

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

CONSOLIDATED

APPLICATION OF THE OIL CONSERVATION DIVISION TO EXTEND THE EFFECTIVE DURATION OF AN EMERGENCY ORDER TO OPERATE ISSUED TO GANDY MARLEY, INC.

CASE NO. 13454
ORDER NO. 12306-A

AND

APPLICATION OF THE OIL CONSERVATION DIVISION TO EXTEND THE EFFECTIVE DURATION OF AN EMERGENCY ORDER TO OPERATE ISSUED TO ARTESIA AERATION, LLC.

CASE NO. 13455
ORDER NO. 12307-A

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 10:00 a.m. on March 25, 2005, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 25th day of March 2005, the Division Director, having considered the requests,

FINDS THAT:

(1) Due public notice has been given, and the Oil Conservation Division ("Division") has jurisdiction over these cases and their subject matter.

(2) The Division seeks an order extending the effective duration of Emergency Order R-12306 issued to Gandy Marley Inc. and Emergency Order R-12307 issued to Artesia Aeration, LLC, until a determination is made on the applications of those operators to amend their landfarm permits.

(3) These cases were consolidated for purpose of the hearing.

(4) Notice of this hearing was provided to Gandy Marley Inc. and to Artesia Aeration, LLC ("Operators"). Notice of the hearing was also published in the Lovington Daily Leader on March 15, 2005, and in the Roswell Daily Record on March 17, 2005. Additionally, notice was posted on the Division's website and sent by e-mail to those parties who had requested notice of Division hearings.

(5) Gandy Marley, Inc. was present at the hearing and represented by counsel.

- (6) Artesia Aeration, Inc. was not represented by counsel.
- (7) Dr. Don Neeper appeared and provided testimony at the hearing.
- (8) Controlled Recovery, Inc. ("CRP") was represented by counsel and appeared at the hearing in opposition to the Division's applications and presented testimony from one witness.
- (9) The Division presented the following testimony and evidence:
 - a) Gandy Marley, Inc. ("Gandy Marley") is the operator of record and surface owner of a commercial landfarm located in Sections 4, 5, 8, and 9, Township 11 South, Range 31 East, in Chaves County, New Mexico. This landfarm is permitted pursuant to 19.15.9.711 NMAC under permit number NM-01-0019.
 - b) Artesia Aeration, L.L.C. ("Artesia Aeration") is the operator of record and surface owner of a commercial landfarm located in the N/2 of Section 7, Township 17 South, Range 32 East, in Lea County, New Mexico. This landfarm is permitted pursuant to 19.15.9.711 NMAC under permit number NM-01-0030.
 - c) The public notice given prior to issuance of a majority of landfarm permits in New Mexico stated: "Hydrocarbon contaminated soils associated with oil and gas production will be remediated...."
 - d) The language of those landfarm permits, however, was broader than the language in the public notice, allowing the facilities to accept oilfield wastes that are exempt from RCRA Subtitle C regulations and that do not contain Naturally Occurring Radioactive Materials regulated pursuant to 20 NMAC 3.1 Subpart 1403 (NORM) and "Non-hazardous" non-exempt oilfield wastes.
 - e) Salt contamination decreases the biodegradation capacity of the landfarms and because salts leach more easily than hydrocarbons, a landfarm accepting salt-contaminated oilfield wastes could pose a threat to groundwater.
 - f) According to the terms of the landfarm permits referred to in "c" above, the Division may change the permit conditions administratively for good cause shown as necessary to protect fresh water, human health, and the environment.
 - g) Division Director Mark Fesmire notified the holders of the aforementioned landfarm permits by letter dated March 4, 2005, that the Division had determined that it was necessary to modify the landfarm permits in order to protect fresh water, human health and the environment. The permits were modified to add the following conditions: "Effective immediately, the NMOCD permitted landfarm ... is prohibited from accepting oilfield waste contaminated with salts."

The March 4th letter stated that for a landfarm to accept salts, the operator was required to apply for a modification of the permit pursuant to 19.15.9.711.B(1) NMAC and follow the notice requirements of 19.15.9.711.B(2).

h) The Operators have each applied for a modification of their permits to allow them to accept salt-contaminated oilfield wastes. The applications to modify those permits are set for hearing on May 19, 2005, before the Division.

i) On March 10, 2005, Gandy Marley applied for an emergency order allowing it to accept salt-contaminated oilfield waste pending a decision on its application for a permit modification. In support of this request, Gandy Marley asserted the following:

- i. The depth to groundwater at the location of the landfarm is 150 feet.
- ii. The TDS level of the groundwater at the location of the landfarm is in excess of 15,000 PPM.
- iii. There are no fresh water wells or watercourses (wet or dry) within 1,000 feet of the landfarm.
- iv. There is an impermeable redbed clay barrier of approximately 150 feet between the surface and the groundwater.
- v. The groundwater at the site is nonproduceable in both volume and quality.
- vi. An emergency order is necessary because there is a critical need in the area of the landfarm for a facility that can accept salt contaminated soils due to extensive drilling programs and remediation programs in the area.

j) On March 11, 2005, Artesia Aeration applied for an emergency order allowing it to accept salt contaminated oilfield waste pending a decision on its application for a permit modification. In support of this request, Artesia Aeration asserted the following:

- i. There is no groundwater at the site as evidenced by a 120 feet deep monitor well.
- ii. There are no fresh water wells or watercourses (wet or dry) within 1,000 feet of the landfarm.
- iii. An emergency order is necessary because there is a critical need in the area of the landfarm for a facility that can accept salt-contaminated soils due to extensive drilling and remediation programs in the area by oil and gas operators.

k) The records of the Division confirm both Operators' descriptions of conditions at their landfarms.

l) Division staff confirmed that both Operators intend to keep salt contaminated oilfield waste separate from hydrocarbon contaminated oilfield waste.

m) By Emergency Order R-12306, issued on March 11, 2005, the Division Director determined that Gandy Marley had demonstrated an emergency need for the issuance of an order without hearing. This order allows Gandy Marley to accept salt contaminated oilfield wastes pending a decision on its application for a permit modification.

n) By Emergency Order R-12307, issued on March 11, 2005, the Division Director determined that Artesia Aeration had demonstrated an emergency need for the issuance of an order without hearing. This order allows Artesia Aeration to accept salt contaminated oilfield wastes pending a decision on its application for a permit modification.

o) In Emergency order R-12307, issued on March 11, 2005, the Division Director determined that Artesia Aeration had demonstrated an emergency requiring the issuance of an order without a hearing allowing Artesia Aeration to accept salt contaminated oilfield wastes pending a decision on its application for a permit modification.

p) Pursuant to NMSA 1978, § 70-2-23, an emergency order shall expire fifteen days from its effective date.

q) Division Orders R-12306 and R-12307 will expire after March 26, 2005.

CONCLUDES THAT:

(1) Prior to the March 4, 2005 letter, the original permits allowed the Operators to accept salt-contaminated oilfield wastes.

(2) The public notices for the permits issued to the Operators did not include acceptance of salt-contaminated oil field wastes as a requested term or condition of the permits.

(3) The public notices given for the permit applications were inadequate, rendering the permits voidable.

(4) The public did not receive proper notice of pending applications before the Division in order to have an adequate opportunity to comment upon the permit applications.

(5) The Division's March 4, 2005 administrative action, which notified all operators of landfarms who had received the voidable permits, that effective immediately, their permits were administratively modified. This modification prohibited them from accepting oilfield waste contaminated with salts, and was permissible and necessary to protect fresh water, human health and the environment.

(6) The Division's action administratively amending previously approved permits resulted in a majority of the landfarms no longer being able to receive salt contaminated oil field wastes.

(7) The recent adoption of the Pit Rule (19.15.2.50 NMAC) has increased the need for remediation and disposal of drill cuttings within New Mexico.

(8) Removing the capability of a majority of landfarms to accept salt contaminated oil field wastes represented to the Division an unforeseen combination of circumstances calling for immediate action by the Division. This constituted an emergency. See definition of "Emergency," Blacks Law Dictionary, 5th ed.

(9) It was necessary for the Division to take appropriate action to ensure that adequate facilities would continue to be available to receive and treat salt contaminated oil field wastes.

(10) It was reasonable for the Division not to wait until a crisis in the disposal of contaminated soil exists, but to take action quickly to protect fresh water, human health and the environment.

(11) Preliminary evidence indicates that the hydrologic and geologic characteristics associated with the Gandy Marley and Artesia Aeration disposal sites are sufficient to prevent water contamination and to protect human health and the environment.

(12) Division Rule 1202.A allows emergency orders to be issued without a hearing and to have the same validity as if a hearing had been held, provided that the order may remain in effect for a period no longer than 15 days.

(13) The purpose of Division Rule 1202 is to allow an emergency order to be extended beyond the 15 day period, provided a hearing is held thereon, and provided further that notice of such hearing may be given within a lesser period than 20 days, as the Division may order. See also NMSA 1978, § 70-2-23.

(14) Adequate notice in compliance with OCD Rule 1202.B of the Division's application to extend the emergency order was provided.

(15) Any extensions of the two emergency orders at issue will be temporary, until final determination concerning the Operator's applications for permit modifications is made by the Division.

(16) Preliminary evidence indicates that allowing Gandy Marley and Artesia Aeration to accept salt-contaminated oilfield wastes at their landfarm facilities will not pose a danger to fresh water, human health or the environment.

(17) The decisions on the applications of Gandy Marley and Artesia Aeration for permit modification should be acted upon with dispatch and not be allowed to pend before the Division for an extended period of time.

IT IS THEREFORE ORDERED THAT:

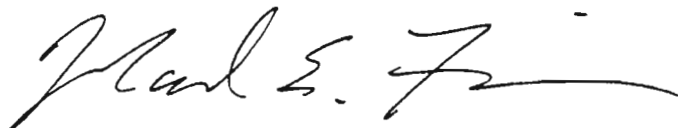
(1) The Division's application to extend Emergency Order R-12306 to allow Gandy Marley, Inc. to continue to operate under permit number NM-01-0020 without being subject to the Division's March 4, 2005 letter, is hereby approved; provided that any salt contaminated oil field waste shall be kept separate from non salt contaminated waste; and provided, further, that such extension shall only remain in effect until a determination is made by the Division on Gandy Marley's application to amend its current landfarm permit.

(2) The Division's application to extend Emergency Order R-12307 to allow Artesia Aeration, LLC to continue to operate under permit number NM-01-0030 without being subject to the Division's March 4, 2005 letter, is hereby approved; provided that any salt contaminated oil field waste shall be kept separate from non salt contaminated waste; and provided, further, that such extension shall only remain in effect until a determination is made by the Division on Artesia Aeration's application to amend its current landfarm permit.

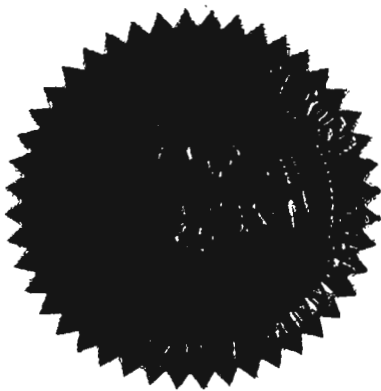
(3) Jurisdiction of these cases is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



MARK E. FESMIRE, P.E.
Director



SEAL