

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

**APPLICATION OF GANDY MARLEY, INC. TO MODIFY
THEIR EXISTING NM OCD RULE 711 PERMIT No. NM-01-019
SO THAT THEY MAY ACCEPT SALT-CONTAMINATED
OILFIELD WASTES.**

2005 09 23 PM 2:10
CASE NO. 13480

**CONTROLLED RECOVERY INC.'S
RESPONSE TO GMI'S "REQUEST FOR CLARIFICATION"**

Controlled Recovery Inc. ("CRI"), hereby submits this response to the "Request for Clarification" filed by Gandy Marley, Inc. ("GMI").

No "clarification" is needed from the Division, as substance and the legal affect of Order No. R-12306-B is clear. Pursuant to instructions from the Hearing Officer, the parties submitted proposed findings of fact and conclusions of law. The "Decision" portion of Order No. R-12306 reflects the findings made by the Hearing Officer after carefully considering these submissions, as well as the entire record. These detailed and carefully considered paragraphs are not simply an academic exercise by the Division to provide "advisory" opinions or "recommendations." Instead, as with all Division Orders, the "Decision" portion of the Order contains the factual underpinnings for the Division's ultimate conclusions. Accordingly, as Professor Moore instructs, these findings by the Division are binding on the parties as a matter of law:

The findings requirement serves to clarify the issues that have been decided in the case for purpose of applying the doctrines of collateral estoppel and res judicata in future litigation. Clear and complete findings also enable the losing party to assess the appealability of the case.

9 Moore's Federal Practice § 52.02[2] (3d Ed. 2004); *Mora v. Martinez*, 80 N.M. 88, 89, 451 P.2d 992, 993 (1969) (noting same). To the extent that GMI decides to ignore these findings in the future, it does so at its peril.

GMI has essentially filed a motion for reconsideration without providing the proper legal or factual predicate. *See* 11 Moore's Federal Practice, § 56.30[8][e] (3d. Ed. 2004) (noting that a motion for reconsideration must be based on newly discovered evidence, clear error by the court, an intervening change in the law, or other highly unusual circumstances). CRI therefore respectfully requests that the Division deny GMI's motion and cite in its denial the general rule that a party is bound by the findings and conclusions entered by the ruling body.

Respectfully Submitted,

HOLLAND & HART, L.L.P.

A handwritten signature in black ink, appearing to read "Michael Feldewert", written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that on the 23rd day of August 23, 2005 I served a copy of the foregoing document **Controlled Recovery, Inc.'s Response to GMI's Request for Clarification** to the following by:

Via Hand Delivery to:

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