

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

**APPLICATION OF GANDY MARLEY, INC.
TO MODIFY THEIR EXISTING NMOCD RULE 711
PERMIT NO. NM-01-019 SO THEY MAY ACCEPT
SALT-CONTAMINATED OILFIELD WASTES**

APPEAL OF ORDER NO. R-12306-B

CASE NO. 13480 de novo

MOTION FOR CONTINUANCE

COMES NOW Gandy Marley, Inc. (GMI), by and through undersigned counsel of record, and requests that the Commission continue the de novo hearing on the above-captioned matter, currently set for the October 13, 2005 Commission Meeting. GMI also requests that the Commission set the following items for the October 13, 2005 docket: 1) discussion of the status of the revised permit modification application and discussion of the schedule for hearing on the application; and 2) any other outstanding issues in this matter. In support of this motion, GMI states as follows:

A. CONTINUANCE OF THE DE NOVO HEARING

1. On May 23 and 24, 2005, a hearing was held by the Division, before a hearing examiner, on GMI's application for a permit modification to allow GMI's commercial waste management facility, permitted under OCD Rule 711, to accept salt-contaminated oilfield waste. The request for a permit modification was necessary because, on March 4, 2005, Division Director Mark Fesmire issued a letter immediately modifying the GMI permit to prohibit the acceptance of oilfield waste contaminated with salts.

2. On August 5, 2005, the Division issued Order R-12306-B, denying GMI's application for a permit modification. As part of the Order, the Division stated that:

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GMI may submit a revised application in conformity with Rule 711. Any revised application filed by GMI shall be readvertised and notice thereof shall be given as required by Rule 711. Following filing by GMI of a revised application in conformity with Rule 711, and after proper notice thereof is provided, the Director hereby refers this matter directly to the Commission for further proceedings thereon."

Order R-12306, p. 20, ¶¶3-5.

3. On August 24, 2005, GMI filed an Application for De Novo Hearing Before the Commission on Order R-12306-B. In the de novo hearing application, GMI requested that "the de novo hearing on the permit modification be stayed until GMI submits a revised permit modification application to the Commission pursuant to Rule 711 and in accordance with the Order." (Application for De Novo Hearing, at p. 3, ¶1). Rule 711 requires that the permit modification application be submitted to the Division and notice given to the public, with at least a 30-day public comment period before a hearing is held. 19.15.9.711(B)(2) NMAC.

4. Since the issuance of Order R-12306-B, GMI has been preparing a revised permit modification application, including preparing engineering drawings, conducting studies and compiling the information required by Rule 711(B)(1). GMI will file the revised permit modification application prior to October 13, 2005. At the October 13, 2005 Commission meeting, GMI will be prepared to discuss the status of the application, including public notice requirements. GMI will also be prepared to discuss a schedule for a hearing on the application.

5. As discussed more fully below, on September 15, 2005, the Commission met to review GMI's request for partial stay. David Brooks, counsel for the Commission, provided the Commission with a summary of the procedural history of this matter. Mr. Brooks indicated that, as part of the de novo application, GMI was requesting that the Commission wait to hear the de novo application until GMI filed its revised permit modification application, which would then be heard by the Commission, as stated in Order R-12306-B. (Reporter's Transcript of

Proceedings Commission Hearing, September 15, 2005, at 7/lns24-25 to 8/lns1-9). After meeting in closed session, the Commission granted GMI's request for a partial stay allowing it to continue operating and stated that, at the October 13, 2005 meeting, "the Commission will review the operator's progress, the Applicant's progress, in preparing and publishing in accordance with Rule 711 their application for modification of their permit." (*Id.* at 10/lns20-23).

6. As stated in Order R-12306-B, the revised permit modification application will be set for hearing before the Commission. There is not sufficient time to submit the revised permit modification application and to allow for the thirty-day public comment period before October 13, 2005.

7. GMI requests that the de novo hearing scheduled for the October 13, 2005 Commission Meeting be continued until such time as GMI submits the revised permit modification application and the public notice requirements are met.

B. REQUEST TO SET ON THE DOCKET ANY OUTSTANDING ISSUES RELATED TO GMI'S DE NOVO APPEAL

8. GMI requests that, at the October 13, 2005 Commission Meeting, the Commission address any outstanding issues, other than the de novo hearing on the permit application, in this matter.

9. Specifically, GMI requests that the Commission be prepared to address any outstanding issues related to the Commission's decision, made at its September 15, 2005 meeting, granting GMI's Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B, and the Commission's failure to issue a written order following its verbal ruling, despite the lack of a motion by the Commission or any other Party to reconsider the granting of the request for partial stay.

10. On August 25, 2005, GMI requested a stay of the portion of Order R-12306-B that rescinded the Division's Emergency Order Extension, dated March 25, 2005, which allowed GMI to continue accepting salt-contaminated waste until a final decision is made on GMI's application for a permit modification. (GMI's Request for Partial Stay of Division Order R-12306-B).

11. On August 31, 2005, the Director denied GMI's Request for Partial Stay of Division Order R-12306-B.

12. On September 2, 2005, GMI filed a motion requesting the Commission to review the Director's denial of GMI's Request for Partial Stay. (GMI's Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B).

13. On September 15, 2005, the Commission met in closed session to review GMI's request for a partial stay of Order R-12306-B. Following the closed session, the Commission, in open session, voted to grant GMI's request for partial stay of Order R-12306-B, allowing GMI to continue operating. (*Id.* at 10/Ins18-25 to 11/Ins1-9). The stay was granted until October 13, 2005 Commission meeting, "where the Commission will review the operator's progress, the Applicant's progress, in preparing and publishing in accordance with Rule 711 their application for modification of their permit. At the October 13 meeting, the Commission will determine whether to extend this date, based on GMI's progress in application and notice." (*Id.*).

14. The Commission ordered counsel for the Commission to draft an order reflecting the Commission's decision. The Commission then agreed to reconvene on September 23, 2005 to sign the order.

15. On September 20, 2005, the Secretary of the Energy, Minerals and Natural Resources Department appointed a new commissioner to replace Frank Chavez, the

commissioner who participated in the September 15, 2005 meeting. Bill Olson, the newly appointed commissioner, recused himself from voting because he did not participate in the September 15, 2005 meeting.

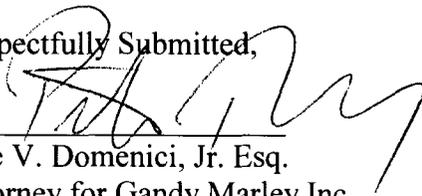
16. At the September 23, 2005 meeting, the Commission did not sign the proposed order granting the stay even though the stay was approved by the Commission on September 15, 2005. Instead, the Commission continued the matter until the October 13, 2005 Commission meeting.

17. On September 27, 2005, GMI filed an Emergency Motion to Enforce and For Presentment of Order. It is expected that the emergency motion will be heard prior to the October 13, 2005 hearing.

WHEREFORE, GMI requests an Order of the Commission:

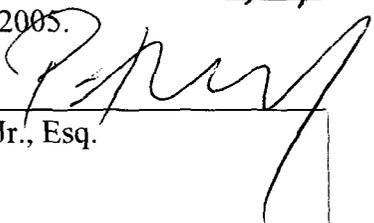
1. Continuing the de novo hearing scheduled for October 13, 2005 Commission Meeting to allow time for GMI's revised permit modification application, which will be submitted before October 13, 2005, to meet the public notice and public comment requirements and to be scheduled for hearing before the Commission;
2. Setting the following issues for the October 13, 2005 docket:
 - a. discussion of the status of the revised permit modification application and discussion of a schedule for the hearing on the application;
 - b. any other outstanding issues in this case.

Respectfully Submitted,



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I hereby certify that a true and correct copy of the foregoing was served on all parties of record on the 24 day of September, 2005.



Pete V. Domenici, Jr., Esq.