

**KELLAHIN and KELLAHIN**  
*Attorneys at Law*  
El Patio - 117 North Guadalupe  
Post Office Box 2265  
Santa Fe, New Mexico 87504-2265

6-19-86 and  
had rehearing  
letter to  
follow.

Tim Kelly (w/enc.)  
Geohydrology Associates  
4015 Carlisle, NE, Suite A  
Albuquerque, New Mexico 87107

**BEFORE THE  
OIL CONSERVATION COMMISSION  
NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS**

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:

CASE NO. 8781 DeNovo  
ORDER NO. R-8161-A

APPLICATION OF PETRO-THERMO  
CORPORATION FOR AN EXCEPTION  
TO DIVISION ORDER NO. R-3221,  
AS AMENDED, AND FOR AUTHORIZATION  
TO DISPOSE OF ASSOCIATED WASTE  
HYDROCARBONS AND OTHER SOLIDS,  
OBTAINED IN CONJUNCTION WITH  
THE DRILLING AND PRODUCTION OF  
OIL AND GAS INTO UNLINED PITS,  
LEA COUNTY, NEW MEXICO.

**APPLICATION FOR REHEARING**

COMES NOW POLLUTION CONTROL INC. and SNYDER  
RANCHES, INC., and pursuant to the provisions of  
Section 70-2-25 N.M.S.A., 1978, apply to the Oil  
Conservation Commission of New Mexico for Rehearing  
of the above captioned case and order, and in support  
thereof state:

**STATEMENT OF FACTS:**

On April 9, 1985, the New Mexico Oil  
Conservation Commission ("Commission") held a hearing  
on the application of Petro-Thermo Corporation for a  
permit to use the SW/4 SE/4 NE/4 of Section 16, T20S,  
R32E, NMPM, Lea County, New Mexico for the commercial

disposal of waste material from oil and gas field operations, including produced salt water and solid wastes.

The disposal facility is to be located on State of New Mexico lands under the management and control of the Commissioner of Public Lands. At the time of the hearing, Petro-Thermo Corporation had not obtained a business lease from the Commissioner of Public Lands of New Mexico to use the surface for this purpose.

The application of Petro-Thermo Corporation was opposed at the Commission hearing by Snyder Ranches, Inc., which is the owner of federal grazing leases adjacent to the applicant's proposed facility and is an interested party affected by this application. In addition, the application was opposed by Pollution Control Inc. which has an approved surface disposal facility and is also an interested party affected by this application.

On May 20, 1986, the Commission entered Order R-8161-A which approved the application of Petro-Thermo Corporation.

Within twenty days of the date of that order, Pollution Control Inc. and Snyder Ranches, Inc., have filed this Application for Rehearing.

**GROUND'S FOR REHEARING:**

1. THE COMMISSION HAS FAILED TO MAKE AN ESSENTIAL JURISDICTIONAL FINDING CONCERNING THE PROTECTION OF CORRELATIVE RIGHTS.

Order R-8161-A fails to set forth the fundamental factual findings raised at the hearing on how, if at all, the approval of this application will protect the rights of Snyder Ranches, Inc. It was undisputed in the evidence that the contaminated waste water would migrate off the proposed Petro-Thermo Site. The Commission has made no finding that correlative rights will be protected. See Sims v. Mechem, 72 N.M. 186 (1963) and Faskin v. Oil Conservation Commission, 87 N.M. 292, 532 P2d 588 (1975).

2. LACK OF PROPERTY INTEREST IN APPLICANT AT THE TIME OF HEARING DENIES COMMISSION JURISDICTION TO ENTER ORDER.

Commission Order Finding (19) is erroneous. Petro-Thermo failed to establish a property interest in this case. That failure compels the Commission to deny the application in accordance with Division Rule 1203. Petro-Thermo has no lease, no ownership and no permission to utilize the proposed surface for this facility. The rights to this tract are vested in the Commissioner of Public Lands and in the absence of

his prior approval, Petro-Thermo cannot bring a case before the Commission.

Under the definition section of the Division Rules and Regulations, an "Owner" is defined as the "person who has the right to drill into and to produce from any pool and to appropriate the production either for himself or for himself and another." An "Operator" is defined as a person "who, duly authorized, is in charge of the development of a lease or the operation of a producing property." Petro-Thermo Corporation under the Division's definitions is neither an owner or an operator.

3. COMMISSION HAS FAILED TO MAKE ESSENTIAL FINDINGS CONCERNING BENEFICIAL USE ("NEED") FOR THIS FACILITY AND HAS COMMITTED ERROR IN DENYING OPPONENTS AN OPPORTUNITY TO PRESENT EVIDENCE OF LACK OF NEED FOR THIS FACILITY.

The Division's Rules and Regulations define surface waste as "... the unnecessary or excessive surface loss or destruction without beneficial use, however caused..."

The Commission has committed reversible error in precluding or ignoring evidence of "need" for this facility during the hearing held on April 10, 1986. The extent to which the surface can be "wasted" is directly linked to the question of need. For example, if all existing facilities in the area do

not have the capacity to handle the volumes Petro-Thermo proposed for this facility, then the use of the surface would be reasonable and waste of the surface would not occur. Conversely, in the absence of proof of need, any use of the eight acre tract would be unreasonable and therefore constitute surface waste. The Commission has erroneously precluded evidence on an essential element of proof.

4. THE COMMISSION ORDER LACKS SUFFICIENT FINDINGS OF ULTIMATE FACTS TO SUPPORT ITS APPROVAL OF THE DISPOSAL RATE OF 30,000 BARRELS PER DAY.

Petro-Thermo Corporation's testimony was that they anticipated to dispose of only 2250 barrels of produced salt water a day. (Petro-Thermo Exhibit 10, page 15).

There is not the faintest clue in any of the findings explaining the Commission's reasoning in approving 30,000 barrels a day disposal volumes when the applicant only anticipates needing 2,250 barrels a day. The Commission's Order on this issue violates the standards set forth in Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P2d 588 (1975).

5. THE FINDINGS OF ORDER R-8161-A ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Applicant has failed its burden to prove that

the contaminated discharge water can be safely deposited into the facility without adversely affecting fresh water.

The evidence at the hearing was that if the seepage from the impoundments at the proposed waste facility migrated off-site towards Laguna Plata, the discharged water could migrate out the west side of the Plata into Nash Draw and on to the Pecos River. The conclusion from all of the hydrologic evidence is that, from current data, none of the experts know where and at what rate the discharged water will migrate.

The Commission violates Section 70-2-12B(15) by the approval of this application.

- Findings  
Snyder  
and Snyder  
Hear  
2/2/81*
6. THE COMMISSION'S DECRETORY PARAGRAPH NO. (2) OF ORDER R-8161-A DENIES SNYDER RANCHES AND POLLUTION CONTROL INC. PROCEDURAL DUE PROCESS.

The Commission has only required that Petro-Thermo submit a revised plan acceptable to the Director of the Oil Conservation Division for the installation and sampling of monitoring wells. Such an order provision fails to afford Pollution Control Inc. and Snyder Ranches, Inc. with an opportunity to appear and contest the proposed monitoring system. This provision effectively removes the opponents from the essential process of participating in determining

the method by which this monitoring system, yet to be proposed, is supposed to protect their correlative rights.

Further, previously approved monitoring systems agreed to by Petro-Thermo and the Division, as set forth in Division letter dated February 18, 1986, were contested at the Commission hearing by Pollution Control and Snyder Ranches hydrologist and the Commission has failed to make appropriate findings.

7. BY APPROVING THE DESIGN OF A DISPOSAL FACILITY THAT DOES NOT PROHIBIT THE MIGRATION OF THE DISCHARGED WASTE WATER BEYOND THE BOUNDARIES OF THAT FACILITY THE COMMISSION HAS EXCEEDED ITS STATUTORY AUTHORITY AND JURISDICTION AND THE COMMISSION ORDER R-8161-A IS VOID.

The Commission has failed to require adequate means to prevent the contaminated waste water from migrating off of the facility and onto the property of Snyder Ranches, Inc.

It is undisputed that the produced waste water that is to be disposed of in the unlined surface pits at the proposed Petro-Thermo facility will leak through the bottom and sides of the pits and migrate beyond the boundaries of the proposed facility. In fact, the applicant's entire design and plan for the facility is based upon that principal. The migration of contaminated waste water will destroy the grazing



grasses and vegetation under the ownership and control of Snyder Ranches, Inc.

The Commission has granted to Petro-Thermo a disposal permit authorizing the disposal for profit of waste water which will migrate beyond the boundaries of that facility. Such action constitutes underground trespass, exceeds the jurisdiction of the Commission and its statutory authority. The order is void.

8. THE COMMISSION IS PRE-EMPTED BY FEDERAL LAW FROM ENTERING AN ORDER THAT AFFECTS THE MANAGEMENT OF THE BUREAU OF LAND MANAGEMENT AND CONTROL OF ADJOINING FEDERAL LANDS.

The Commission Order R-8161-A recites at length the concerns and statements expressed at the hearing by Bureau of Land Management District Director but then arbitrarily ignores those concerns and enters an order that adversely affects the right of the Bureau of Land Management to effectively manage and control the adjoining federal lands.

The Commission has attempted to exercise judgment and control over federal lands which exceeds the jurisdiction of the Commission.

9. THE COMMISSION ORDER FAILS TO MAKE ADEQUATE FINDINGS CONCERNING WASTE.

The New Mexico Supreme Court in Continental Oil

Co. v. Oil Conservation Commission, 70 N.M. 310 (1962) and in Sims v. Mechem, 72 N.M. 186 (1963) requires the Commission to make findings that are sufficiently extensive to show not only the jurisdiction but the basis of the Commission's order.

Order R-8161-A fails to make adequate findings concerning how the approval of this application will prevent waste.

10. THE FOLLOWING COMMISSION FINDINGS ARE ARBITRARY, CAPRICIOUS, CONTRARY TO LAW, AND ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

1. Finding (15), (a) through (k).
2. Finding (19), after the phrase "said Section 16."
3. Finding (22).
4. Finding (23).
5. Finding (24).
6. Finding (25).
7. Finding (26).
8. Finding (29).
9. Finding (31).
10. Finding (32).
11. Finding (33).
12. Finding (34).
13. Finding (35).
14. Finding (37).
15. Finding (38).

WHEREFORE, Pollution Control Inc. and Snyder Ranches, Inc. respectfully request that the Commission grant a Rehearing in the above styled case and that after rehearing, the Commission vacate and set aside its Order R-8161-A and enter its Order denying the application of Petro-Thermo Corporation in this matter.

Respectfully submitted,

By:



W. Thomas Kellahin, Esq.  
Kellahin & Kellahin  
Post Office Box 2265  
Santa Fe, New Mexico 87501

and

J. W. Neal, Esq.  
116 N. Turner  
Hobbs, New Mexico 88240