

State of New Mexico  
Energy, Minerals and Natural Resources Department

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**Michelle Lujan Grisham**  
Governor

**Sarah Cottrell Propst**  
Cabinet Secretary

**Todd E. Leahy, JD, PhD**  
Deputy Secretary

**Dylan Fuge**, Division Director  
Oil Conservation Division



June 2, 2023

Candy L. Browning  
Surety Service Center  
Fidelity and Deposit Company of Maryland  
Trading as Zurich Surety  
1299 Zurich Way  
Schaumburg, IL 60196

Arthur J. Gallagher Risk Management Services,  
Inc.  
6967 South River Gate Drive  
Ste 200  
Midvale, UT 84047-575

Toro Operating Company, Inc.  
621 17<sup>th</sup> Street  
Suite 830  
Denver, CO 80293

Toro Energy Mining & Minerals, Inc.  
3773 Cherry Creek North Drive  
Suite 1025  
Denver, CO 80209

Jenex Petroleum Corporation  
3773 Cherry Creek North Drive  
Suite 1025  
Denver, CO 80209

**RE: Notice of Surface Waste Management Facility Closure Initiated By Division and of Forfeiture of Financial Assurance**

The Director of the Oil Conservation Division (“OCD”) issues this Notice that, for good cause, the OCD initiates the immediate cessation of all activities and the closure of the Jenex Treating Plant (NM1-26) Surface Waste Management Facility, pursuant to 19.15.36.18.G NMAC. The OCD provides the following summary basis for the determination to initiate closure and forfeit financial assurance:

1. The Jenex Treating Plant, Permit No. NM1-26, is a Treating Plant and Landfarm Surface Waste Management Facility (“SWMF”) located approximately 8 miles south of Hobbs, New Mexico. The SWMF is approximately 23 acres in size, within Section 14 of T20S, R38E (32.577449. - 103.123483). The SWMF consists of a treating plant and 3 landfarm cells.
2. In approximately 2006, Jenex Operating Company transferred the SWMF permit NM1-26 to Toro Operating Company, Inc. (“Toro”). On September 20, 2006, OCD approved a Rider to Bond No. 04127088, which changed the principle to Toro Operating Company, Inc.
3. Financial Assurance is required by OCD rule through closure and post closure of the SWMF.

*Upon notification by the division that it has approved a permit for a new commercial facility or a major modification of an existing commercial facility but prior to the division issuing the permit, the applicant shall submit acceptable financial assurance in the amount of the commercial facility's estimated closure and post closure cost, or \$25,000, whichever is greater. The commercial facility's estimated closure and post closure cost shall be the amount provided in the closure and post closure plan the applicant submitted pursuant to Paragraph (9) of Subsection C of 19.15.36.8 NMAC unless the division determines that such estimate does not reflect a reasonable and probable closure and post closure cost to implement the closure and post closure plan, in which event, the division shall determine the estimated closure and post closure cost and shall include such determination in its proposed decision. If the applicant disagrees with the division's determination of estimated closure and post closure cost, the applicant may request a hearing as provided in 19.15.36.10 NMAC. If the applicant so requests, and no other person files a request for a hearing regarding the proposed decision, the hearing shall be limited to determination of estimated closure and post closure cost. 19.15.36.11.B (1-3) NMAC.*

4. On May 15, 2023, OCD received a Notice of Cancellation letter from Ms. Candy Browning at Zurich Surety ("Zurich"), informing OCD of cancellation of Bond No. LP4127088, effective 30 days from receipt of the letter.
5. OCD may not release Bond No. LP4127088.  
*The division shall not release existing financial assurance until the operator has submitted, and the division has approved, an acceptable replacement. 19.15.36.11.F (2) NMAC.*
6. Toro is not registered with the OCD, does not have an assigned OGRID number, and has not provided updated contact information since OCD's receipt of the bond rider in 2006.
7. Toro's business registration with the New Mexico Secretary of State (Business ID# 2761609) is "Revoked Final." Upon information and belief, the principle/operator identified for NM1-26 is no longer authorized to conduct business in the state of New Mexico.
8. None of Toro, Jenex Operating Company, or any successor in business has notified OCD of a cessation of operations or submitted a closure plan for NM1-26, as required by 19.15.36 NMAC and as specific conditions of Permit NM1-26.  
*The operator shall notify the division's environmental bureau at least 60 days prior to cessation of operations at the surface waste management facility and provide a proposed schedule for closure. [...] 19.15.36.18.A (1) NMAC.*
9. OCD conducted an inspection of the site of NM1-26 and a review of available satellite imagery. OCD's inspection revealed damaged fencing, damaged and/or missing electric boxes or equipment, and piles of stained materials which appear to be contaminated with oil field waste. After review of satellite images, OCD cannot identify any indication of truck traffic or vegetation maintenance since at least 2016.
10. Upon information and belief, Toro and/or any currently unknown successor interests have failed to maintain the Jenex Treating Plant in conformity with OCD rule, have abandoned the SWMF, have left materials contaminated with oil field waste unremediated at the site in a manner that may damage public health or the environment, and have failed to maintain the necessary legal authorizations to continue conducting business in the state of New Mexico.
11. Upon information and belief, Toro and/or any currently unknown successor has refused or is unable to operate the SWMF in a manner that protects fresh water, public health and the environment. Further, Toro and/or any currently unknown successor has refused or is unable to conduct or complete an approved closure plan. Additionally, Toro and/or any currently unknown successor is in material breach of the terms and conditions of NM1-26. Lastly, disposal operations have ceased and there has been no significant activity at the SWMF for more than six months. *See 19.15.36.18.G(2) NMAC.*

On this basis, the OCD finds that good cause exists to initiate the immediate closure of the Jenex Treating Plant, and Permit NM1-26, and seek the forfeiture of Bond No. LP4127088 in its entirety. To challenge

OCD's determination to initiate closure and forfeit the financial assurance, the operator or surety may request a hearing before the Division. Such request must be made within 20 days of receipt of this notice. 19.15.36.18.G(2)(a) NMAC. OCD may agree to appropriate conditions to avoid forfeiture of the financial assurance, to include written agreement by Toro, Zurich, or a third party to timely perform closure and post closure operations consistent with the terms of NM1-26 and 19.15.36 NMAC. Specific terms of such agreement are subject to review and approval of the OCD.

OCD retains the right to seek any and all sanctions permitted by law or rule, including for specific violations of 19.15.36 NMAC, the conditions of NM1-26, or the abandonment of the Jenex Treating Plant committed by Toro, any currently unknown successor interest, or any other identifiable responsible party.

In the event that OCD undertakes closure of the Jenex Treating Plant and forfeits the financial assurance, Toro and/or any currently unknown successor interest remains liable for any costs incurred by OCD beyond the amount of the financial assurance forfeited. 19.15.36.18(G)(4)(b) NMAC. Any forfeited financial assurance must be made payable to the Energy, Minerals, and Natural Resources Department, Oil Conservation Division. 19.15.36.11.D NMAC.

For more information regarding this Notice, contact Jesse Tremaine, Assistant General Counsel, at (505) 231-9312 or [JesseK.Tremaine@emnrd.nm.gov](mailto:JesseK.Tremaine@emnrd.nm.gov).

Regards,



Dylan M. Fuge  
Director

6/2/2023

Date

cc: EMNRD-OGC