

**2RF-161 - MYOX AST -  
Facility  
[fVV2113850290]  
Cessation of  
Operations Request  
Application ID  
278333/10/23/2023  
OCD/Solaris/  
Correspondence**

**[371643] SOLARIS WATER  
MIDSTREAM, LLC**

# R. T. HICKS CONSULTANTS, LTD.

901 Rio Grande Blvd NW ▲ Suite F-142 ▲ Albuquerque, NM 87104 ▲ Since 1996

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January 2, 2023

Ms. Victoria Venegas  
NMOCD  
Via E-mail and Portal Upload

RE 2RF-161 Myox (FRITCHY) AST Variance Request

Ms. Venegas:

The submission by Solaris Water Midstream LLC on 10/23/23 did not intend to ask for administrative approval of a second 6-month extension. We understand that 19.15.34.13.C would not allow such a request. We intended the submission as a variance (see attached) request pursuant to:

19.15.34.16 VARIANCES:

- A. An operator may file a written request for a variance from any requirement of these rules with the division district office. The request for variance shall include:
- (1) a detailed statement explaining the need for a variance; and
  - (2) a detailed written demonstration that the variance will provide equal or better protection of fresh water, public health and the environment.

Hicks Consultants believed we met the requirements for approval of such a variance from the Rule. While the Tomahawk wells are not yet on a drilling schedule. Solaris would like to use the **2RF-161 Myox (FRITCHY) AST** to complete the Chevron HNM 26 27 Sec 11/14 Pad 30 pkg30, HNM 26 27 Sec 11/14 Pad 31, Pkg 31, HNM 26 27 Sec 13/1 Pad 23 Pkg 24, HNM 26 27 Sec 3/15 Pad 18A, Pkg 18, HNM 26 27 Sec 10/15 Pad 28, Pkg 28. These wells will be completed from 4/19/24 through 6/10/24.

Changing drilling and completion schedules, which are constant with operators, causes havoc with stationary ASTs like Myox. As you know, neither the authors of Rule 34 nor the Commission considered regulating ASTs. Closing and re-opening the Myox AST provides no value and will cause unnecessary impact to public health (increased truck traffic for disposal of the liner system) and the environment (emissions to conduct an unnecessary closure).

In the denial, OCD noted that Solaris did not maintain fluid in the AST that can prevent wind damage to the liner system. While there is no evidence of such damage, evaluating the integrity of the Myox liner system is necessary. We proposed a protocol to evaluate primary liner integrity and leak detection system prior to filling the AST with produced water. We are willing to discuss other testing protocols that would allow OCD to approve the variance that requires primary liner integrity testing as the first work element.

January 2, 2024

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We do not believe the 11/8/23 OCD response is a denial of the variance as Solaris did not receive the certified letter. Please clarify if OCD intended to deny the variance request. If so, Solaris must request a hearing shortly to accommodate the next use of the AST.

Sincerely,

R.T. Hicks Consultants

A handwritten signature in black ink, appearing to read "Randall H", is positioned above the printed name.

Randall Hicks, P.G.

Principal

Copy: Solaris Water Midstream, LLC

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## Statement Explaining Why the Applicant Seeks a Variance

The prescriptive mandates of the Rule that are the subject of this variance request are:

19.15.34.13.C A recycling containment shall be deemed to have ceased operations if less than 20% of the total fluid capacity is used every six months following the first withdrawal of produced water for use. The operator must report cessation of operations to the appropriate division district office. The appropriate division district office may grant an extension to this determination of cessation of operations not to exceed six months.

The Myox Containment is associated with the Landes Recycling Facility and is 100% dependent upon the drilling schedule of wells in the vicinity. The Myox Containment last received treated produced from the Landis recycling facility in April, 2022. OCD granted a 6-month extension to operate on May 1, 2023. This extension expires on October 31, 2023.

A previous request to extend the service life of the Myox AST referenced Tomahawk wells of COG. As indicated in the attached Sundry Notice, the schedule of drilling changed, again. The Myox AST Containment will be used when these wells are drilled or other wells in the area request produced water for E&P use.

Closure of the Myox Containment to maintain compliance with Rule 34 followed by reconstruction of the containment provides no environmental or financial benefit for the reasons described below.

Please note that the Myox AST Containment has been dry for many months, therefore no leak detection monitoring is required by the Rule.

## Demonstration That the Variance Will Provide Equal or Better Protection of Fresh Water, Public Health, and the Environment

Prior to introduction of produced water into the containment for the next stimulation, Solaris will provide OCD with:

- An update regarding the anticipated start of recycling activities
- Results of an inspection of the liner system, avian hazing device, fencing, etc.
- A leak detection report 2 weeks prior to use in stimulation with the AST Containment filled with water. If Solaris detects leakage, the AST Containment will be drained and repaired prior to re-filling for use in well stimulation.

During the first three weeks after the initial test described above, Solaris will monitor the leak detection system and provide OCD with the findings via email.

We contend that these actions provide equal protection of fresh water, public health and the environment when compared to closure of the containment and rebuilding.

October 10, 2023

Page 2

Finally, to our memory of the hearing for Rule 34 suggests that a principal reason that this 6-month restriction exists is stated on Page 2 of the OCC Order:

e. Prevent any use of recycling containments for the disposal of produced water or other oilfield wastes.

Evaporation in large in-ground containments occurs. Obviously, someone involved with the hearing – a Commissioner, OCD staff, or commercial operators of SWDs - believed that a recycling containment that was not continually recycling stored produced water is avoiding the mandates of Rule 35 (Waste Disposal) and the use of injection for produced water management. While one can debate if this portion of Rule 43 makes sound environmental sense or no, one cannot debate that:

- 60,000 bbl. AST containments make very poor waste disposal (evaporation) unit,
- AST containments were not considered by the Commission as they require numerous variances to the Rule in order to be used by Rule 34. This closure section is another instance where the Rule does not consider ASTs as containments.

No Rule is perfect, and Rule 34 is an excellent example.

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

Form C-147  
Revised October 11, 2022

<https://www.emnrd.nm.gov/ocd/ocd-e-permitting/>

## Recycling Facility and/or Recycling Containment

**Type of Facility:** ☒ Recycling Facility ☒ Recycling Containment\*

**Type of action:** ☐ Permit

☐ Modification

☐ Closure

☐ Registration

☒ Extension

☒ Other (explain) **extension of cessation of operation, request from November 2023 to April 2024**

**\* At the time C-147 is submitted to the division for a Recycling Containment, a copy shall be provided to the surface owner.**

Be advised that approval of this request does not relieve the operator of liability should operations result in pollution of surface water, ground water or the environment. Nor does approval relieve the operator of its responsibility to comply with any other applicable governmental authority's rules, regulations or ordinances.

1. Operator: Solaris Water Midstream, LLC. (For multiple operators attach page with information) OGRID #: 371643  
Address: 9651 Katy Fwy, Suite 400, Houston Texas 77024  
Facility or well name (include API# if associated with a well): Myox AST  
OCD Permit Number: FVV2113850290 (For new facilities the permit number will be assigned by the district office)  
U/L or Qtr/Qtr NE 1/4 of SE 1/4 Section 32 Township 25S Range 28E County: Eddy  
Surface Owner: ☐ Federal ☐ State ☒ Private ☐ Tribal Trust or Indian Allotment

2. ☐ **Recycling Facility:**  
Location of recycling facility (if applicable): Latitude 32.1218301° Longitude -104.0707176° NAD83  
Proposed Use: ☒ Drilling\* ☒ Completion\* ☒ Production\* ☒ Plugging\*  
**\*The re-use of produced water may NOT be used until fresh water zones are cased and cemented**  
☐ Other, **requires permit for other uses. Describe use, process, testing, volume of produced water and ensure there will be no adverse impact on groundwater or surface water.**  
☒ Fluid Storage  
☒ Above ground tanks ☒ Recycling containment ☐ Activity permitted under 19.15.17 NMAC explain type \_\_\_\_\_  
☐ Activity permitted under 19.15.36 NMAC explain type: \_\_\_\_\_ ☐ Other explain \_\_\_\_\_  
☐ For multiple or additional recycling containments, attach design and location information of each containment  
☐ **Closure Report (required within 60 days of closure completion):** ☐ Recycling Facility Closure Completion Date: \_\_\_\_\_

3. ☒ **Recycling Containment:**  
☐ Annual Extension after initial 5 years (attach summary of monthly leak detection inspections for previous year)  
Center of Recycling Containment (if applicable): Latitude 32.084813° Longitude -104.113231° NAD83  
☐ For multiple or additional recycling containments, attach design and location information of each containment  
☒ Lined ☒ Liner type: Thickness 40 mil ☒ LLDPE ☐ HDPE ☐ PVC ☐ Other white smooth  
☐ String-Reinforced  
Liner Seams: ☐ Welded ☐ Factory ☐ Other \_\_\_\_\_ Volume: \_\_\_\_\_ bbl Dimensions: L \_\_\_\_\_ x W \_\_\_\_\_ x D 12 ft.  
☐ Recycling Containment Closure Completion Date: \_\_\_\_\_

4.

**Bonding:**

- ☐ Covered under bonding pursuant to 19.15.8 NMAC per 19.15.34.15(A)(2) NMAC (These containments are limited to only the wells owned or operated by the owners of the containment.)
- ☒ Bonding in accordance with 19.15.34.15(A)(1). Amount of bond \$ \_\_\_\_\_ (work on these facilities cannot commence until bonding amounts are approved)
- ☐ Attach closure cost estimate and documentation on how the closure cost was calculated.

5.

**Fencing:**

- ☒ Four foot height, four strands of barbed wire evenly spaced between one and four feet
- ☐ Alternate. Please specify \_\_\_\_\_

6.

**Signs:**

- ☒ 12"x 24", 2" lettering, providing Operator's name, site location, and emergency telephone numbers
- ☐ Signed in compliance with 19.15.16.8 NMAC

7.

**Variances:**

Justifications and/or demonstrations that the proposed variance will afford reasonable protection against contamination of fresh water, human health, and the environment.

**Check the below box only if a variance is requested:**

☒ Variance(s): Requests must be submitted to the appropriate division district for consideration of approval. If a Variance is requested, include the variance information on a separate page and attach it to the C-147 as part of the application.

**If a Variance is requested, it must be approved prior to implementation.**

8.

**Siting Criteria for Recycling Containment**

**Instructions:** The applicant must provide attachments that demonstrate compliance for each siting criteria below as part of the application. Potential examples of the siting attachment source material are provided below under each criteria.

**General siting****Ground water is less than 50 feet below the bottom of the Recycling Containment.**

NM Office of the State Engineer - iWATERS database search; USGS; Data obtained from nearby wells

☐ Yes ☒ No  
☐ NA

Within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended.

- Written confirmation or verification from the municipality; written approval obtained from the municipality

☐ Yes ☒ No  
☐ NA

Within the area overlying a subsurface mine.

- Written confirmation or verification or map from the NM EMNRD-Mining and Minerals Division

☐ Yes ☒ No

Within an unstable area.

- Engineering measures incorporated into the design; NM Bureau of Geology & Mineral Resources; USGS; NM Geological Society; topographic map

☐ Yes ☒ No

Within a 100-year floodplain. FEMA map

☐ Yes ☒ No

Within 300 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse, or lakebed, sinkhole, or playa lake (measured from the ordinary high-water mark).

- Topographic map; visual inspection (certification) of the proposed site

☐ Yes ☒ No

Within 1000 feet from a permanent residence, school, hospital, institution, or church in existence at the time of initial application.

- Visual inspection (certification) of the proposed site; aerial photo; satellite image

☐ Yes ☒ No

Within 500 horizontal feet of a spring or a fresh water well used for domestic or stock watering purposes, in existence at the time of initial application.

- NM Office of the State Engineer - iWATERS database search; visual inspection (certification) of the proposed site

☐ Yes ☒ No

Within 500 feet of a wetland.

- US Fish and Wildlife Wetland Identification map; topographic map; visual inspection (certification) of the proposed site

☐ Yes ☒ No



9.

**Recycling Facility and/or Containment Checklist:**

**Instructions:** Each of the following items must be attached to the application. Indicate, by a check mark in the box, that the documents are attached.

- ☒ Design Plan - based upon the appropriate requirements.
- ☒ Operating and Maintenance Plan - based upon the appropriate requirements.
- ☒ Closure Plan - based upon the appropriate requirements.
- ☒ Site Specific Groundwater Data -
- ☒ Siting Criteria Compliance Demonstrations –
- ☒ Certify that notice of the C-147 (only) has been sent to the surface owner(s)

10.

**Operator Application Certification:**

I hereby certify that the information and attachments submitted with this application are true, accurate and complete to the best of my knowledge and belief.

Name (Print): Chad Gallagher Title: ROW Agent  
Signature: Chad Gallagher Date: 1/2/2024  
e-mail address: chad.gallagher@ariswater.com Telephone: (575)444-9786

11.

**OCD Representative Signature:** \_\_\_\_\_ **Approval Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_ **OCD Permit Number:** \_\_\_\_\_

- ☐ OCD Conditions \_\_\_\_\_
- ☐ Additional OCD Conditions on Attachment \_\_\_\_\_



**Venegas, Victoria, EMNRD**

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**From:** Venegas, Victoria, EMNRD  
**Sent:** Wednesday, November 8, 2023 2:44 PM  
**To:** Barr, Leigh, EMNRD  
**Subject:** 2RF-161 - MYOX AST - Facility [fVV2113850290]

**2RF-161 - MYOX AST - Facility [fVV2113850290]**

Mr. Gallagher,

NMOCD has reviewed the extension of the cessation of operations request and related documents, submitted by [371643] SOLARIS WATER MIDSTREAM, LLC on 10/23/2023 Application ID 278333, for 2RF-161 - MYOX AST - Facility Number [fVV2113850290] in Unit Letter K, Section 32, Township 25S, Range 28E, Eddy County, New Mexico. The cessation for operations extension request has been denied for the following reasons:

- The last reported recycle of PW at 2RF-161 - MYOX was in April 2022. 2RF-161 - MYOX AST - Facility Number [fVV2113850290] was granted a six-months extension of cessation of operations from May 1, 2023, through October 31, 2023. [371643] SOLARIS WATER MIDSTREAM, LLC was clearly advised that , if after this 6-month period, the containment was not utilized at a minimum of 20% fluid capacity, no additional extensions would be granted, and the operator would be directed to remove all fluids and proceed with the closure requirements.
- [371643] SOLARIS WATER MIDSTREAM, LLC did not meet the condition of approval specified in the email of May 12, 2023, which requested: *[371643] SOLARIS WATER MIDSTREAM, LLC will maintain a liquid level in the containment that is at least equal to the weight of the liner plus 20%. [371643] SOLARIS WATER MIDSTREAM, LLC may maintain a higher liquid level if they choose.*
- NMOCD requests [371643] SOLARIS WATER MIDSTREAM, LLC to proceed with the closure requirements.
- Please note, failure to comply with the requirements of 19.15.34 NMAC may result in an enforcement action, including the assessment of civil penalties.

Please let me know if you have any additional questions.

Regards,

**Victoria Venegas** • Environmental Specialist

Environmental Bureau

EMNRD - Oil Conservation Division

506 W. Texas Ave. Artesia, NM 88210

(575) 909-0269 | [Victoria.Venegas@emnrd.nm.gov](mailto:Victoria.Venegas@emnrd.nm.gov)

<https://www.emnrd.nm.gov/ocd/>



**District I**  
1625 N. French Dr., Hobbs, NM 88240  
Phone:(575) 393-6161 Fax:(575) 393-0720

**District II**  
811 S. First St., Artesia, NM 88210  
Phone:(575) 748-1283 Fax:(575) 748-9720

**District III**  
1000 Rio Brazos Rd., Aztec, NM 87410  
Phone:(505) 334-6178 Fax:(505) 334-6170

**District IV**  
1220 S. St Francis Dr., Santa Fe, NM 87505  
Phone:(505) 476-3470 Fax:(505) 476-3462

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

CONDITIONS

Action 316037

CONDITIONS

Operator: SOLARIS WATER MIDSTREAM, LLC 907 Tradewinds Blvd, Suite B Midland, TX 79706	OGRID: 371643
	Action Number: 316037
	Action Type: [C-147] Water Recycle Long (C-147L)

CONDITIONS

Created By	Condition	Condition Date
vvenegas	•Manual application to upload variance request letter OCD/Solaris correspondence to the facility file	2/20/2024