

Florene Davidson  
New Mexico Oil Conservation  
Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

**Re: NMOCD Case No. 14122; Order No. R-12978 De Novo; Application of Pecos Operating Company for Approval of a Non-Commercial Salt Water Disposal Well, Lea County, New Mexico**

Dear Florene:

Enclosed for filing are the original and six copies of a Response to Motion to Dismiss in the above-referenced matter. I would appreciate your returning one conformed copy to me.

Thank you for your cooperation in this matter.

Very truly yours,

J. Scott Hall

JSH/mb

Enclosures

**REPLY TO:**

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

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

2008 OCT 3 AM 11:22  
RECEIVED  
CASE NO. 14122  
ORDER NO. R-12978  
DE NOVO

RESPONSE TO MOTION TO DISMISS

H & M Disposal Company, for its response to the Motion to Dismiss H&M's Application for Hearing De Novo states:

Pecos Operating Company LLC sought administrative approval of its application for the conversion of a well for salt water disposal operations into the Devonian formation. Pecos Operating's application was objected to by H&M Disposal which operates an existing Devonian formation disposal well located 1,320' from the Applicant's proposed well. As a result of the objection, Pecos Operating's Application was removed from the administrative approval process and became an adjudicatory proceeding.

On August 14, 2008, following an examiner hearing, the Division entered Order No. R-12978 approving Pecos Operating's Application. The Order also provided additional relief<sup>1</sup> that was not sought by Pecos and imposed conditions for the operation,

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<sup>1</sup> Pecos sought authorization to inject at a maximum pressure of 1,500 psi. Without explanation, the Order authorizes injection up to 2700 psi.

testing and reporting<sup>2</sup> for H&M's well that were beyond the scope of the Pecos Application and were not even discussed at the hearing.

Rule 1222 of the Division's rules and regulations requires that a copy of an order issued in an adjudicatory proceeding be mailed to a party's attorney within ten days. As a result of an oversight, the order was not mailed. It was not until September 18, 2008 that counsel for H&M became aware that the order had been previously issued. On that same day, an Application for Hearing De Novo was filed on behalf of H&M.

As is customary in all cases, Order No. R-12978 provides that the Division retains jurisdiction over its order. Through the exercise of its considerable discretion, the Division often enters post-hearing amendments to its orders for any number of purposes. Further, Rule 1221 provides the Division may stay its orders in order to, inter alia, prevent gross negative consequences to any affected party.

By not having received notice of the issuance of Order No. R-12978 as is required by agency rule, H&M is deprived of the opportunity to exercise its statutory right to have this matter heard by the Commission in a de novo proceeding. H&M is prejudiced as a result. In order to prevent the gross negative consequences that H&M will incur, the Division should amend Order No. R-12978 and provide for an extension of time for H&M, as adversely affected party, to file its Application for Hearing De Novo in this matter.

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<sup>2</sup> H&M is required to conduct bottom-hole pressure testing via wireline that will expose the tubing in its well to unnecessary risk of damage. Neither was this matter discussed at the examiner hearing.

Accordingly, H & M Disposal Company requests that the Motion to Dismiss be denied and that the matter be set for hearing de novo before the New Mexico Oil Conservation Commission.

MONTGOMERY & ANDREWS, P.A.

By: *J. Scott Hall*

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**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on this 3<sup>rd</sup> day of October, 2008, as follows:

Michael Feldewert Holland & Hart P.O. Box 2208 Santa Fe, NM 87501 (505) 983-6043/Fax	Cheryl Bada, Esq. NM Energy Minerals & Natural Resources Dept. 1220 South St. Francis Drive Santa Fe, NM 87505 (505) 476-3462/Fax
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*J. Scott Hall*

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