

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

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

**CASE NO. 14122
ORDER NO. R-12978
DE NOVO**

MEMORANDUM ON THE COMMISSION'S AUTHORITY

H & M Disposal Company provides this memorandum brief addressing the Commission's authority and jurisdiction:

The thirty day provision of NMSA 1978 §70-2-13 does not mandate dismissal of this case. In construing §70-2-13, under §12-2A-20 of the Uniform Statute and Rule Construction Act, (12-2A-1, *et seq.*), the Commission is to consider the context in which the rule or statute is applied. Under §12-2A-10, the statute must be reconciled with other provisions of the Oil and Gas Act. The thirty day provision must be applied so as to avoid an unconstitutional, absurd or unachievable result. (§12-2A-18 A. 3).

The Commission must reconcile the thirty day provision with the following specific statutory directives under the Oil and Gas Act: Section 70-2-12(B) of the Act provides:

“Apart from any authority, express or implied, elsewhere given to or existing in the Oil Conservation Division by virtue of the Oil and Gas Act or the statutes of the state, the Division is authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated in this subsection;

(2.) To prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata; ...

(4.) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment which reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool; ...

(7.) To require wells to be drilled, operated and produced in such manner to prevent injury to neighboring leases or properties; ... [and]

(15.) To regulate the disposition of water produced or used in connection with the drilling for or producing of oil and gas or both and to direct the surface or subsurface disposal of the water in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer[.]

These statutory mandates will be disserved if precluded by a strict application of the thirty day provision. In addition, Section 70-2-11 of the Oil and Gas Act makes clear that the agency has authority to act in any event. That section provides: "(a.) The Division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the Division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any section hereof."¹ In past cases, the Division has cited to this specific provision of the Oil and Gas Act as authority supporting the Agency's broad construction of its powers to act as "cumulative and not exclusive". See, Order No. R-11573-B, Case No. 12601; *Application of Bettis Boyle and Stovall To Reopen Compulsory Pooling Order No. R-11573 To Address The Appropriate Royalty Burdens On The Well For*

¹ See, also, NMSA 1978, § 70-2-6; "...[The Division] shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act"

Purposes Of The Charge For Risk Involved In Drilling Said Well, Lea County, New Mexico.

This agency has consistently construed its procedural rules in a liberal manner to allow a full and fair hearing to almost anyone, but particularly "affected persons". The agency's construction of its similar rules are to be regarded as an aid in the application of the thirty day provision in this instance. See §12-2A-20 B(4).

The Commission's authority to act under Rule 1221 in order to prevent gross negative consequences to any affected party should also be noted.

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was hand-delivered to counsel of record on this 6th day of November, 2008, as follows:

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