

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

NMOCD - OGA 07-165

IN THE MATTER OF ARTESIA AERATION, L.L.C.,

Respondent.

**AGREED ORDER DIRECTING COMPLIANCE
AND ASSESSING CIVIL PENALTY**

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, as amended (hereinafter, "Act"), the Director of the Oil Conservation Division (hereinafter, "OCD") issues this Order to **ARTESIA AERATION, L.L.C.**, (hereinafter, "Artesia Aeration"), directing compliance with the Act and OCD Rules, and assessing a penalty for violations of the Act and OCD Rules.

I. FINDINGS

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. Artesia Aeration is a domestic profit corporation authorized to do business in the State of New Mexico under Public Regulation Commission (hereinafter, "PRC") SCC number 1690171.
3. The OCD issued Permit #NM-01-030 to Artesia Aeration on November 29, 1999 to operate a commercial landfarm located in the N/2 of Section 7 of Township 17 South, Range 32 East, NMPM, in Lea County, New Mexico.
4. The OCD issued the permit under 19.15.9.711.B NMAC (hereinafter, "Rule 711"), which 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."
5. Permit #NM-01-030, under Items 1, 2 and 3 of "Treatment Zone Monitoring," requires quarterly sampling and analysis for total petroleum hydrocarbons ("TPH") and volatile aromatic organics ("BTEX"), and annual sampling and analysis for major cations and anions and Water Quality Control Commission ("WQCC") metals. Item 3 under "Reporting," requires that "[a]nalytical results from the treatment zone monitoring will be submitted to the OCD Santa Fe office within thirty (30) days of receipt from the laboratory."

6. An OCD desk audit of Artesia Aeration's reporting for the period of January 1, 2003 through December 31, 2004, and the period of October 1, 2004 through March 31, 2005, shows that the OCD received no quarterly or annual reports from Artesia Aeration during this time period.
7. NMSA 1978, Section 70-2-31(A) authorizes the assessment of civil penalties of up to one thousand dollars per day per violation against any person who knowingly or willfully violates any provision of the Oil and Gas Act or any rule adopted pursuant to the Act.
8. NMSA 1978, Section 70-2-33(A) defines "person" to include corporations.
9. On September 6, 2005, the OCD issued a Notice of Violation to Artesia Aeration for failing to submit reports as required under the terms of its permit #NM-01-030.
10. Following the issuance of the Notice of Violation, Artesia Aeration submitted a quarterly report showing that all regulated contaminants are within acceptable limits.

II. CONCLUSIONS

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Artesia Aeration is a "person" subject to civil penalties for knowing and willful violations of the Oil and Gas Act or OCD Rules.
3. Artesia Aeration knowingly and willfully violated the terms of its permit issued pursuant to OCD Rule 711 by failing to submit treatment zone monitoring reports during the period January 1, 2003 through March 31, 2005 in plain indifference to or reckless disregard of the requirements of the permit.

III. ORDER AND CIVIL PENALTY

1. The OCD hereby assesses a civil penalty of **One Thousand Five Hundred Dollars (\$1,500.00)** against Artesia Aeration for failing to file reports as required under the terms of its permit issued pursuant to OCD Rule 711.
2. Artesia Aeration ~~paid~~ ^{SHALL PAY JWF} the **One Thousand Five Hundred Dollar (\$1,500.00)** civil penalty assessed in this Agreed Compliance Order by ~~check dated October 18, 2005.~~ ^{CERTIFIED ON CASHIER'S CHECK UPON EXECUTION OF THIS ORDER. JWF}
3. Artesia Aeration agrees to the following additional terms for Permit #NM-01-030:
 - a) Artesia Aeration shall take the quarterly treatment zone samples required under Permit #NM-01-030 during the last two weeks of each calendar quarter. Quarterly reports showing the results of these sample analyses shall be received in

the OCD Santa Fe office no later than the 15th day of the second month following the end of each calendar quarter, as follows:

- First Calendar Quarter Report due on or before May 15
- Second Calendar Quarter Report due on or before August 15
- Third Calendar Quarter Report due on or before November 15
- Fourth Calendar Quarter Report due on or before February 15

- b) Artesia Aeration shall take the annual treatment zone samples required under Permit #NM-01-030 during the last two weeks of the fourth calendar quarter. Artesia Aeration shall submit its annual reports showing the results of these sample analyses to the OCD Santa Fe office with its fourth calendar quarter report on or before the 15th day of February.
4. Beginning with the ~~third quarter report of 2005~~, due on or before ~~November 15, 2005~~, for each day that any report required under Permit #NM-01-030 is late, Artesia Aeration shall pay a \$1,000 penalty.
5. By signing this Order, Artesia Aeration expressly
- a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
 - b) agrees to comply with Ordering Paragraphs (3) and (4);
 - c) waives any right, pursuant to the Oil and Gas Act or otherwise, to a hearing either prior or subsequent to the entry of this Order or to an appeal from this Order; and
 - d) agrees that if it fails to comply with this Order, the Order may be enforced by suit or otherwise to the same extent and with the same effect as a final Order of the Division entered after notice and hearing in accordance with all terms and provisions of the Oil and Gas Act (NMSA 1978, Sections 70-2-1 through 70-2-38, as amended).

Done at Santa Fe, New Mexico this 1st day of Feb, 2007

By: 
MARK FESMIRE, P.E., Director
Oil Conservation Division

Artesia Aeration, L.L.C. signature on following page

ACCEPTANCE

Artesia Aeration, L.L.C. hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the Order.

ARTESIA AERATION, L.L.C.

By: Jim Walter

Title: MANAGER

Date: 1-26-07