

State of New Mexico
Energy, Minerals and Natural Resources Department

Michelle Lujan Grisham
Governor

Sarah Cottrell Propst
Cabinet Secretary

Todd E. Leahy, JD, PhD
Deputy Secretary

Dylan Fuge, Division Director
Oil Conservation Division



Dylan Fuge
NMOCD Director

Graham Stahnke, P.G. - Regulatory Manager
AKA Energy Group, LLC
125 Mercado St., Suite 201
Durango, CO 80301
Facility: FGP0000000017
Incident: NAUTOFGP000148

RE: Recommendation on Empire ABO Gas Plant Site-Petition application for closure under alternative abatement standards for the standards set forth in Subsections A and B of 19.15.30.9 NMAC

Mr. Fuge,

The New Mexico Oil Conservation Division (OCD) is in receipt of a report requesting closure of the above reference abatement plan based on an Alternative Abatement Standard per Paragraph 3 of Subsection E of 19.15.30.9 NMAC, dated March 26, 2023, submitted on AKA Energy Group, LLC's (AKA Energy) behalf by Larson & Associates, Inc.

Per 19.15.30.8 (F) (3) NMAC, which states "division's environmental bureau chief shall review the petition and, within 60 days after receiving the petition, submit a written recommendation to the director to approve, approve subject to conditions or disapprove any or all of the proposed alternative abatement standards. The recommendation shall include the reasons for the division's environmental bureau chief's recommendation. The division's environmental bureau chief shall submit a copy of the recommendation to the petitioner by certified mail," the bureau chief has reviewed the report and determined that AKA Energy has not provided tangible evidence toward an approval for an alternative abatement standard for the following reasons:

- 1. 19.15.30.9 (F) (a) either compliance with the abatement standards is not feasible, by the maximum use of technology within the responsible person's economic capability; or there is no reasonable relationship between the economic and social costs and benefits, including attainment of the standards set forth in 19.15.30.9 NMAC to be obtained.**

OCD SVE remediation under the approved abatement plan has demonstrated that compliance with the abatement standards in 20.6.2.4103.B is feasible, by the maximum use of technology within the responsible person's economic capability. AKA Energy has monitored groundwater quality at the Facility since 2006 from samples collected from monitoring wells under the approved stage 2 abatement plan. The benzene concentration decreased in all but three monitoring wells under the current approved abatement

plan demonstrating that the current method SVE methods of remediation has been and will continue to be successful.

OCD cannot determine that there is no reasonable relationship between the economic and social costs and benefits, as no viable alternatives were presented for evaluation. WQCC regulations governing discharge permits for groundwater include provisions for protecting “all groundwater of the state of New Mexico...for present and potential future use as domestic and agricultural water supply.” NMAC 20.6.2.3101. An adequate analysis of economic feasibility must incorporate all benefits and costs associated with reclamation to society as a whole, and not be based solely on an operator’s alleged costs.

2. 19.15.30.9 (F) (b) the proposed alternative abatement standards are technically achievable and cost-benefit justifiable.

Other viable remediation methods (e.g. – air sparging LNAPL wells, skimmers) should be fully evaluated and compared.

3. 19.15.30.9 (F) (c): compliance with the proposed alternative abatement standard will not create a present or future hazard to public health or undue damage to property.

Inorganic contaminants persist in the subsurface and are not degraded or destroyed by natural attenuation processes and continue to migrate. The requested alternative abatement does not address long term monitoring and relies on modeling effort to demonstrate long-term protection of human health and the environment. This is not an acceptable approach to ensure protection of New Mexico’s groundwater resources. The benzene alternative abatement standard proposed (149 mg/L) is nearly 30,000 times the maximum allowable concentration of 0.005 mg/L per Subsection A of 20.6.2.3103 NMAC. Additionally, Paragraph 3 of Subsection A of 20.6.2.3103 NMAC states: Non-aqueous phase liquid shall not be present floating atop of or immersed within ground water, as can be reasonably measured. AKA Energy has not demonstrated that the proposed alternative abatement standard will not create a present or future hazard to public health or undue damage to property.

Per 19.15.30.8 (F) (d), If the division’s environmental bureau chief recommends disapproval of any or all of the proposed alternative abatement standards, the petitioner may submit a request to the director, within 15 days after the recommendation’s receipt, for a public hearing on those standards.

If you have any questions, please contact Rosa Romero by email at RosaM.Romero@emnrd.nm.gov.

Regards,

RosaM Romero

Rosa Romero
Environmental Bureau Chief

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

CONDITIONS

Action 261993

CONDITIONS

Operator: Aka Energy Group, LLC 125 Mercado St, Suite 201 Durango, CO 80301	OGRID: 330743
	Action Number: 261993
	Action Type: [UF-GWA] Ground Water Abatement (GROUND WATER ABATEMENT)

CONDITIONS

Created By	Condition	Condition Date
michael.buchanan	None	9/5/2023