

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

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

CASE NO. 13455

PRE-HEARING STATEMENT

This entry of appearance and pre-hearing statement is submitted by the applicant, the Oil Conservation Division.

APPEARANCES

APPLICANT

Oil Conservation Division

APPLICANT'S ATTORNEY

Gail MacQuesten
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3451
Fax: 476-3462
gmacquesten@state.nm.us

OPPONENTS

No appearance has been entered.

OPPONENTS' ATTORNEY

No appearance has been entered

APPLICANT'S STATEMENT OF THE CASE

Artesia Aeration LLC ("Artesia Aeration") is the operator of record of a commercial landfarm located in Lea County, New Mexico. The landfarm is permitted pursuant to 19.15.9.711 NMAC under permit number NM-01-0030.

The public notice given prior to issuance of this and other landfarm permits stated that the permits were for landfarming to remediate hydrocarbon-contaminated soils. The language of the landfarm permits, however, was broader than the language in the public notice, allowing the facilities to accept oilfield contaminated solids that are either exempt from the Federal RCRA Subtitle C (hazardous waste) regulations or are "nonhazardous" by characteristic testing or listing.

By letter dated March 4, 2005, Division Director Mark Fesmire issued the following administrative modification to the landfarm permits, in order to protect fresh water, human health and the environment:

"Effective immediately, the NMOCD permitted landfarm identified above is prohibited from accepting oilfield waste contaminated with salts."

The letter stated that for a landfarm to accept salts, the operator would need 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) NMAC.

2005 APR 17 AM 10 03

Artesia Aeration has applied for a modification of its permit to allow it to accept salt-contaminated oilfield wastes.

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 its request, Artesia Aeration asserted the following:

- a. There is no groundwater at the site evidenced by a 120' monitor well.
- b. There are no fresh water wells or watercourses (wet or dry) within 1,000' of the landfarm.
- c. 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 by oil and gas operators.

In addition, Division staff confirmed that the Operator will keep salt-contaminated oilfield waste separate from hydrocarbon-contaminated oilfield waste.

On March 11, 2005, the Division issued Emergency Order R-12307 to Artesia Aeration allowing its landfarm to accept salt-contaminated oilfield waste. By statute, an emergency order issued without public notice and a hearing shall remain in effect no longer than fifteen days from its effective date. See NMSA 1978, § 70-2-23. Because of the notice period required for permit modifications under 19.15.9.711.B(2) NMAC the Division will not be able to act on Artesia Aeration's application before the fifteen day period expires. For that reason, the Division seeks an order extending the duration of the emergency order until the Division acts on the pending application for permit modification.

APPLICANT'S PROPOSED EVIDENCE

WITNESS:

ESTIMATED TIME:

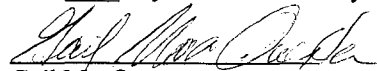
Ed Martin

15 min.

PROCEDURAL MATTERS

The Division requests that this case be heard with case 13454, which presents similar issues regarding a landfarm operated by Gandy Marley Inc.

Respectfully submitted,
This 17th day of March 2005 by



Gail MacQuesten
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3451

Attorney for the Oil Conservation Division