

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

**APPLICATION OF ARTESIA AERATION, LLC TO MODIFY
ITS EXISTING NMOCD RULE 711 PERMIT No. NM-01030
SO THAT THEY MAY ACCEPT SALT-CONTAMINATED
OILFIELD WASTES.**

2005 MAY 10 9 11 AM
CASE NO. 13481

**CRI'S MOTION TO DISMISS THIS CASE AND TO RESCIND ORDER 12307-A
EXTENDING THE DURATION OF ARTESIA AERATION'S EMERGENCY ORDER
TO ACCEPT SALT CONTAMINATED WASTES**

Controlled Recovery Inc. ("CRI") hereby moves the Division for an order dismissing this case and rescinding Order 12307-A, which currently authorizes Artesia Aeration to accept salt contaminated waste on a temporary basis "until a determination is made by the Division on Artesia Aeration's application to amend its current landfarm permit." See Order 12307-A at ¶ (3). Contrary to what was understood at the time of the March 25th hearing giving rise to Order 12307-A, no application was on file with the Division to amend Artesia Aeration's surface waste management permit, and Artesia Aeration has since failed to submit an administratively complete application for public review and comment. Since there is nothing for the public or an Examiner to review in this matter, this case should be dismissed and Order 12307-A immediately rescinded.

A. Order 12307-A Was Entered Based On The Incorrect Assumption That Artesia Aeration Had Filed An Administratively Complete Application To Modify Its Permit That Would Be Ripe For Hearing On May 19th.

Order 12307-A was issued by the Division on March 25th under the mistaken belief that Artesia Aeration had filed an application for modification of its permit that would be ready for hearing on May 19th:

(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.

5/21/05
WVW

See Order 12307-A at ¶ (9)(h). See also ¶ (9) (j), (n) and (o) (each referring to what the Division understood was a filed “application for a permit modification.”) Indeed Order 12307-A contained the following conclusions:

(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.

(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.

Division records now reveal that at the time of the March 25th hearing, Artesia Aeration had not filed an application to modify its permit. Indeed, Artesia Aeration did not file a Form C-137 until April 26, 2005 – a *full month after* the Division’s hearing giving rise to Order R-12307-A. See Attachment A.

Moreover, the Form C-137 that Artesia Aeration finally submitted to the Division does not contain *any* of the attachments required by that application. This includes a failure to list and notify surface owners within a mile of the facility, a failure to list the nature and types of wastes the facility seeks approval to take, a failure to submit a diagram or other description of the manner in which the undisclosed wastes will be handled and stored, a failure to submit a closure plan, and a failure to notify the county commission. See Attachment A (listing the basic requirements under Rule 711). It also does not appear that Artesia Aeration submitted a copy of its incomplete C-137 with the Division’s District Office as required by Rule 711.B(1). Accordingly, Artesia Aeration *still has not properly filed an administratively complete application* that is ripe for review by the Division’s staff, the general public, or an Examiner.

In essence, Artesia Aeration has utterly failed to meet the basic filing requirements for seeking a modification of its permit. Indeed, there is nothing to evaluate or present in this case. Since the key assumptions forming the basis for Division Order R-12307-A (that Artesia Aeration had filed a complete application and that the application would be ready for hearing on May 9th) are not correct, this order should be immediately rescinded and this matter dismissed.

B. The Public Notice Incorrectly References A Filed Application Containing Provisions for Handling the Waste.

On April 14th notice of an “application” filed by Artesia Aeration was provided to the public. The public notice stated that Artesia Aeration had:

- “applied for a modification to its surface waste management facility permit,”
- listed various types of wastes that the facility proposed to accept, and
- stated “the application includes provisions for the handling of such oilfield wastes and addresses the protection of groundwater.”

See Attachment B. As noted above, however, when this public notice was issued Artesia Aeration had not filed any application with the Division. *See* Attachment A. Moreover, the C-137 that Artesia Aeration eventually filed almost two weeks *after* this public notice does not list the types of wastes it intends to accept or the “provisions” for handling these undisclosed wastes. Accordingly, nothing is on file with the Division to support this public notice or for the public to review and comment upon.

C. Rule 711(B) Requires the Filing of an Administratively Complete Form C-137 Before Public Notice and at Least a 30 Day Public Comment Period On the Filed Application.

Rule 711.B(1) requires that any party desiring to “modify an existing facility” must file a Form C-137 with the Division in duplicate. Rule 711.B (1)(a)-(m) and Form C-137 list the information that must accompany the filing. *See* Attachment A. Subsection (B)(2) of Rule 711 further provides that “prior to public notice” the applicant must submit evidence of written notice to the surface owners within one mile of the facility, as well as written notice to the county commission where the facility is located. Once the Division has determined the administrative filing meets all of these requirements, Rule 711.B(2)(b) and (c) contemplate at least a 30 day period for the public to view the application, file comments, or request a hearing with the Division.

Artesia Aeration has failed to meet any of these requirements. Not only was there no application filed “prior to public notice” as Rule 711.B(2)(a) mandates, but Artesia Aeration still has not filed an administratively complete application to commence the running of the 30-day

public comment and review period. Since the Division still has not received the minimal information required by Rule 711, this matter is not ripe for hearing and may not be ripe for an extended period of time. *See also* NMRA 20.6.2.3108 (D) – (K) (requiring for discharge permits an administrative determination that the application is complete, public notice of this determination, and “at least” a 30-day period for the public to review the application and provide comment).

D. Since The Division Has Afforded Artesia Aeration Ample Opportunity To Timely and Properly File an Application to Modify its Permit, Dismissal of This Case and Rescission of Order R-12307-A Is Necessary and Appropriate.

Eight months ago, by letter dated September of 2004, the Division informed Artesia Aeration of the following:

If you want to accept salt-contaminated cuttings or any other salt-contaminated wastes, your 711 permit must be modified to ensure that your acceptance of those wastes will not adversely affect public health or the environment.

See Attachment C. Artesia Aeration took no action in response to this letter. Six months later, by letter dated March 4, 2005, the Division Director again informed Artesia Aeration of the need to file an application to modify its permit in conformance with the provisions of Rule 711.B:

If the landfarm identified above wishes to accept oilfield waste contaminated with salts, you will need to file an application to modify the permit pursuant to OCD Rule 711.B (1) and follow the notice requirements of OCD Rule 711.B (2).

See Attachment D. Rather than file an application to modify its permit, Artesia Aeration submitted a “Request for a temporary emergency order allowing a landfarm to accept salt-contaminated oilfield wastes” in which it represented to the Division that it had “already submitted an application to accept salt-contaminated wastes.” *See* Attachment E. As demonstrated by Attachment A, that representation by Artesia Aeration was false.

On March 25th, the Division issued Order R-12307-A authorizing Artesia Aeration to accept salt contaminated wastes on a temporary basis under the belief that the facility had

already applied for a modification of its permit and that the matter would be ripe for hearing on May 19th. Neither of these assumptions were correct.

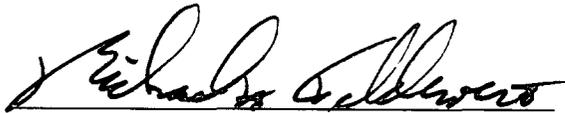
Artesia Aeration has been on notice for eight months of the need to file for a modification of its permit to accept salt contaminated wastes. The Division has given Artesia Aeration every opportunity to file the necessary information for an informed, public review of that modification, but Artesia Aeration has utterly failed to take advantage of that opportunity. Delaying this matter further – and allowing Artesia Aeration to continue to accept salt contaminated wastes without a properly issued permit – will not only serve to reward its noncompliance with these Division directives and Rule 711, but cause the public and properly permitted facilities to lose faith in the Division's permitting process.

WHEREFORE, CRI respectfully requests that:

- (1) the Division enforce its September 2004 and March 2005 directives to Artesia Aeration to discontinue acceptance of salt contaminated oilfield wastes until such time as the facility has complied with the permitting and public review process set forth in OCD Rule 771.B;
- (2) the Division issue an order dismissing Case No. 13481; and
- (3) the Division rescind Order R-12307-A authorizing Artesia Aeration to accept salt contaminated wastes on a temporary basis.

Respectfully Submitted,

HOLLAND & HART, L.L.P.



Michael H. Feldewert
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
(505) 988-4421
(505) 983-6043 Facsimile

Attorneys for Controlled Recovery, Inc.

CERTIFICATE OF SERVICE

I certify that on May 10, 2005, I served a copy of the foregoing **CRI'S Motion To Dismiss This Case And To Rescind Order 12307-A Extending The Duration Of Artesia Aeration's Emergency Order To Accept Salt Contaminated Wastes** to the following by:

Via Hand Delivery to:

Gail MacQuesten
State of New Mexico
Energy, Minerals, Natural Resources Department
Oil Conservation Division
1200 South St. Francis Drive
Santa Fe, New Mexico 87505

Via U.S. Mail, postage prepaid

Donald A. Neeper
New Mexico Citizens for Clean Air
& Water, Inc.
2708 B. Walnut Street
Los Alamos, New Mexico 87544-2050

Via U.S. Mail, postage prepaid & Facsimile to:

Jim Wilson
Artesia Aeration, LLC
Post Office Box 310
Hobbs, New Mexico 88241
(505) 392-3085 facsimile

Peter V. Domenici, Jr.
Dolan & Domenici, PC
6100 Seagull Street, NE, #205
Albuquerque, New Mexico 87109-2500
(505) 884-3424 facsimile


Michael H. Feldewert



TRANSMITTAL COVER SHEET

OIL CONSERVATION DIVISION
1220 S. ST. FRANCIS DRIVE
SANTA FE, NM 87505
(505) 476-3440
(505)476-3462 (Fax)

PLEASE DELIVER THIS FAX:

TO: MIKE FELDEWERT

FROM: EO MARTIN

DATE: 5-9-05

PAGES: 2

SUBJECT: ARTESIA AERATION

4-137

IF YOU HAVE TROUBLE RECEIVING THIS FAX, PLEASE CALL THE OFFICE NUMBER ABOVE.

ATTACHMENT
A

District I
1625 N. French Dr., Hobbs, NM 88240
District II
1301 W. Grand Avenue, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
1220 S. St. Francis Dr., Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources
Oil Conservation Division
1220 South St. Francis Dr.
Santa Fe, NM 87505

Form C-137
Revised June 10, 2003

Submit Original Plus 1
Copy to Santa Fe
1 Copy Appropriate
District Office

APPLICATION FOR WASTE MANAGEMENT FACILITY

(Refer to the OCD Guidelines for assistance in completing the application)

Commercial Centralized

1. Type: Evaporation Injection Other
 Solids/Landfarm Treating Plant

2. Operator: ARTESIA Aeration

Address: P.O. Box 310 Hobs, NM 88241

Contact Person: Jim Wilson Phone: 392-9575

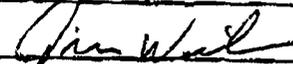
3. Location: /4 /4 Section 7 Township 17S Range 32E
Submit large scale topographic map showing exact location

4. Is this a modification of an existing facility? Yes No
5. Attach the name and address of the landowner of the facility site and landowners of record within one mile of the site.
6. Attach description of the facility with a diagram indicating location of fences, pits, dikes, and tanks on the facility.
7. Attach designs prepared in accordance with Division guidelines for the construction/installation of the following: pits or ponds, leak-detection systems, aerations systems, enhanced evaporation (spray) systems, waste treating systems, security systems, and landfarm facilities.
8. Attach a contingency plan for reporting and clean-up for spills or releases.
9. Attach a routine inspection and maintenance plan to ensure permit compliance.
10. Attach a closure plan.
11. Attach geological/hydrological evidence demonstrating that disposal of oil field wastes will not adversely impact groundwater. Depth to and quality of ground water must be included.
12. Attach proof that the notice requirements of OCD Rule 711 have been met.
13. Attach a contingency plan in the event of a release of H₂S.
14. Attach such other information as necessary to demonstrate compliance with any other OCD rules, regulations and orders.

15. CERTIFICATION
I hereby certify that the information submitted with this application is true and correct to the best of my knowledge and belief.

Name: Jim Wilson

Title: Manager

Signature: 

Date: 4/26/05

E-mail Address: _____

NOTICE OF PUBLICATION

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

The State of New Mexico through its Oil Conservation Division hereby gives notice pursuant to law and the Rules and Regulations of the Division of the following public hearing to be held at 8:15 A.M. on **May 19, 2005**, in the Oil Conservation Division Hearing Room at 1220 South St. Francis Drive, Santa Fe, New Mexico, before an examiner duly appointed for the hearing. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Division Administrator Florene Davidson at 505-476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible. Public documents including the agenda and minutes, can be provided in various accessible forms. Please contact Florene Davidson if a summary or other type of accessible form is needed.

**STATE OF NEW MEXICO TO:
All named parties and persons
Having any right, title, interest
Or claim in the following cases
And notice to the public.**

(NOTE: All land descriptions refer to the New Mexico Principal Meridian whether or not so stated.)

Case 13481

Application of Artesia Aeration, LLC to modify its existing NMOCD Rule 711 Permit No. NM-01-030 so that they may accept salt-contaminated oilfield wastes. Artesia Aeration, LLC has applied for a modification to its surface waste management facility permit to allow the applicant to accept oilfield waste, exempt from RCRA Subtitle C, including chloride impacted debris, drilling mud, soils, sludges, and tank bottoms associated with the drilling, operating and maintenance of oil and gas wells and related operations of the oil and gas industry, and certain non-exempt, non-hazardous oilfield waste. Artesia Aeration, LLC's landfarm is located in the N/2 of Section 7, Township 17 South, Range 32 East, in Lea County, New Mexico. The application includes provisions for the handling of such oilfield wastes and addresses the protection of groundwater. The applicant will keep chloride-contaminated oilfield waste separate from hydrocarbon-contaminated oilfield waste.

Given under the Seal of the State of New Mexico Oil Conservation Division at Santa Fe, New Mexico on this 12th day of April 2005.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**Mark E. Fesmire, P.E.
Division Director**

S E A L

**ATTACHMENT
B**

Affidavit of Publication

STATE OF NEW MEXICO)

) ss.

COUNTY OF LEA)

Joyce Clemens being first duly sworn on oath deposes and says that she is Advertising Director of **THE LOVINGTON DAILY LEADER**, a daily newspaper of general paid circulation published in the English language at Lovington, Lea County, New Mexico; that said newspaper has been so published in such county continuously and uninterruptedly for a period in excess of Twenty-six (26) consecutive weeks next prior to the first publication of the notice hereto attached as hereinafter shown; and that said newspaper is in all things duly qualified to publish legal notices within the meaning of Chapter 167 of the 1937 Session Laws of the State of New Mexico.

That the notice which is hereto attached, entitled

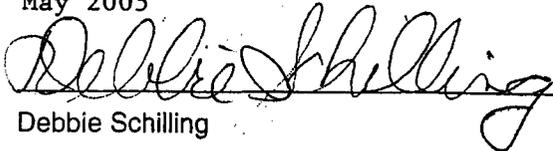
Legal Notice

was published in a regular and entire issue of **THE LOVINGTON DAILY LEADER** and not in any supplement thereof, for one (1) day, beginning with the issue of April 14, 2005 and ending with the issue of April 14, 2005.

And that the cost of publishing said notice is the sum of \$ 54.12 which sum has been (Paid) as Court Costs.



Subscribed and sworn to before me this 2nd day of May 2005



Debbie Schilling

Notary Public, Lea County, New Mexico

My Commission Expires June 22, 2006

LEGAL NOTICE NOTICE OF PUBLICATION

STATE OF
NEW MEXICO
ENERGY, MINERALS
AND NATURAL
RESOURCES DEPART-
MENT
OIL CONSERVATION
DIVISION
SANTA FE,
NEW MEXICO

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ed.

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All named parties and persons
Having any right, title, interest
Or claim in the following cases
And notice to the public.

(NOTE: All land descriptions refer to the New Mexico Principal Meridian whether or not so stated.)

Case 13481 ✓
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of groundwater. The applicant will keep chloride-contaminated oilfield waste separate from hydrocarbon-contaminated oilfield waste.

Given under the Seal of the State of New Mexico Oil Conservation Division at Santa Fe, New Mexico on this 12th day of April 2005.

STATE OF
NEW MEXICO
OIL CONSERVATION
DIVISION

Mark E. Fearnire, P.E.
Division Director

SEAL

Published in the
Lovington Daily Leader
April 14, 2005.



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON

Governor

Joanna Prukop

Cabinet Secretary

September 17, 2004

Mark E. Fesmire, P.E.

Director

Oil Conservation Division

Mr. Bob Mathews
Artesia Aeration LLC
P.O. Box 248
Artesia, NM 88210

Dear Mr. Mathews:

Since the New Mexico Oil Conservation Division (NMOCD) promulgated Rule 50 covering pits and below-grade tanks, there has arisen a need, in certain circumstances, for operators to transport their drill cuttings off-site and dispose of them.

NMOCD Rule 711, as it pertains to landfarms, does not specifically address the issue of exempt oilfield wastes that may be contaminated with salts. Your landfarm application and permit were written with only hydrocarbon-contaminated soils in mind. Salt-contaminated wastes cause the following problems:

1. Lessening the effectiveness of the biodegradation capacity of your landfarm
2. Rapid leachability causing adverse effects on groundwater

If you want to accept salt-contaminated cuttings or any other salt-contaminated wastes, your 711 permit must be modified to ensure that your acceptance of those wastes will not adversely affect public health or the environment.

Please check one of the following:

I have accepted or intend to accept salt-contaminated wastes in my landfarm. An OCD form C-137, applying for a modification to my 711 permit is attached. Included, as an attachment, is a demonstration that the accepted salt-contaminated soils will not adversely affect groundwater in the foreseeable future. (Closure requirements will also require modification to ensure the protection of groundwater. Should your acceptance of salt-contaminated wastes prove detrimental to groundwater, future liability for such damage rests with the landfarm operator).

I do not intend to accept salt-contaminated wastes in my landfarm. Should this condition change, I will submit an OCD Form C-137 for a modification to my 711 permit at that time.

New Mexico Oil Conservation Division
Attn: Ed Martin
1220 S. St. Francis
Santa Fe, NM 87505

This letter must be returned to the above address no later than October 31, 2004. An extension of time may be granted if you contact this office no later than that date.

If you have any questions, contact Ed Martin (505) 476-3492 or emartin@state.nm.us

Signed _____

Date _____

Oil Conservation Division * 1220 South St. Francis Drive * Santa Fe, New Mexico 87505
Phone: (505) 476-3440 * Fax (505) 476-3462 * <http://www.emnrd.state.nm.us>

ATTACHMENT
C

Case Nos. 13454 & 13455

CRI Exhibit No. 4

Hearing Date: March 25, 2005



NEW MEXICO ENERGY, MINERALS AND
NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON
Governor
Joanna Prukop
Cabinet Secretary

7001 1940 0004 7920 7553

March 4, 2005

Mark E. Fesmire, P.E.
Director
Oil Conservation Division

Artesia Aeration, LLC
P.O. Box 310
Hobbs, NM 88240

Permit Number: NM-1-0030

Re: Administrative Modification of Landfarm Permits

The Oil Conservation Division (OCD) issued the landfarm permit identified above under OCD Rule 711. As explained in the public notice given prior to the issuance of the permit, the permit was for landfarming to remediate hydrocarbon-contaminated soils. The language of the permit, however, is broader, allowing the facility to accept oilfield contaminated solids which are either exempt from the Federal RCRA Subtitle C (hazardous waste) regulations or are "nonhazardous" by characteristic testing. If this language were interpreted to allow the landfarm to accept oilfield waste contaminated with salts, the salts could compromise the biodegradation capacity of the landfarm. And because salts leach more easily than hydrocarbons, the landfarm may pose a greater threat to groundwater.

According to the terms of the permit identified above, the OCD may change the permit conditions administratively for good cause shown as necessary to protect fresh water, human health and the environment. The OCD has determined that it is necessary to protect fresh water, human health and the environment to modify the permit as follows:

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

If the landfarm identified above wishes to accept oilfield waste contaminated with salts, you will need to file an application to modify the permit pursuant to OCD Rule 711.B(1) and follow the notice requirements of OCD Rule 711.B(2). If you have already filed a complete application for permit modification with this office and complied with the notice requirements, the OCD will process the application promptly.

Landfarms that wish to accept oilfield wastes contaminated with salts while their application for permit modification is pending may apply to the Division Director for an emergency order under OCD Rule 1202. Applications for emergency orders will be considered on a case-by-case basis.

This notice is being sent to all entities operating landfarm facilities in New Mexico permitted pursuant to OCD Rule 711, as shown on the attached list.

If you have any questions, please contact Ed Martin at (505) 476-3492 or emartin@state.nm.us.

Very truly yours,

Mark E. Fesmire, P.E

Before the OCD
Case 13454 & 13455
OCD Ex. 5

Request for a temporary emergency order allowing a landfarm to accept salt-contaminated oilfield waste.

Name of Facility Artesia Aeration

Address P.O. Box 310

City, State, Zip Hobbs, NM 88241

Location of landfarm

Qtr/Qtr, Section, Township, Range N/2 Section 7, Township 17S, Range 32E 32E

Lea County NMPM

Depth to groundwater at landfarm No water at 120' deep

Fresh water wells within 1,000 feet? Yes No

Watercourses (wet or dry) within 1,000 feet? Yes No

Conditions at the landfarm site which would make it acceptable for the disposal of salt-contaminated oilfield waste. Such conditions could include an impermeable barrier such as clay (red bed) between the landfarm and the groundwater, lack of groundwater at the site, etc.

Monitor well is 120' deep with no water

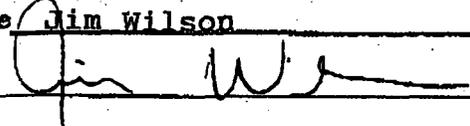
Reserve pit cuttings will be kept in a seperate cell, away from other materials.

Why do you consider this an emergency? With only one site in Southern Lea County, to haul reserve pit cuttings to, our location would make it more feesable and less expensive for the oil companies to haul their reserve pit cuttings to from Northern Lea County.

Check one: I have already submitted an application to accept salt-contaminated waste
 I will submit an application for modification in the next two weeks

Signed by:

Printed Name Jim Wilson

Signature 

Title Manager

Date 3/11/2005

03/10/2005 THU 20:47 [TX/RX NO 5409] 002

Before the OCD
Case 13454 & 13455
OCD Ex. 7