

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

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

CASE NO. 13480 *de novo*
ORDER NO. R-12306-E

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (the Commission) for hearing on October 12, 2005 at Santa Fe, New Mexico on Gandy Marley Inc.'s Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B and Gandy Marley Inc.'s Emergency Motion to Enforce and for Presentment of Order, and the Commission, having carefully considered the same, now, on this 13th day of October, 2005,

FINDS:

Application and Procedural History

1. The application in this case was filed by Gandy Marley, Inc. ("Gandy Marley" or "applicant") on April 8, 2005, seeking a modification of its permit to operate a surface waste management facility ("the facility") under OCD Rule 711 [19.15.9.711 NMAC] to allow it to accept salt-contaminated wastes.

2. However, the events that produced this proceeding commenced on March 4, 2005 when the Oil Conservation Division ("the Division") issued an *ex parte* decision by letter ("the March 4 letter") modifying applicant's permit so as to preclude its continued acceptance of salt-contaminated waste at the facility. The Division determined that Gandy Marley's permit application had not afforded adequate public notice that it would accept salt-contaminated waste for treatment, and that its land-farming procedure was not an appropriate means of managing such waste. In the March 4 letter, the Division stated that:

If the landfarm above wishes to accept oilfield waste contaminated with salts, you will need to file an application to modify the permit pursuant to OCD Rule 711.B(2).

3. The Division then commenced Case No. 13454 seeking an emergency order to allow Gandy Marley to continue to accept salt contaminated waste during the pendency of the permit modification application that Gandy Marley then contemplated filing.

4. The Division has entered five previous orders in this matter:

(a) Order R-12306, entered on March 11, 2005 in Case No. 13454, was an emergency order, entered without a hearing, that authorized Gandy Marley to accept salt contaminated oilfield wastes pending a decision on its application for a permit modification.

(b) Order R-12306-A, entered on March 25, 2005 in Case No. 13454, subsequent to an emergency hearing conducted before a Division examiner on March 25, 2005, extended the emergency ordering provisions of Order R-12306 on conditions there stated, "until a determination is made by the Division on Gandy Marley's application to amend its current landfarm permit."

(c) Order R-12306-B, entered on August 5, 2005 in Case No. 13480, pursuant to a hearing conducted before a Division examiner on May 23, 2005, rescinded the emergency order extension granted by Order R-12306-A, directed Gandy Marley to immediately comply with the Division's March 4, 2005 letter prohibiting further acceptance of salt-contaminated waste, and indicated that if a further application were filed it would be heard by the Commission.

(d) Order R-12306-C, entered on August 31, 2005 in Case No. 13480, refused Gandy Marley's Request for Partial Stay of Order R-12306-B pending *de novo* review of that order by the Commission.

(e) Order R-12306-D, entered on October 4, 2005 set the October 12 hearing in this case and continued the hearing on the merits previously set for October 13.

5. No party filed an application for *de novo* review of Order R-12306-A by the Commission, and that order became final.

6. Order No. R-12306-B denied applicant's request that a permit modification be granted on the existing record and ordered applicant to submit a new application and give new public notice. That application was submitted to the Commission on October 6, 2005, but has not yet been determined to be administratively complete.

7. Order No. R-12306-B stated that it constituted a determination of Gandy Marley's application and, for that reason and other reasons therein stated, terminated the authority of Gandy Marley, Inc. to accept salt-contaminated waste pursuant to Order No.

R-12306-A. In Ordering paragraph 1 of Order No. R-12306-B, the Division rescinded the emergency order extension granted by Order No. R-12306-A. Ordering paragraph 2 of Order R-12306-B ordered that Gandy Marley immediately comply with the Division's March 4, 2005 letter that had directed it not to accept any further salt-contaminated waste at the facility

8. However, within the time provided by Section 70-2-13 NMSA 1978, as amended, applicant filed an application for *de novo* review of Order No. R-12306-B with the Commission.

9. On August 25, 2005, Gandy Marley Inc. filed with the Division a Request for Partial Stay of Order R-12306-B requesting the Director to stay the portion of Order R-12306-B that rescinds the emergency order extension granted by Order R-12306-A, thereby continuing the emergency order extension in effect, and allowing Gandy Marley to resume accepting salt-contaminated wastes at the facility pending the Commission's *de novo* review of Order R-12306-B.

10. On August 31, 2005 the Division Director issued Order R-12306-C, denying Gandy Marley's Request for Partial Stay.

11. On September 2, 2005 Gandy Marley filed its Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B, requesting the full Commission to review and reverse the action of the Division Director in denying the Request for Partial Stay. Following a hearing on September 15, 2005 which did not result in the issuance of a Commission order, Gandy Marley filed its Emergency Motion to Enforce and for Presentment of Order.

12. At the hearings on this matter, Controlled Recovery, Inc. ("CRI") appeared and opposed the issuance of any stay.

13. The issue now before the Commission is whether the Commission should stay that portion of Order R-12306-B that rescinds the interim provisions of Order R-12306-A, pending *de novo* review of Order R-12306-B.

Findings of Fact

The following findings of fact are based on evidence admitted at earlier hearings before division hearing examiners and/or findings of the Division in previous orders entered in this case, or material furnished by Gandy Marley at the hearing on October 12, 2005:

14. Gandy Marley received its original permit from the Division on January 27, 1995, for operation of the facility, and the facility was accepting salt-contaminated drill cuttings and drilling mud prior to the Division's issuance of the March 4 letter. It treated these wastes by land-farming, a procedure for remediation of hydrocarbon-contaminated soils that does not protect the environment from salt constituents.

15. The language of the permit issued to Gandy Marley was sufficiently broad to authorize it to accept salt-contaminated oil field wastes for remediation at the facility. Order R-12306-A, finding paragraph 9(d). The permit has undergone periodic review by the Division.

16. The issuance of the March 4, 2005 letter by the Division Director led to a reasonable concern about the availability of adequate facilities for the disposition of such waste materials generated by the oil and gas activity in southeastern New Mexico

17. A significant part of the public comment received by the division concerning this application prior to the May 23 hearing that resulted in the issuance of Order R-12306-B consisted of letters from operators concerned about a critical shortage of available facilities for disposal of salt-contaminated wastes being generated from intensive oil and gas activity.

18. While there are substantial reasons for concern that water and/or soil pollution could occur at some time in the future if the facility continues to receive salt-contaminated wastes and manages such wastes as it has done in the past, there is no finding that any water pollution has occurred as a result of the operation of the facility.

19. The material furnished at the hearing on October 12, 2005 indicates that Gandy Marley has proposed a new system for managing salt-contaminated wastes. Gandy Marley agreed on the record at the October 12 hearing that if the Commission issued a stay order allowing the emergency provisions of Order R-12306-A to remain in effect, it would manage any salt-contaminated waste in accordance with the designs shown in the materials presented, and comply with other conditions the Commission might impose as interim measures for protection of the environment.

20. During the hearing, the Commission proposed specific additional conditions to further protect the environment from salt-contaminated waste. Gandy Marley agreed on the record that, if a stay order were entered, it would abide by the Commission's proposed additional conditions as well as those in its submissions.

Conclusions

The majority of the Commission concludes as follows:

1. OCD Rule 1220.B indicates that stays of Division orders are appropriate, *inter alia*, when necessary to prevent waste or to prevent gross negative consequence to any affected party. The effect of such a stay is to preserve the status quo pending review by the Commission of an order of the Division.

2. In this case the Division set in motion the series of events which has resulted in Gandy Marley being ordered to cease accepting waste for treatment as it has

accepted for ten years, and that the Division expressly found conformed to the terms of its permit as that permit existed before the Division's issuance of its *ex parte* letter of March 4.

3. The status quo prior to the Division's issuance of the March 4 letter was that Gandy Marley could and did accept salt-contaminated waste at the facility. The Division preserved that status quo by the issuance of Orders R-12306 and 12306-A. Accordingly that remained the status quo immediately prior to the Division's issuance of Order R-12306-B, the order that is now before the Commission for review.

4. The initial impetus behind the March 4 letter was to provide opportunity for input from stakeholders with respect to the terms of Gandy Marley's permit; opportunity that the Division found was lacking when Gandy Marley's permit was issued, due to the nature of the public notice at that time.

5. However, the Division must also be mindful of the rights of operators who are operating under permits that the Division has issued, especially when it acts unilaterally to modify those rights.

6. Gandy Marley has proposed to the Commission a design for management of salt contaminated waste at the facility, and the majority of the Commission believes that the proposed conditions will protect public health and the environment and prevent the contamination of water at the site during the time necessary to fully consider Gandy Marley's application. Furthermore Gandy Marley has agreed that, if a stay is issued, it will abide by additional conditions imposed by the Commission as herein set forth.

7. Allowing Gandy Marley to accept salt-contaminated soils, drilling wastes and cuttings on a temporary basis for management as now proposed, and subject to additional conditions to further safeguard the environment, provides an equitable balancing of the concerns for public input and for protection of Gandy Marley's rights.

8. The Commission expressly reserves for consideration of Gandy Marley's application on the merits any determination of whether the conditions of this order will adequately protect public health and the environment on a continuing basis, but concludes that Gandy Marley's agreement to close and remediate the portion of the facility affected by this order if its application is denied will adequately protect the public against that eventuality.

9. The Commission has accordingly concluded, by a vote of two commissioners in favor, and one commissioner opposed, that the following provisions should be adopted. Opposition to the motion by one commissioner was based on his opinion that Gandy Marley's proposed interim design for management of salt-contaminated wastes should be subject to the procedural rules of Division Rule 711.

IT IS THEREFORE ORDERED THAT:

1. Applicant's Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B is granted to the extent and subject to the conditions herein provided.
2. Order No. R-12306-C denying the requested partial stay is hereby rescinded.
3. The portion of Order R-12306-B rescinding the emergency order extension granted by Order R-12306-A, and ordering applicant to forthwith cease accepting salt contaminated wastes at the facility is hereby stayed; *provided however*, that, so long as this Order remains in force, applicant shall comply with the following conditions:
 - a. Applicant shall segregate all salt contaminated waste received at the facility and shall dispose of the same only in a landfill cell constructed and maintained substantially in accordance with the designs attached to this Order as Exhibit A, with the addition thereto of a 40 mil synthetic primary liner.
 - b. In the event that its application is denied, applicant will immediately cease accepting salt-contaminated waste at the facility, and proceed expeditiously to close the landfill cell herein authorized in accordance with Division rules, and either remove all salts and salt-contaminated soils, drilling wastes and cuttings deposited therein, or close and seal the cell where these wastes were placed, in accordance with Division rules and orders.
4. This order shall remain in effect for a period of six months from the date of issuance, or until the Commission enters a final order in this case, whichever first occurs.

5. Jurisdiction of this case is retained for entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**


MARK E. FESMIRE, P.E., CHAIR



JAMI BAILEY, CPG. MEMBER



WILLIAM C. OLSON, MEMBER

SEAL