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ENFORCEMENT

DATE:

2005



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON

Governor

Joanna Prukop

Cabinet Secretary

Mark E. Fesmire, P.E.

Director

Oil Conservation Division

NOTICE OF VIOLATION

September 6, 2005

CERTIFIED MAIL

RETURN RECEIPT NO: 7001-1940-0004-7920-7690

Mr. Larry Gandy
Gandy Marley, Inc.
P.O. Box 1658
Roswell, NM 88202

RE: Violation of a Condition of Permit #NM-01-019 issued under Oil Conservation Division Rule 711 [19.15.9.711.B NMAC] issued for a commercial landfarm located in Sections 4, 5, 8, and 9 of Township 11 South, Range 31 East, NMPM, Chaves County, New Mexico

Dear Mr. Gandy:

OCD Rule 711 states, in pertinent part, "...all commercial and centralized facilities including facilities in operation on the effective date of Section 19.15.9.711 NMAC...shall be permitted by the Division". Permit # NM-01-019 issued to Gandy Marley, Inc. on October 22, 1999, sets forth mandatory conditions under which Gandy Marley, Inc. must operate the facility in order to retain its permit.

OCD conducted an in-house inspection of the facility records and this inspection revealed that Gandy Marley, Inc. has been delinquent in the submission of treatment zone monitoring reports. Items 1, 2, and 3 under TREATMENT ZONE MONITORING in the permit describe how the sampling of the treatment zone will be conducted. Treatment zone samples are to be analyzed for total petroleum hydrocarbons (TPH) and volatile aromatic organics (BTEX) quarterly and for major cations and anions and Water Quality Control Commission (WQCC) metals annually. Item 3 under REPORTING in the permit states that "Analytical results from the treatment zone monitoring will be submitted to the OCD Santa Fe office within thirty (30) days of receipt from the laboratory. For the period of January 1, 2003 through December 31, 2004, the OCD has received no quarterly or annual reports.

Gandy Marley, Inc.'s conduct, i.e., failure to submit quarterly and annual reports, warrants issuance of this "Notice of Violation" and assessment of civil penalties pursuant to Section 70-2-31(A), NMSA 1978 for violations of the OCD Rules and Permit, and the statute described above. Section 70-2-31(A) authorizes penalties of up to one thousand dollars (\$1,000) per day per violation for any knowing or willful violation of any provision of the "Oil and Gas Act" or any Rule or Order issued pursuant to the Act. In the case of a continuing violation, each day of violation constitutes a separate violation. Section 70-2-31(A).

In view of the seriousness and duration of these violations, the Environmental Bureau of the OCD believes a penalty of \$2,000 and a definite commitment to future corrective action are essential. This penalty is based on \$1,000 for each year that Gandy Marley, Inc. was in violation of its permit conditions.

Unless the matter can be satisfactorily resolved, we will request an enforcement hearing before an OCD Hearing Examiner, where we will recommend issuance of a formal order requiring compliance with the Oil and Gas Act and OCD Rules, a civil penalty, and corrective action. Please note that because the permit condition and statute at issue were violated on multiple occasions, if this matter goes to hearing, the OCD may seek a penalty greater than the \$2,000 penalty proposed in this notice.

Please contact this office within ten (10) days to schedule an administrative conference to discuss this matter. Failure to do so may result in an additional penalty. OCD's participation in this conference, and Gandy Marley, Inc.'s subsequent agreement to the fines proposed will prevent OCD from pursuing this matter further. OCD legal counsel may be present for this conference and you may bring legal counsel if you desire.

If you have questions, you may contact me at 505-476-3490.

Sincerely,



Roger C. Anderson
Environmental Bureau Chief
rcanderson@state.nm.us

RCA/eem

Cc: OCD Artesia District
Cheryl O'Connor
NOV File
File NM-01-019

Ed – Here are my comments on the Gandy Marley permit conditions.

It looks like you are combining the landfarm and landfill into one permit. That's fine with me. But it might help to reorganize things a little. Maybe start with provisions that apply to both, such as overall operation conditions, reporting, etc. And make clear in the title of that section that the conditions apply to both. Then go into provisions that are specific to landfarms, and then landfills. If you end with provisions that apply to both (financial assurance, closure) make sure that is clear.

Landfill construction

In "landfill construction" paragraph 5, you say that the clay will be compacted to a certain permeability. Do you want to say what testing will be required to show that? Also, you say quality control measures will be employed to ensure uniform construction. Specifics?

Also in "landfill construction" you talk about the construction of cells and allowable locations. Their proposal was to convert existing landfarm cells into landfill cells. Do you want to limit them to that, rather than allowing them to go beyond the original footprint, which is what your description of construction implies?

Landfill operation

In "landfill operation" paragraph 1, you talk about no debris that would compromise the liner. Should we (can we) be any more specific, or do we want to leave it general?

In "landfill operation" paragraph 2, you talk about using clean soil. Later, it becomes clear that you are allowing remediated soil if it meets certain standards. That shows up in "landfarm operation" paragraph 5. I think it would be clearer to put that paragraph under "landfill operation," so people don't have to look at landfarms to find out what can be used in a landfill.

In landfill operation, paragraph 4 you talk about seeding. Should be tell them they need to do this as the landfill is being closed, rather than only after the entire cell is closed?

In paragraph 6 you talk about removal of precipitation that accumulates. Do you need to say how that will be done? Would creating a slope in the bottom of the cell help direct water away from the filled areas of the cell?

In paragraph 5 (which comes after 4) you say that no more than 2 5-acre cells will be open at any time. Is that the size of the existing cells?

Landfarm operation

Don't we want to spell out that they can't take salt contaminated soils in the landfarm? Is it enough to say that they can take "petroleum-contaminated soils," and define the extent of the petroleum contamination?

I would move paragraph 5 to the landfill section.

In paragraph 8b you refer to item 9. What are you referring to?

Overall facility operations

I'm assuming these provisions apply to both the landfarm and the landfill. You might want to start by defining facility to include both.

Some of the provisions appear to apply only to landfills. If so, those provisions should probably be moved to "landfill operations"

Waste acceptance criteria

Is this staying in? We should define waste separately for landfarms and landfills, and I think we have already done that. If there are general criteria applicable to both that we want to put in a general section, that's OK.

Closure

Should we define what we mean by closure? I.e., final closure of each cell of the landfill, final closure of the landfarm cells?

My main concern with combining the landfarm and landfill permit is organization. We need to be very clear about what applies to both, and what applies only to landfarms or landfills. And we also have to be careful that we don't have contradictory provisions, for example, a general discussion of closure that has provisions that conflict with specific provisions for landfills or landfarms.