

**NM1 - 30**

**PERMITS,  
RENEWALS, &  
MODS**

Artesia Aeration, LLC  
P.O. Box 248  
Artesia, New Mexico 88211-0248  
(575) 748-2854

August 31, 2011

Mr. Brad A. Jones  
New Mexico Energy, Minerals and Natural Resources Department  
Oil Conservation Division  
1220 South St. Frances Drive  
Santa Fe, New Mexico 87505

*Re: Request for Release of Financial Assurance provided by Artesia Aeration, LLC for Permit No. NM1-030*

Dear Mr. Jones:

Artesia Aeration, LLC previously held surface waste management facility Permit No. NM1-030 (the "Permit") for the facility located at the SW/4 SW/4 SW/4 Section 5, SE/4 SE/4 SE/4 Section 6, and N/2 Section 7, Township 17 South, Range 32 East, N.M.P.M., Lea County, New Mexico. Recently, Artesia Aeration, LLC transferred the Permit to R360 Artesia, LLC. The transfer was approved by the Oil Conservation Division, as evidenced by the enclosed letter dated August 25, 2011, from Gabrielle A. Gerholt.

Due to the fact that the Permit has been transferred and financial assurance has been provided by R360 Artesia, LLC, Artesia Aeration, LLC requests that the Oil Conservation Division release any and all financial assurance that was furnished by Artesia Aeration, LLC in connection with the Permit.

If you have any questions or need any additional information, please give me a call.


Sincerely,

**Artesia Aeration, LLC**



Jack Matthews, Member  
Encl/as stated

RECEIVED  
NM 88 - 2 P 1:00



New Mexico Energy, Minerals and Natural Resources Department

**Susana Martinez**  
Governor

**John H. Bemis**  
Cabinet Secretary-Designate

**Brett F. Woods, Ph.D.**  
Deputy Cabinet Secretary

**Jami Bailey**  
Division Director  
Oil Conservation Division



August 25, 2011

Bill Maak  
R360 Artesia, L.L.C.  
16945 Northchase Drive, Suite 2200  
Houston, Texas 77060

**Re: Request For Permit Transfer and Financial Assurance Approval**  
**New Operator: R360 Artesia, L.L.C.**  
**Permit: NM1 - 030**  
**Argonaut Insurance Company Bond No.: SUR0001682 (\$93,420.00)**  
**Facility Location: SW/4 SW/4 SW/4 of Section 5, SE/4 SE/4 SE/4 of Section 6 and N/2 of Section 7, Township 17 South, Range 32 East, NMPM, Lea County, New Mexico**

Dear Mr. Maak:

The Oil Conservation Division (OCD) has reviewed R360 Artesia, L.L.C.'s request to transfer a permit, dated August 4, 2011, and the replacement financial assurance, dated August 22, 2011 to demonstrate compliance to Subsection E of 19.15.36.12 NMAC. OCD hereby approves the above-referenced financial assurance and transfer of the surface waste management facility permit NM1-030 to R360 Artesia, L.L.C.

Please be advised that should operations result in pollution of surface water, ground water or the environment, approval of this request does not relieve R360 Artesia, L.L.C of liability. In addition, approval of this request requires R360 Artesia, L.L.C to comply with all applicable governmental authority's rules and regulations.

If there are any questions regarding this matter, please do not hesitate to contact Mr. Brad A. Jones of the OCD staff at (505) 476-3487 or [brad.a.jones@state.nm.us](mailto:brad.a.jones@state.nm.us).

Sincerely,

Gabrielle A. Gerholt  
Assistant General Counsel

GVG/baj

Enclosure: Copy of Surety Bond # SUR0001682 (total amount \$93,420.00)

cc: OCD District I Office, Hobbs  
Artesia Aeration, LLC, PO Box 248, Artesia NM 88210

**TRANSFER OF PERMIT**

Pursuant to 19.15.36.12E NMAC, "Transfer of a permit. The operator shall not transfer a permit without the division's prior written approval. A request for transfer of a permit shall identify officers, directors and owners of 25 percent or greater in the transferee. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval. If the division denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the proposed transferee may request a hearing with 10 days after receipt of the notice. Until the division approves the transfer and the required financial assurance is in place, the division shall not release the transferor's financial assurance."

**FACILITY INFORMATION:**

**Surface Waste Management Facility Permit(s):** NM1-030

**Legal Description:** a +/- 167.85-ACRE TRACT OF LAND LYING IN PART OF THE SWSWSW OF SEC 5, PART OF THE SESESE OF SEC 6, AND PART OF THE N2 OF THE SEC 7, ALL IN T17S, R32E, N.M.P.M., LEA COUNTY, NEW MEXICO

**Location:** No street address available

**From:** Company Name: Artesia Aeration L.L.C  
Company Address: P.O. Box 248  
Artesia, New Mexico 88210

**To:** Company Name: R360 Artesia, L.L.C  
Company Address: 16945 Northchase Drive, Suite 2200  
Houston, TX 77060

2011 AUG -5 A 11:44  
RECEIVED OOD

**CERTIFICATION:**

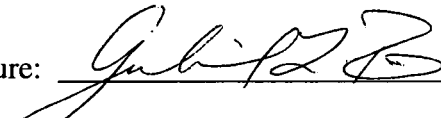
R360 Artesia, LLC, by the officer whose signature appears below, accepts this permit and agrees to comply with all terms and conditions contained herein. R360 Artesia, LLC further acknowledges that the Division for good cause shown as necessary to protect fresh water, human health, and the environment may change such terms and conditions administratively. The undersigned also attests to the fact that he or she understands 19.15.5.11 NMAC which states "Any person who conducts any activity pursuant to a permit, administrative order or other written authorization or approval from the division shall comply with every term, condition and provision of such permit, administrative order, authorization or approval."

Accepted:

R360 Artesia, LLC

Print Name: Gabriel Rio

Permit #: NM1-030

Signature: 

Date: 8/4/2011

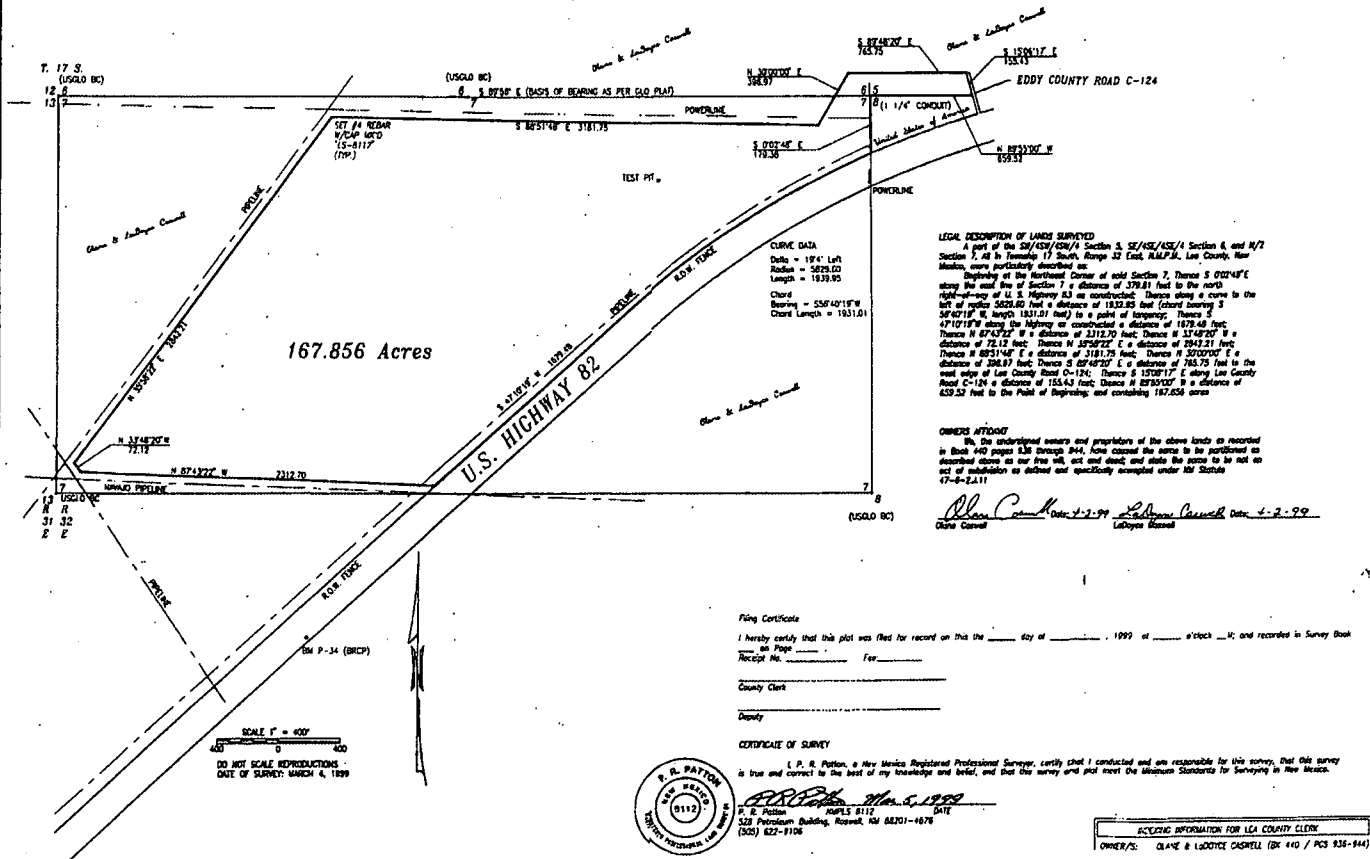
Title: Senior Vice President

Mailing Address: 16945 Northchase Drive, Suite 2200, Houston, TX 77060

Contact Telephone Number: 281-873-3206



# SURVEY OF ARTESIA AERATION COMPANY SITE IN SECTIONS 5, 6 AND 7, TOWNSHIP 17 SOUTH, RANGE 32 EAST, N.M.P.M., LEA COUNTY, NEW MEXICO



**LEGAL DESCRIPTION OF LANDS SURVEYED**  
 A part of the SE/4SE/20N/4 Section 5, SE/4SE/4 Section 6, and N/2 Section 7, all in Township 17 South, Range 32 East, N.M.P.M., Lea County, New Mexico, more particularly described as:  
 Improving of the Northeast Corner of said Section 7, Thence S 02°48' E along the east line of Section 7 a distance of 378.81 feet to the north 1/4th-corners of L. S. Highway 82 as constructed; Thence along a curve to the left of radius 5878.00 feet a distance of 1533.85 feet (chord bearing S 58°42'18" W length 1533.00 feet) to a point of tangency; Thence S 47°10'18" along the highway as constructed a distance of 1878.48 feet; Thence N 87°43'22" W a distance of 3312.70 feet; Thence N 33°48'20" W a distance of 72.12 feet; Thence N 87°42'22" E a distance of 1848.21 feet; Thence N 89°31'48" E a distance of 3181.73 feet; Thence N 20°22'00" E a distance of 208.87 feet; Thence S 69°48'20" E a distance of 163.75 feet to the west edge of Lea County Road C-124; Thence S 15°02'11" E along Lea County Road C-124 a distance of 158.43 feet; Thence N 89°30'22" W a distance of 629.52 feet to the Point of Beginning; and containing 167.856 acres

**OWNER'S AFFIDAVIT**  
 We, the undersigned owners and proprietors of the above lands as recorded in Book 443 pages 838 through 844, have caused the same to be partitioned as described above as our free will, act and deed; and state the same to be not an act of subdivision as defined and specifically exempted under the Statute 47-6-2.111  
*Oliver C. Cashell* Date 3-2-99 *Lea County Clerk* Date 4-2-99  
 Lea County Clerk  
 LeRoye Blanton

**Filing Certificate**  
 I hereby certify that this plat was filed for record on this the \_\_\_\_\_ day of \_\_\_\_\_, 1999 of \_\_\_\_\_ o'clock \_\_\_\_\_ M., and recorded in Survey Book \_\_\_\_\_ on Page \_\_\_\_\_ For \_\_\_\_\_  
 County Clerk  
 Deputy



**CERTIFICATE OF SURVEY**  
 I, R. E. Patton, a New Mexico Registered Professional Surveyor, certify that I conducted and am responsible for this survey, that this survey is true and correct to the best of my knowledge and belief, and that the money was paid over the Minimum Standards for Surveying in New Mexico.  
*R. E. Patton* Date *Mar. 5, 1999*  
 R. E. Patton License 8112 Date  
 1320 Petroleum Building, Roswell, NM 88203-1676  
 (505) 622-3106

**RECORDING INFORMATION FOR LEA COUNTY CLERK**  
 OWNER/S: CLAY & LOUISE CASHELL (BK 410 / PGS 838-844)

SCALE 1" = 400'  
 DO NOT SCALE REPRODUCTIONS  
 DATE OF SURVEY: MARCH 4, 1999



Total Hits as of Today : 786139  
Active users browsing the site: 118

Entity Detail		<a href="#">Back to Search</a>
<b>R360 ARTESIA, LLC</b> Delaware Foreign Limited Liability Company		
Filing Information		Address Information
CorpNmprc#	4466520	<b>Mailing Address</b> 615 S DUPONT HWY DOVER,DE,US,19901
Purpose	N/R	<b>Corporation Address</b> ""
Corporation Status	EX-Exempt	<b>OutOfState Address</b> 615 S DUPONT HWY DOVER,DE,19901
Date Of Incorporation	07/21/2011	<b>Foreign Address</b> "
State Of Incorporation	DE	
FiscalYearDate		
Agent Information		Director(s) Information
GARY DON REAGAN 1819 N. TURNER ST STE G HOBBS,NM,88240		
Officer(s) Information		Cooperative License Information
Orgnzs1 : TROY THACKER Orgnzs2 : FRANK SCHAGEMAN Orgnzs3 : GABRIEL RIO Orgnzs4 :		Licence# : Expiration Year : Type :
Instrument Information		Supplemental Post Mark Dates
InstrumentNumber	4466520	Supplemental :
Filing Date	07/21/2011	Purpose Change :
Instrument Type	Certificate Of Registration	Agent Resigned :
Instrument Text	R360 ARTESIA, LLC ORGANIZED UNDER THE LAWS OF DELAWARE ON 7/19/2011 4 PGS PERPETUAL	Name Change :
Note: This is not official record. Please contact NMPRC if question or conflict.		

## Gerholt, Gabrielle, EMNRD

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**From:** Gabriel Rio [grio@r360es.com]  
**Sent:** Monday, August 15, 2011 5:38 PM  
**To:** Gerholt, Gabrielle, EMNRD  
**Cc:** David Perez; Matt Niemczak  
**Subject:** RE: R360 Artesia LLC  
**Attachments:** Artesia New Mexico FINAL Certificate of Registration 7-22-11.pdf

Gabrielle,

The information you've requested is listed below. Please let me know if you need anything further. Our New Mexico certificate of registration is attached.

### Officers

Troy Thacker – Chief Executive Officer and President  
Frank Schageman – Vice President and Chief Financial Officer  
Gabriel Rio – Vice President  
John Barnidge – Vice President  
William Maak – Treasurer  
Barbara Carney – Secretary

### Mangers (Directors)

Troy Thacker  
Frank Schageman  
Gabriel Rio

### Owners of >25%

R360 Environmental Solutions, Inc. owns 100% of R360 Artesia, LLC

Best regards,

**Gabriel J. Rio**


**Senior Vice President, Strategic Planning and M&A**

**R360 Environmental Solutions Company**

Greenspoint Plaza 4, 16945 Northchase Drive, Suite 2200, Houston, TX 77060

O: 281.873.3206 | F: 281.873.3256 | C: 713.240.1938



 Please consider the environment before printing this email

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**From:** Gerholt, Gabrielle, EMNRD [<mailto:Gabrielle.Gerholt@state.nm.us>]

**Sent:** Monday, August 15, 2011 10:51 AM

**To:** Gabriel Rio

**Subject:** R360 Artesia LLC

Dear Mr. Rio,



Thank-you for supplying Mr. Jones with the transfer certification for Permit # NM1-030. Per New Mexico Annotated Code 16.15.36.12E, the Oil Conservation Division requires identification of all officers, directors and owners of 25% or more in R360 Artesia LLC. Would you be able to provide that to me this week in order for our continued processing?  
Sincerely,

Gabrielle A. Gerholt  
Assistant General Counsel  
Oil Conservation Division  
505.476.3451

# NEW MEXICO PUBLIC REGULATION COMMISSION

## COMMISSIONERS

DISTRICT 1 JASON MARKS  
DISTRICT 2 PATRICK H. LYONS  
DISTRICT 3 JEROME D. BLOCK  
DISTRICT 4 THERESA BECENTI-AGUILAR  
DISTRICT 5 BEN L. HALL



P.O. Box 1269  
1120 Paseo de Peralta/P.O. Box 1269  
Santa Fe, NM 87504-1269

CORPORATION BUREAU  
(505) 827-4508

JULY 22, 2011

UCC SEARCH, INC.  
PO BOX 9315  
SANTA FE, NM 87504-9315

RE: R360 ARTESIA, LLC  
SCC#4466520

BE ADVISED THAT THIS COMMISSION HAS APPROVED AND FILED THE ARTICLES OF REGISTRATION, FOR THE ABOVE REFERENCED ORGANIZATION EFFECTIVE JULY 21, 2011.

THE ATTACHED CERTIFICATE DOES NOT CONSTITUTE AUTHORIZATION FOR THE ABOVE REFERENCED ORGANIZATION TO TRANSACT ANY BUSINESS WHICH REQUIRES COMPLIANCE WITH OTHER APPLICABLE FEDERAL OR STATE LAWS, INCLUDING, BUT NOT LIMITED TO, STATE LICENSING REQUIREMENTS. IT IS THE ORGANIZATION'S SOLE RESPONSIBILITY TO OBTAIN SUCH COMPLIANCE WITH ALL LEGAL REQUIREMENTS APPLICABLE THERETO PRIOR TO ENGAGING IN THE BUSINESS FOR WHICH IT HAS OBTAINED THE ATTACHED CERTIFICATE OF REGISTRATION.

THE ATTACHED ARTICLES OF REGISTRATION SHOULD BECOME A PERMANENT DOCUMENT OF THE ORGANIZATION'S RECORDS. YOUR CANCELLED CHECK, AS VALIDATED BY THIS COMMISSION, IS YOUR RECEIPT. IF YOU HAVE ANY QUESTION, PLEASE CONTACT THE CHARTERED DOCUMENT DIVISION AT (505) 827-4511 FOR ASSISTANCE.

CHARTERED DOCUMENT DIVISION  
DAG



OFFICE OF THE  
PUBLIC REGULATION COMMISSION

CERTIFICATE OF REGISTRATION

OF

R360 ARTESIA, LLC

4466520

A DELAWARE ORGANIZATION

The Public Regulation Commission certifies that the Application for Certificate of Registration, duly signed and verified, pursuant to the provisions of the LIMITED LIABILITY COMPANY ACT (53-19-1 TO 53-19-74 NMSA 1978) have been received by it, are found to conform to law.

Accordingly, by virtue of authority vested in it by law, the Public Regulation Commission issues this certificate of Registration and attaches hereto a duplicate of the Application for Certificate of Registration.

Dated: JULY 21, 2011

In testimony whereof, the Public Regulation Commission of the state of New Mexico has caused this certificate to be signed by its chairman and the seal of said Commission to be affixed in the City of Santa Fe.

*Patrick H. Lyons*  
Chairman

*Stacy Starr-Garcia*  
Bureau Chief



**SUBMIT ORIGINAL AND A COPY  
TYPE OR PRINT LEGIBLY**

**FILED  
NMPRC  
Corporation Bureau**

**JUL 21 2011**

**Foreign Limited Liability Company  
APPLICATION FOR REGISTRATION**

The undersigned limited liability company, in order to apply for a Certificate of Registration to transact business in New Mexico under the Limited Liability Company Act, submits the following statement to the Public Regulation Commission:

1. The name of the limited liability company is: R360 Artesia, LLC
2. If it proposes to transact business in New Mexico under a different name, the name it elects for use in New Mexico is: \_\_\_\_\_
3. It is organized under the laws of: Delaware
4. The date of organization in its domestic state is: 07/19/2011
5. If so required by the laws of the domestic state, the address of the office required to be maintained in the domestic state is: 615 S. Dupont Hwy, Dover, County of Kent, Delaware 19901
6. If the laws of the domestic state do not require an address to be maintained in that state, then the address of the principal office of the limited liability company is: \_\_\_\_\_
7. The street address of the **registered office in New Mexico** is: 1819 N. Turner St., Suite G, Hobbs, NM 88240

**(P.O. Box is not acceptable. Provide a description of the geographical location if a street address does not exist)**

The **name of the registered agent** at the address of the New Mexico registered office is:  
Gary Don Reagan

8. The names of the persons in whom management of the limited liability company is vested are:  
Troy Thacker, Frank Schageman, Gabriel Rio

**The company is a foreign limited liability company as defined in Section 2 of the New Mexico Limited Liability Company Act. The Secretary of State is appointed the agent of the foreign limited liability company for service of process if, upon resignation of the appointed registered agent no agent has been appointed, or, if appointed, the agent's authority has been revoked or the agent cannot be found or served in the exercise of reasonable diligence.**

Dated: July 19, 2011

R360 Artesia, LLC

**Name of Limited Liability Company**

By Gabriel Rio

**Signature of Authorized Person**

**THIS APPLICATION MUST BE ACCOMPANIED BY A CERTIFICATE OF GOOD STANDING / EXISTENCE, ISSUED BY THE APPROPRIATE OFFICIAL CUSTODIAN OF LIMITED LIABILITY COMPANY RECORDS FOR THE STATE OR COUNTRY UNDER THE LAWS OF WHICH THE COMPANY IS ORGANIZED. THIS CERTIFICATE MUST BE ORIGINAL OR ELECTRONICALLY ISSUED, AND MUST BE CURRENT WITHIN THIRTY DAYS OR HAS NOT EXPIRED, UPON SUBMISSION TO THE COMMISSION.**

**RECEIVED  
NMPRC  
Corporation Bureau**

Form FLLC  
(revised 07/03)

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "R360 ARTESIA, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTIETH DAY OF JULY, A.D. 2011.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "R360 ARTESIA, LLC" WAS FORMED ON THE NINETEENTH DAY OF JULY, A.D. 2011.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

5012522 8300


110840301

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 8913984

DATE: 07-20-11



New Mexico Energy, Minerals and Natural Resources Department

**Susana Martinez**  
Governor

**John H. Bemis**  
Cabinet Secretary-Designate

**Brett F. Woods, Ph.D.**  
Deputy Cabinet Secretary

**Jami Bailey**  
Division Director  
Oil Conservation Division



August 25, 2011

Bill Maak  
R360 Artesia, L.L.C.  
16945 Northchase Drive, Suite 2200  
Houston, Texas 77060

**Re: Request For Permit Transfer and Financial Assurance Approval**  
**New Operator: R360 Artesia, L.L.C.**  
**Permit: NM1 - 030**  
**Argonaut Insurance Company Bond No.: SUR0001682 (\$93,420.00)**  
**Facility Location: SW/4 SW/4 SW/4 of Section 5, SE/4 SE/4 SE/4 of Section 6 and N/2 of Section 7, Township 17 South, Range 32 East, NMPM, Lea County, New Mexico**

Dear Mr. Maak:

The Oil Conservation Division (OCD) has reviewed R360 Artesia, L.L.C.'s request to transfer a permit, dated August 4, 2011, and the replacement financial assurance, dated August 22, 2011 to demonstrate compliance to Subsection E of 19.15.36.12 NMAC. OCD hereby approves the above-referenced financial assurance and transfer of the surface waste management facility permit NM1-030 to R360 Artesia, L.L.C.

Please be advised that should operations result in pollution of surface water, ground water or the environment, approval of this request does not relieve R360 Artesia, L.L.C of liability. In addition, approval of this request requires R360 Artesia, L.L.C to comply with all applicable governmental authority's rules and regulations.

If there are any questions regarding this matter, please do not hesitate to contact Mr. Brad A. Jones of the OCD staff at (505) 476-3487 or [brad.a.jones@state.nm.us](mailto:brad.a.jones@state.nm.us).

Sincerely,



Gabrielle A. Gerholt  
Assistant General Counsel

GVG/baj

Enclosure: Copy of Surety Bond # SUR0001682 (total amount \$93,420.00)

cc: OCD District I Office, Hobbs  
Artesia Aeration, LLC, PO Box 248, Artesia NM 88210

To: Brad Jones, Environmental Engineer

From: Gabrielle A. Gerholt, Associate General Counsel



Date: August 24, 2011

In Re: R360's Surety Bond

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I have reviewed the surety bond presented by R360 and the Power of Attorney. It appears to meet OCD requirements and is an acceptable form of financial assurance.

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

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:**

**CASE NO. 13481  
ORDER NO. R-12307-B**

**APPLICATION OF ARTESIA AERATION, LLC TO MODIFY THEIR  
EXISTING NMOCD RULE 711 PERMIT NO. NM-01-0030 SO THEY MAY  
ACCEPT SALT-CONTAMINATED OILFIELD WASTES**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came before Examiner William V. Jones.

NOW, on this 10<sup>th</sup> day of August, 2005, the Division Director, having considered the record and the recommendations of the Examiner,

**FINDS THAT:**

1. The Division has jurisdiction over this case and its subject matter.
2. Artesia Aeration, LLC ("Artesia Aeration") is the operator of record and surface owner of a commercial landfarm located in the N/2 of Section 7, Township 17 South, Range 32 East, in Lea County, New Mexico. This landfarm is permitted pursuant to 19.15.9.711 NMAC under permit number NM-01-0030.
3. Division Director Mark Fesmire notified the holders of landfarm permits by letter dated March 4, 2005, that the Division had determined that it was necessary to modify the landfarm permits in order to protect fresh water, human health and the environment. The permits were modified to add the following conditions: "Effective immediately, the NMOCD permitted landfarm ... is prohibited from accepting oilfield waste contaminated with salts."

The March 4th letter stated that for a landfarm to accept salts, the operator was required to apply for a modification of the permit pursuant to 19.15.9.711.B(1) NMAC and follow the notice requirements of 19.15.9.711.B(2).



4. In this instance, Artesia Aeration requests a modification of its existing permit in order to allow the permitted facility to accept oil field salt contaminated solid wastes.

5. On March 11, 2005 and March 25, 2005, the Division issued emergency orders R-12307 and R-12307-A, to allow Artesia Aeration's landfarm to continue accepting salt-contaminated oilfield wastes; provided that,

[A]ny salt-contaminated oil field waste shall be kept separate from non salt-contaminated waste; and provided, further, that such extension shall only remain in effect until a determination is made by the Division on Artesia Aeration's application to amend its current landfarm permit.

6. On May 19, 2005, the Division received from Artesia Aeration a "Notice of Withdrawal of Application of Artesia Aeration, LLC to Modify its Existing NMOCD Rule 711 Permit No. NM-01030 So That They May Accept Salt-Contaminated Oilfield Wastes".

7. On May 20, 2005, the Division informed Artesia Aeration by letter that the "withdrawal request" had been received and Artesia Aeration must immediately comply with the Division's March 4, 2005 letter and the landfarm facility should no longer accept oil field salt contaminated wastes.

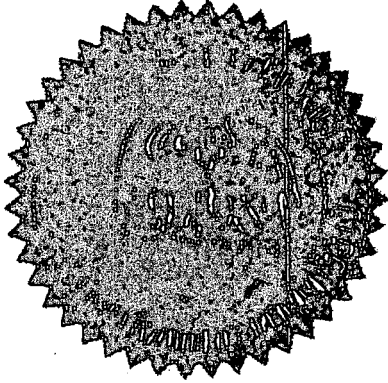
8. Emergency Order No. 12307 as amended should no longer be in effect and Artesia Aeration should immediately comply with the Division's March 4<sup>th</sup> and May 20<sup>th</sup> letters.

9. Case 13481 should be dismissed.

**IT IS THEREFORE ORDERED THAT:**

1. Case No. 13481 is dismissed.
  2. Emergency Order No. 12307-A is hereby rescinded and Artesia Aeration should immediately comply with the Division's March 4 and May 20, 2005 letters.
  3. Artesia Aeration's landfarm facility (Permit NM-01-0030) shall no longer accept oil field salt contaminated wastes.
-

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



SEAL

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire". The signature is fluid and cursive, with a long horizontal stroke at the end.

MARK E. FESMIRE, P.E.  
Director

②  
Volume I - 379 pgs.  
Volume II - 380-688 pgs.  
PH - Donald Neeper - OCD - Gandy Marley - CRI

Continued to ②  
may 23  
det. Domet  
michael feld  
PH  
Continued to  
may 23  
application  
withdrew

**CASE 13480:** Application of Gandy Marley, Inc. to modify their existing NMOCD Rule 711 Permit No. NM-01-019 so that they may accept salt-contaminated oilfield wastes. Gandy Marley, Inc. has applied for a modification to their surface waste management facility permit to allow the facility to accept oilfield waste, exempt from RCRA Subtitle C, including chloride impacted debris, drilling mud, soils, sludges, tank bottoms and filters associated with the drilling, operating and maintenance of oil and gas wells and related operations of the oil and gas industry, and certain non-exempt, non-hazardous oilfield waste. Gandy Marley, Inc.'s facility is located in Sections 4,5,8, and 9 of Township 11 South, Range 31 East, in Chaves County, New Mexico. Gandy Marley, Inc. has provided information describing the construction of the cells and conditions at the site that make it suitable for the acceptance of such wastes. The operator will keep salt-contaminated oilfield waste separate from hydrocarbon-contaminated oilfield waste.

**CASE 13481:** Application of Artesia Aeration, LLC to modify its existing NMOCD Rule 711 Permit No. NM-01-030 so that they may accept salt-contaminated oilfield wastes. Artesia Aeration, LLC has applied for a modification to its surface waste management facility permit to allow the applicant to accept oilfield waste, exempt from RCRA Subtitle C, including chloride impacted debris, drilling mud, soils, sludges, and tank bottoms associated with the drilling, operating and maintenance of oil and gas wells and related operations of the oil and gas industry, and certain non-exempt, non-hazardous oilfield waste. Artesia Aeration, LLC's landfarm is located in the N/2 of Section 7, Township 17 South, Range 32 East, in Lea County, New Mexico. The application includes provisions for the handling of such oilfield wastes and addresses the protection of groundwater. The applicant will keep chloride-contaminated oilfield waste separate from hydrocarbon-contaminated oilfield waste.

Artesia Aeration, LLC  
P.O. Box 310  
Hobbs, NM 88240

Permit Number: NM-1-0030

Re: Administrative Modification of Landfarm Permits

The Oil Conservation Division (OCD) issued the landfarm permit identified above under OCD Rule 711. As explained in the public notice given prior to the issuance of the permit, the permit was for landfarming to remediate hydrocarbon-contaminated soils. The language of the permit, however, is broader, allowing the facility to accept oilfield contaminated solids which are either exempt from the Federal RCRA Subtitle C (hazardous waste) regulations or are "nonhazardous" by characteristic testing. If this language were interpreted to allow the landfarm to accept oilfield waste contaminated with salts, the salts could compromise the biodegradation capacity of the landfarm. And because salts leach more easily than hydrocarbons, the landfarm may pose a greater threat to groundwater.

According to the terms of the permit identified above, the OCD may change the permit conditions administratively for good cause shown as necessary to protect fresh water, human health and the environment. The OCD has determined that it is necessary to protect fresh water, human health and the environment to modify the permit as follows:

**Effective immediately, the NMOCD permitted landfarm identified above is prohibited from accepting oilfield waste contaminated with salts.**

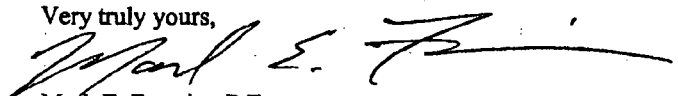
If the landfarm identified above wishes to accept oilfield waste contaminated with salts, you will need to file an application to modify the permit pursuant to OCD Rule 711.B(1) and follow the notice requirements of OCD Rule 711.B(2). If you have already filed a complete application for permit modification with this office and complied with the notice requirements, the OCD will process the application promptly.

Landfarms that wish to accept oilfield wastes contaminated with salts while their application for permit modification is pending may apply to the Division Director for an emergency order under OCD Rule 1202. Applications for emergency orders will be considered on a case-by-case basis.

This notice is being sent to all entities operating landfarm facilities in New Mexico permitted pursuant to OCD Rule 711, as shown on the attached list.

If you have any questions, please contact Ed Martin at (505) 476-3492 or emartin@state.nm.us.

Very truly yours,

  
Mark E. Fesmire, P.E



# NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

**BILL RICHARDSON**

Governor

**Joanna Prukop**

Cabinet Secretary

**Mark E. Fesmire, P.E.**

Director

**Oil Conservation Division**

May 20, 2005

Mr. Jim Wilson  
505-392-9575 Fax 505-392-3085  
Artesia Aeration, LLC  
PO Box 310  
Hobbs, New Mexico 88241

Dear Sir:

The Division received your "Notice of Withdrawal of Application of Artesia Aeration, LLC to Modify its Existing NMOCD Rule 711 Permit No. NM-01030 So That They May Accept Salt-Contaminated Oilfield Wastes" on May 19, 2005.

Please be advised the Division will be issuing a formal order finalizing the status of Division Case No. 13481. However, in the interim, the Division's March 4, 2005 letter to Artesia Aeration, LLC is still in effect. The operative statement in that letter is:

"Effective immediately, the NMOCD permitted landfarm identified above (Permit No. NM-1-0030) is prohibited from accepting oilfield waste contaminated with salts."

Thank You,

Mark E. Fesmire, P.E.  
Division Director

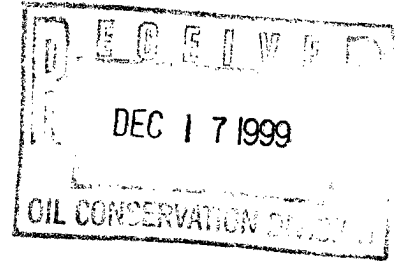
Copied by Fax 505-983-6344 to:  
Mr. Bruce S. Garber  
Garber and Hallmark, P.C.  
Attorneys at Law  
200 W. Marcy, Suite 203  
PO Box 850  
Santa Fe, New Mexico 87504



STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION  
2040 S. PACHECO  
SANTA FE, NEW MEXICO 87505  
(505) 827-7131

November 29, 1999



**CERTIFIED MAIL**  
**RETURN RECEIPT NO. P-326-936-642**

Mr. Rob Mathews  
Artesia Aeration L.L.C.  
P.O. Box 248  
Artesia, NM 88210

**RE: OCD Rule 711 Permit Approval NM-01-0030**  
**Artesia Aeration L.L.C.**  
**Commercial Landfarm**  
**N/2 of Section 7, Township 17 South, Range 32 East, NMPM, Lea County, New Mexico**

Dear Mr. Mathews:

The permit application for the Artesia Aeration L.L.C. (Artesia Aeration) commercial surface waste management facility located in the N/2 N/2 of Section 9 and the N/2 N/2 of Section 10, Township 20 South, Range 38 East, NMPM, Lea County, New Mexico, **is hereby approved** in accordance with New Mexico Oil Conservation Division (OCD) Rule 711 under the conditions contained in the enclosed attachment. **This permit approval is conditional upon the receipt and approval by the Director of financial assurance in the amount of \$93,420.** According to the schedule outlined in the financial assurance section of the enclosed attachment, **\$25,000** is required within thirty (30) days of the date of this permit approval letter. The application consists of the permit application Form C-137 dated June 29, 1999, the public notice dated October 11, 1999, and supplemental materials dated July 15, 1999.

The operation, monitoring and reporting shall be as specified in the enclosed attachment. All modifications and alternatives to the approved landfarming methods must receive prior OCD approval. Artesia Aeration is required to notify the Director of any facility expansion or process modification and to file the appropriate materials with the Division.

Please be advised approval of this facility permit does not relieve Artesia Aeration of liability should your operation result in pollution of surface water, ground water, or the environment. In addition, OCD approval does not relieve Artesia Aeration of responsibility for compliance with other federal, state or local laws and/or regulations.

Mr. Rob Mathews  
November 29, 1999  
Page 2

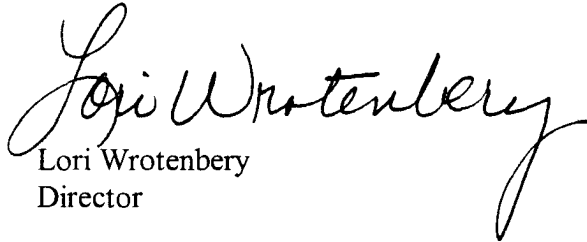
Please be advised that all tanks exceeding 16 feet in diameter and exposed pits, ponds or lagoons must be screened, netted or otherwise rendered nonhazardous to migratory birds. In addition, OCD Rule 310 prohibits oil from being stored or retained in earthen reservoirs or open receptacles.

The facility is subject to periodic inspections by the OCD. The conditions of this permit will be reviewed by the OCD no later than five (5) years from the date of this approval and the facility will be inspected at least once a year. In addition, the closure cost estimate will be reviewed according to prices and remedial work estimates at the time of the five (5) year review. The financial assurance may be adjusted to incorporate any closure cost changes.

Enclosed are two copies of the conditions of approval. **Please sign and return one copy to the OCD Santa Fe Office within five working days of receipt of this letter.**

If you have any questions please do not hesitate to contact Martyne J. Kieling at (505) 827-7153.

Sincerely,



Lori Wrotenbery  
Director

LW/mjk

xc with attachments:  
Hobbs OCD Office

**ATTACHMENT TO OCD 711 PERMIT APPROVAL**  
**PERMIT NM-01-0030**  
**ARTESIA AERATION L. L.C.**  
**N/2 of Section 7, Township 17 South, Range 32 East, NMPM,**  
**Lea County, New Mexico**  
**(November 29, 1999)**

**LANDFARM CONSTRUCTION**

1. Construction must commence on the landfarm area within one (1) year of the permit approval date. If construction does not commence within one (1) year of the permit approval date, this permit will be of no effect.
2. The facility must be fenced and have a sign at the entrance. The sign must be legible from at least fifty (50) feet and contain the following information: a) name of the facility; b) location by section, township and range; and c) emergency phone number.
3. Contaminated soils may not be placed within one hundred (100) feet of the boundary of the facility.
4. Contaminated soils may not be placed within twenty (20) feet of any pipeline crossing the landfarm. In addition, no equipment will be operated within ten (10) feet of a pipeline. All pipelines crossing the facility must have surface markers identifying the location of the pipelines.
5. The portion of the facility containing contaminated soils must be bermed to prevent runoff and runoff. A perimeter berm no less than five (5) feet above grade with a base of at least thirty (30) feet must be constructed and maintained such that it is capable of containing precipitation from a one-hundred year flood for the specific region. Individual cells must be contained with a berm no less than five (5) feet above grade with a base of at least thirty (30) feet.
6. All above-ground tanks, saddle tanks or drums located at the facility and containing materials other than fresh water must be placed on an impermeable pad with curb containment. The pad and curb containment must be able to hold one and one-third the volume of the largest tank or all interconnected tanks. The tanks and containers must be labeled as to contents and hazards.

**LANDFARM OPERATION**

1. Disposal may occur only when an attendant is on duty. The facility must be secured when



attendant is present.

2. All contaminated soils received at the facility must be spread and disked within 72 hours of receipt.
3. Soils must be spread on the surface in lifts of six inches or less.
4. Soils must be disked a minimum of one time every two weeks (biweekly) to enhance biodegradation of contaminants.
5. Exempt contaminated soils must be placed in the landfarm so that they are physically separate (*i.e.*, bermed) from non-exempt contaminated soils. There may be no mixing of exempt and non-exempt soils.
6. Successive lifts of contaminated soils may not be spread until a laboratory measurement of total petroleum hydrocarbons (TPH) in the previous lift is less than 100 parts per million (ppm), the sum of all aromatic hydrocarbons (BTEX) is less than 50 ppm, and benzene is less than 10 ppm. Comprehensive records of the laboratory analyses and the sampling locations must be maintained at the facility. Authorization from the OCD must be obtained prior to application of successive lifts and/or removal of the remediated soils.
7. Moisture may be added as necessary to enhance bioremediation and to control blowing dust. There may be no ponding, pooling or run-off of water allowed. Any ponding of precipitation must be removed within twenty-four (24) hours of discovery.
8. Enhanced bio-remediation through the application of microbes (bugs) and/or fertilizers requires prior approval from the OCD. Requests for application of microbes or fertilizers must include the location of the area designated for the program, the composition of additives, and the method, amount and frequency of application.
9. Any design changes to the landfarm facility must be submitted to the OCD Santa Fe office for approval and a copy must be sent to the Hobbs District office.
10. Landfarm inspection and maintenance must be conducted on at least a biweekly basis and immediately following each consequential rainstorm or windstorm. The OCD Santa Fe and Hobbs offices must be notified within 48 hours if any defect is noted. Repairs must be made as soon as possible. If the defect will jeopardize the integrity of the landfarm, additional wastes may not be placed into the landfarm until repairs have been completed.

## WASTE ACCEPTANCE CRITERIA

1. The facility is authorized to accept only:
  - a. Oilfield wastes that are exempt from RCRA Subtitle C regulations and that do not contain Naturally Occurring Radioactive Material regulated pursuant to 20 NMAC 3.1 Subpart 1403 (NORM). All loads of these wastes received at the facility shall be accompanied by a "Generator Certificate of Waste Status" signed by the generator
  - b. "Non-hazardous" non-exempt oilfield wastes that do not contain NORM. These wastes may be accepted on a case-by-case basis after a hazardous waste determination is made. Samples, if required, must be obtained from the wastes prior to removal from the generator's facility and without dilution in accordance with EPA SW-846 sampling procedures. All "non-hazardous" non-exempt wastes received at the facility must be accompanied by:
    - i. An approved OCD Form C-138 "Request For Approval To Accept Solid Waste."
    - ii. A "Generator Certificate of Waste Status" signed by the generator.
    - iii. A verification of waste status issued by the appropriate agency, for wastes generated outside OCD jurisdiction. The agency verification is based on specific information on the subject waste submitted by the generator and demonstrating the exempt or non-hazardous classification of the waste.
  - c. Non-oilfield wastes that are non-hazardous if ordered by the Department of Public Safety in a public health emergency. OCD approval must be obtained prior to accepting the wastes.
2. At no time may any OCD-permitted surface waste management facility accept wastes that are hazardous by either listing or characteristic testing.
3. No free liquids or soils with free liquids may be accepted at the facility.
4. Materials that may be accepted into the facility must pass a paint filter test by EPA Method 9095A prior to receipt.
5. The transporter of any wastes to the facility must supply a certification that wastes delivered are those wastes received from the generator and that no additional materials have been added.

### TREATMENT ZONE MONITORING

1. One (1) background soil sample must be taken from the center portion of the landfarm two (2) feet below the native ground surface prior to operation. The sample must be analyzed for total petroleum hydrocarbons (TPH), volatile aromatic organics (BTEX), major cations/anions and Water Quality Control Commission (WQCC) metals.
2. A treatment zone not to exceed three (3) feet beneath the landfarm native ground surface must be monitored. A minimum of one random soil sample must be taken from each individual cell, with no cell being larger than five (5) acres, six (6) months after the first contaminated soils are received in the cell and then quarterly thereafter. The sample must be taken at two (2) to three (3) feet below the native ground surface.
3. The soil samples must be analyzed using EPA-approved methods for total petroleum hydrocarbons (TPH) and volatile aromatic organics (BTEX) quarterly and for major cations/anions and Water Quality Control Commission (WQCC) metals annually.
4. After soil samples are obtained, the boreholes must be filled with an impermeable material such as cement or bentonite.

### REPORTING

1. Analytical results from the treatment zone monitoring must be submitted to the OCD Santa Fe office **within thirty (30) days** of receipt from the laboratory.
2. Background sample analytical results must be submitted to the OCD Santa Fe office **within thirty (30) days** of receipt from the laboratory.
3. Records of landfarm inspections and maintenance must be kept and maintained for OCD review.
4. Artesia Aeration L.L.C. must notify the **OCD Santa Fe and Hobbs offices within 24 hours** of any fire, break, leak, spill, blow out or any other circumstance that could constitute a hazard or contamination in accordance with OCD Rule 116.
5. Comprehensive records of all material disposed of at the facility must be maintained at the facility. The records for each load must include: 1) generator; 2) origin; 3) date received; 4) quantity; 5) certification of waste status as exempt or non-exempt with any necessary supporting documentation to certify non-hazardous status for non-exempt waste; 6) NORM status declaration; 7) transporter; 8) exact cell location; and 9) any addition of microbes, moisture, fertilizers, *etc.*

6. Analytical results regarding remediated soil must be submitted to the OCD Santa Fe office, reporting required with a copy to the Hobbs District office, along with any request to close the cell, apply successive lifts or remove the remediated material.
7. The OCD must be notified prior to the installation of any pipelines or wells or other construction within the boundaries of the facility.

### FINANCIAL ASSURANCE

1. Financial assurance in the amount of **\$93,420** (the estimated cost of closure) in the form of a surety or cash bond or a letter of credit, which is approved by the Division, is required from Artesia Aeration L.L.C. for the commercial surface waste management facility.

**By December 29, 1999** Artesia Aeration must submit financial assurance in the amount of **\$25,000**.

**By December 29, 2000** or when the facility is filled to 50% of the permitted capacity, whichever comes first, Artesia Aeration must submit financial assurance in the amount of **\$46,710**.

**By December 29, 2001** or when the facility is filled to 75% of the permitted capacity, whichever comes first, Artesia Aeration must submit financial assurance in the amount of **\$70,065**.

**By December 29, 2002** or when the facility is filled to 100% of the permitted capacity, whichever comes first, Artesia Aeration must submit financial assurance in the amount of **\$93,420**.

2. The facility is subject to periodic inspections by the OCD. The conditions of this permit and the facility will be reviewed no later than five (5) years from the date of this approval. In addition, the closure cost estimate will be reviewed according to prices and remedial work estimates at the time of review. The financial assurance may be adjusted to incorporate any closure cost changes.

### CLOSURE

1. The OCD Santa Fe and Hobbs offices must be notified when operation of the facility is discontinued for a period in excess of six (6) months or when the facility is to be dismantled. Within six (6) months of discontinued use or within 30 days of deciding to dismantle the facility a closure plan must be submitted to the OCD Santa Fe office. The operator must

complete cleanup of constructed facilities and restoration of the facility site within the following six (6) months, unless an extension of time is granted by the Director.

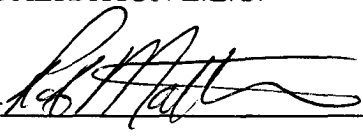
2. Upon six (6) months of discontinued use or within 30 days of deciding to dismantle the facility a closure plan to include the following procedures must be submitted to the OCD Santa Fe office for approval:
  - a. When the facility is to be closed no new material may be accepted.
  - b. Existing landfarm soils must be remediated until they meet the OCD standards in effect at the time of closure.
  - c. The soils beneath the landfarm cells must be characterized as to the total petroleum hydrocarbons (TPH) and volatile aromatic organics (BTEX) content in order to determine potential migration of contamination beneath the facility.
  - d. Contaminated soils exceeding OCD closure standards for the site must be removed or remediated.
  - e. The area must be contoured, seeded with native grasses and allowed to return to its natural state. If the landowner desires to keep existing structures, berms, or fences for future alternative uses the structures, berms, or fences may be left in place.
  - f. Closure must be pursuant to all OCD requirements in effect at the time of closure, and any other applicable local, state and/or federal regulations.

### CERTIFICATION

Artesia Aeration L.L.C., by the officer whose signature appears below, accepts this permit and agrees to comply with all terms and conditions contained herein. Artesia Aeration L.L.C. further acknowledges that these conditions and requirements of this permit may be changed administratively by the Division for good cause shown as necessary to protect fresh water, human health and the environment.

Accepted:

ARTESIA AERATION L.L.C.

Signature:  Title Registered Agent Date 12-10-99



STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION  
2040 S. PACHECO  
SANTA FE, NEW MEXICO 87505  
(505) 827-7131

November 29, 1999

**CERTIFIED MAIL**  
**RETURN RECEIPT NO. P-326-936-642**

Mr. Rob Mathews  
Artesia Aeration L.L.C.  
P.O. Box 248  
Artesia, NM 88210

**RE: OCD Rule 711 Permit Approval NM-01-0030**  
**Artesia Aeration L.L.C.**  
**Commercial Landfarm**  
**N/2 of Section 7, Township 17 South, Range 32 East, NMPM, Lea County, New Mexico**

Dear Mr. Mathews:

The permit application for the Artesia Aeration L.L.C. (Artesia Aeration) commercial surface waste management facility located in the N/2 N/2 of Section 9 and the N/2 N/2 of Section 10, Township 20 South, Range 38 East, NMPM, Lea County, New Mexico, **is hereby approved** in accordance with New Mexico Oil Conservation Division (OCD) Rule 711 under the conditions contained in the enclosed attachment. **This permit approval is conditional upon the receipt and approval by the Director of financial assurance in the amount of \$93,420.** According to the schedule outlined in the financial assurance section of the enclosed attachment, **\$25,000** is required within thirty (30) days of the date of this permit approval letter. The application consists of the permit application Form C-137 dated June 29, 1999, the public notice dated October 11, 1999, and supplemental materials dated July 15, 1999.

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Mr. Rob Mathews  
November 29, 1999  
Page 2

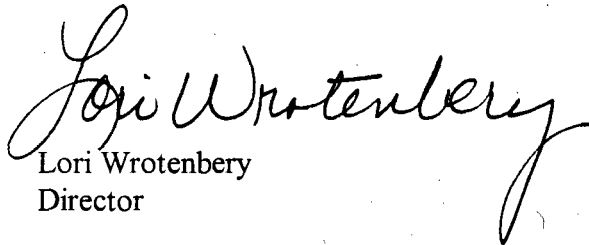
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Sincerely,



Lori Wrotenbery  
Director

LW/mjk

xc with attachments:  
Hobbs OCD Office

**ATTACHMENT TO OCD 711 PERMIT APPROVAL**  
**PERMIT NM-01-0030**  
**ARTESIA AERATION L. L.C.**  
**N/2 of Section 7, Township 17 South, Range 32 East, NMPM,**  
**Lea County, New Mexico**  
**(November 29, 1999)**

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### TREATMENT ZONE MONITORING

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6. Analytical results regarding remediated soil must be submitted to the OCD Santa Fe office, reporting required with a copy to the Hobbs District office, along with any request to close the cell, apply successive lifts or remove the remediated material.
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**By December 29, 1999** Artesia Aeration must submit financial assurance in the amount of **\$25,000**.

**By December 29, 2000** or when the facility is filled to 50% of the permitted capacity, whichever comes first, Artesia Aeration must submit financial assurance in the amount of **\$46,710**.

**By December 29, 2001** or when the facility is filled to 75% of the permitted capacity, whichever comes first, Artesia Aeration must submit financial assurance in the amount of **\$70,065**.

**By December 29, 2002** or when the facility is filled to 100% of the permitted capacity, whichever comes first, Artesia Aeration must submit financial assurance in the amount of **\$93,420**.

2. The facility is subject to periodic inspections by the OCD. The conditions of this permit and the facility will be reviewed no later than five (5) years from the date of this approval. In addition, the closure cost estimate will be reviewed according to prices and remedial work estimates at the time of review. The financial assurance may be adjusted to incorporate any closure cost changes.

### CLOSURE

1. The OCD Santa Fe and Hobbs offices must be notified when operation of the facility is discontinued for a period in excess of six (6) months or when the facility is to be dismantled. Within six (6) months of discontinued use or within 30 days of deciding to dismantle the facility a closure plan must be submitted to the OCD Santa Fe office. The operator must

complete cleanup of constructed facilities and restoration of the facility site within the following six (6) months, unless an extension of time is granted by the Director.

2. Upon six (6) months of discontinued use or within 30 days of deciding to dismantle the facility a closure plan to include the following procedures must be submitted to the OCD Santa Fe office for approval:
  - a. When the facility is to be closed no new material may be accepted.
  - b. Existing landfarm soils must be remediated until they meet the OCD standards in effect at the time of closure.
  - c. The soils beneath the landfarm cells must be characterized as to the total petroleum hydrocarbons (TPH) and volatile aromatic organics (BTEX) content in order to determine potential migration of contamination beneath the facility.
  - d. Contaminated soils exceeding OCD closure standards for the site must be removed or remediated.
  - e. The area must be contoured, seeded with native grasses and allowed to return to its natural state. If the landowner desires to keep existing structures, berms, or fences for future alternative uses the structures, berms, or fences may be left in place.
  - f. Closure must be pursuant to all OCD requirements in effect at the time of closure, and any other applicable local, state and/or federal regulations.

### CERTIFICATION

Artesia Aeration L.L.C., by the officer whose signature appears below, accepts this permit and agrees to comply with all terms and conditions contained herein. Artesia Aeration L.L.C. further acknowledges that these conditions and requirements of this permit may be changed administratively by the Division for good cause shown as necessary to protect fresh water, human health and the environment.

Accepted:

ARTESIA AERATION L.L.C.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

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

**CONSOLIDATED**

**APPLICATION OF THE OIL CONSERVATION DIVISION TO EXTEND THE EFFECTIVE DURATION OF AN EMERGENCY ORDER TO OPERATE ISSUED TO GANDY MARLEY, INC.**

**CASE NO. 13454  
ORDER NO. 12306-A**

**AND**

**APPLICATION OF THE OIL CONSERVATION DIVISION TO EXTEND THE EFFECTIVE DURATION OF AN EMERGENCY ORDER TO OPERATE ISSUED TO ARTESIA AERATION, LLC.**

**CASE NO. 13455  
ORDER NO. 12307-A**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing at 10:00 a.m. on March 25, 2005, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 25<sup>th</sup> day of March 2005, the Division Director, having considered the requests,

**FINDS THAT:**

- (1) Due public notice has been given, and the Oil Conservation Division ("Division") has jurisdiction over these cases and their subject matter.
- (2) The Division seeks an order extending the effective duration of Emergency Order R-12306 issued to Gandy Marley Inc. and Emergency Order R-12307 issued to Artesia Aeration, LLC, until a determination is made on the applications of those operators to amend their landfarm permits.
- (3) These cases were consolidated for purpose of the hearing.
- (4) Notice of this hearing was provided to Gandy Marley Inc. and to Artesia Aeration, LLC ("Operators"). Notice of the hearing was also published in the Lovington Daily Leader on March 15, 2005, and in the Roswell Daily Record on March 17, 2005. Additionally, notice was posted on the Division's website and sent by e-mail to those parties who had requested notice of Division hearings.
- (5) Gandy Marley, Inc. was present at the hearing and represented by counsel.

- (6) Artesia Aeration, Inc. was not represented by counsel.
- (7) Dr. Don Neeper appeared and provided testimony at the hearing.
- (8) Controlled Recovery, Inc. ("CRI") was represented by counsel and appeared at the hearing in opposition to the Division's applications and presented testimony from one witness.
- (9) The Division presented the following testimony and evidence:
  - a) Gandy Marley, Inc. ("Gandy Marley") is the operator of record and surface owner of a commercial landfarm located in Sections 4, 5, 8, and 9, Township 11 South, Range 31 East, in Chaves County, New Mexico. This landfarm is permitted pursuant to 19.15.9.711 NMAC under permit number NM-01-0019.
  - b) Artesia Aeration, L.L.C. ("Artesia Aeration") is the operator of record and surface owner of a commercial landfarm located in the N/2 of Section 7, Township 17 South, Range 32 East, in Lea County, New Mexico. This landfarm is permitted pursuant to 19.15.9.711 NMAC under permit number NM-01-0030.
  - c) The public notice given prior to issuance of a majority of landfarm permits in New Mexico stated: "Hydrocarbon contaminated soils associated with oil and gas production will be remediated...."
  - d) The language of those landfarm permits, however, was broader than the language in the public notice, allowing the facilities to accept oilfield wastes that are exempt from RCRA Subtitle C regulations and that do not contain Naturally Occurring Radioactive Materials regulated pursuant to 20 NMAC 3.1 Subpart 1403 (NORM) and "Non-hazardous" non-exempt oilfield wastes.
  - e) Salt contamination decreases the biodegradation capacity of the landfarms and because salts leach more easily than hydrocarbons, a landfarm accepting salt-contaminated oilfield wastes could pose a threat to groundwater.
  - f) According to the terms of the landfarm permits referred to in "c" above, the Division may change the permit conditions administratively for good cause shown as necessary to protect fresh water, human health, and the environment.
  - g) Division Director Mark Fesmire notified the holders of the aforementioned landfarm permits by letter dated March 4, 2005, that the Division had determined that it was necessary to modify the landfarm permits in order to protect fresh water, human health and the environment. The permits were modified to add the following conditions: "Effective immediately, the NMOCD permitted landfarm ... is prohibited from accepting oilfield waste contaminated with salts."

The March 4<sup>th</sup> letter stated that for a landfarm to accept salts, the operator was required to apply for a modification of the permit pursuant to 19.15.9.711.B(1) NMAC and follow the notice requirements of 19.15.9.711.B(2).

h) The Operators have each applied for a modification of their permits to allow them to accept salt-contaminated oilfield wastes. The applications to modify those permits are set for hearing on May 19, 2005, before the Division.

i) On March 10, 2005, Gandy Marley applied for an emergency order allowing it to accept salt-contaminated oilfield waste pending a decision on its application for a permit modification. In support of this request, Gandy Marley asserted the following:

- i. The depth to groundwater at the location of the landfarm is 150 feet.
- ii. The TDS level of the groundwater at the location of the landfarm is in excess of 15,000 PPM.
- iii. There are no fresh water wells or watercourses (wet or dry) within 1,000 feet of the landfarm.
- iv. There is an impermeable redbed clay barrier of approximately 150 feet between the surface and the groundwater.
- v. The groundwater at the site is nonproduceable in both volume and quality.
- vi. An emergency order is necessary because there is a critical need in the area of the landfarm for a facility that can accept salt contaminated soils due to extensive drilling programs and remediation programs in the area.

j) On March 11, 2005, Artesia Aeration applied for an emergency order allowing it to accept salt contaminated oilfield waste pending a decision on its application for a permit modification. In support of this request, Artesia Aeration asserted the following:

- i. There is no groundwater at the site as evidenced by a 120 feet deep monitor well.
- ii. There are no fresh water wells or watercourses (wet or dry) within 1,000 feet of the landfarm.
- iii. An emergency order is necessary because there is a critical need in the area of the landfarm for a facility that can accept salt-contaminated soils due to extensive drilling and remediation programs in the area by oil and gas operators.

k) The records of the Division confirm both Operators' descriptions of conditions at their landfarms.

l) Division staff confirmed that both Operators intend to keep salt contaminated oilfield waste separate from hydrocarbon contaminated oilfield waste.

m) By Emergency Order R-12306, issued on March 11, 2005, the Division Director determined that Gandy Marley had demonstrated an emergency need for the issuance of an order without hearing. This order allows Gandy Marley to accept salt contaminated oilfield wastes pending a decision on its application for a permit modification.



n) By Emergency Order R-12307, issued on March 11, 2005, the Division Director determined that Artesia Aeration had demonstrated an emergency need for the issuance of an order without hearing. This order allows Artesia Aeration to accept salt contaminated oilfield wastes pending a decision on its application for a permit modification.

o) In Emergency order R-12307, issued on March 11, 2005, the Division Director determined that Artesia Aeration had demonstrated an emergency requiring the issuance of an order without a hearing allowing Artesia Aeration to accept salt contaminated oilfield wastes pending a decision on its application for a permit modification.

p) Pursuant to NMSA 1978, § 70-2-23, an emergency order shall expire fifteen days from its effective date.

q) Division Orders R-12306 and R-12307 will expire after March 26, 2005.

**CONCLUDES THAT:**

(1) Prior to the March 4, 2005 letter, the original permits allowed the Operators to accept salt-contaminated oilfield wastes.

(2) The public notices for the permits issued to the Operators did not include acceptance of salt-contaminated oil field wastes as a requested term or condition of the permits.

(3) The public notices given for the permit applications were inadequate, rendering the permits voidable.

(4) The public did not receive proper notice of pending applications before the Division in order to have an adequate opportunity to comment upon the permit applications.

(5) The Division's March 4, 2005 administrative action, which notified all operators of landfarms who had received the voidable permits, that effective immediately, their permits were administratively modified. This modification prohibited them from accepting oilfield waste contaminated with salts, and was permissible and necessary to protect fresh water, human health and the environment.

(6) The Division's action administratively amending previously approved permits resulted in a majority of the landfarms no longer being able to receive salt contaminated oil field wastes.

(7) The recent adoption of the Pit Rule (19.15.2.50 NMAC) has increased the need for remediation and disposal of drill cuttings within New Mexico.

(8) Removing the capability of a majority of landfarms to accept salt contaminated oil field wastes represented to the Division an unforeseen combination of circumstances calling for immediate action by the Division. This constituted an emergency. See definition of "Emergency," Blacks Law Dictionary, 5<sup>th</sup> ed.

(9) It was necessary for the Division to take appropriate action to ensure that adequate facilities would continue to be available to receive and treat salt contaminated oil field wastes.

(10) It was reasonable for the Division not to wait until a crisis in the disposal of contaminated soil exists, but to take action quickly to protect fresh water, human health and the environment.

(11) Preliminary evidence indicates that the hydrologic and geologic characteristics associated with the Gandy Marley and Artesia Aeration disposal sites are sufficient to prevent water contamination and to protect human health and the environment.

(12) Division Rule 1202.A allows emergency orders to be issued without a hearing and to have the same validity as if a hearing had been held, provided that the order may remain in effect for a period no longer than 15 days.

(13) The purpose of Division Rule 1202 is to allow an emergency order to be extended beyond the 15 day period, provided a hearing is held thereon, and provided further that notice of such hearing may be given within a lesser period than 20 days, as the Division may order. See also NMSA 1978, § 70-2-23.

(14) Adequate notice in compliance with OCD Rule 1202.B of the Division's application to extend the emergency order was provided.

(15) Any extensions of the two emergency orders at issue will be temporary, until final determination concerning the Operator's applications for permit modifications is made by the Division.

(16) Preliminary evidence indicates that allowing Gandy Marley and Artesia Aeration to accept salt-contaminated oilfield wastes at their landfarm facilities will not pose a danger to fresh water, human health or the environment.

(17) The decisions on the applications of Gandy Marley and Artesia Aeration for permit modification should be acted upon with dispatch and not be allowed to pend before the Division for an extended period of time.

IT IS THEREFORE ORDERED THAT:

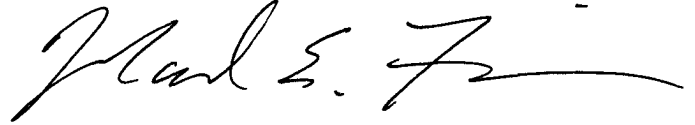
(1) The Division's application to extend Emergency Order R-12306 to allow Gandy Marley, Inc. to continue to operate under permit number NM-01-0020 without being subject to the Division's March 4, 2005 letter, is hereby approved; provided that any salt contaminated oil field waste shall be kept separate from non salt contaminated waste; and provided, further, that such extension shall only remain in effect until a determination is made by the Division on Gandy Marley's application to amend its current landfarm permit.

(2) The Division's application to extend Emergency Order R-12307 to allow Artesia Aeration, LLC to continue to operate under permit number NM-01-0030 without being subject to the Division's March 4, 2005 letter, is hereby approved; provided that any salt contaminated oil field waste shall be kept separate from non salt contaminated waste; and provided, further, that such extension shall only remain in effect until a determination is made by the Division on Artesia Aeration's application to amend its current landfarm permit.

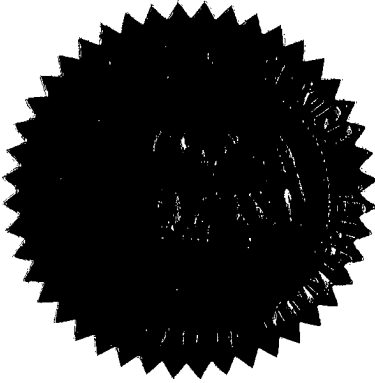
(3) Jurisdiction of these cases is retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION



MARK E. FESMIRE, P.E.  
Director



SEAL

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

**IN THE MATTER OF THE PROCEEDING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF CONSIDERING:**

**REQUEST OF ARTESIA AERATION, LLC  
FOR AN EMERGENCY ORDER TO OPERATE**

CASE NO. 13455  
ORDER NO. R-12307

**ORDER**

**BY THE DIVISION:**

This matter came on for decision before the Director of the Oil Conservation Division on March 11, 2005, upon the request of Artesia Aeration, LLC for an emergency order pursuant to NMSA 1978, § 70-2-23 allowing its commercial landfarm, located in the N/2 of Section 7, Township 17 South, Range 32 East, in Lea County, New Mexico, to accept salt-contaminated oilfield waste until a determination is made by the Hearing Examiner on Artesia Aeration, LLC's application to amend its current landfarm permit.

NOW, on this 11<sup>th</sup> day of March 2005, the Division Director, having considered the request,

**FINDS THAT:**

- (1) The Oil Conservation Division ("Division") has jurisdiction over this case and its subject matter.
- (2) Artesia Aeration, LLC ("Operator") is the operator of record of a commercial landfarm located in the N/2 of Section 7, Township 17 South, Range 32 East, in Lea County, New Mexico (hereinafter "landfarm").
- (3) The landfarm is permitted pursuant to 19.15.9.711 NMAC under permit number NM-01-0030.
- (4) The public notice given prior to issuance of landfarm permits stated that the permits were for landfarming to remediate hydrocarbon-contaminated soils.
- (5) The language of the landfarm permits, however, was broader than the language in the public notice, allowing the facilities to accept oilfield contaminated solids that are either exempt from the Federal RCRA Subtitle C (hazardous waste) regulations or are "nonhazardous" by characteristic testing or listing.

(6) If the language of the landfarm permits is interpreted to allow landfarms to accept oilfield waste contaminated with salts, the salts could compromise the biodegradation capacity of the landfarms. And because salts leach more easily than hydrocarbons, unless the site is appropriate, a landfarm accepting salt-contaminated oilfield wastes could pose a threat to groundwater.

(7) According to the terms of the landfarm permits, the Division may change the permit conditions administratively for good cause shown as necessary to protect fresh water, human health and the environment.

(8) By letter dated March 4, 2005, Division Director Mark Fesmire notified the holders of landfarm permits that the Division had determined that it was necessary to modify the landfarm permits as follows, in order to protect fresh water, human health and the environment:

“Effective immediately, the NMOCD permitted landfarm identified above is prohibited from accepting oilfield waste contaminated with salts.”

The letter stated that for a landfarm to accept salts, the operator would need to apply for a modification of the permit pursuant to 19.15.9.711.B(1) NMAC and follow the notice requirements of 19.15.9.711.B(2).

(9) Operator has applied for a modification of its permit to allow it to accept salt-contaminated oilfield wastes.

(10) On March 11, 2005, Operator applied for an emergency order allowing it to accept salt-contaminated oilfield waste pending a decision on its application for a permit modification. In support of its request, Operator asserts the following:

- a. There is no groundwater at the site evidenced by a 120' monitor well.
- b. There are no fresh water wells or watercourses (wet or dry) within 1,000 feet of the landfarm.
- c. An emergency order is necessary because there is a critical need in the area of the landfarm for a facility that can accept salt-contaminated soils due to extensive drilling programs and remediation programs in the area by oil and gas operators.

(11) The records of the Oil Conservation Division confirm Operator's description of conditions at the site of the landfarm.

(12) Conditions at the site of the landfarm are such that the landfarm may accept salt-contaminated oilfield wastes without posing a hazard to groundwater.

(13) Division staff has confirmed that the Operator will keep salt-contaminated oilfield waste separate from hydrocarbon-contaminated oilfield waste.

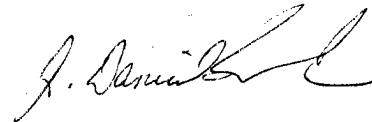
(14) Operator has demonstrated an emergency requiring the issuance of an order without a hearing allowing Operator to accept salt-contaminated oilfield waste at the landfarm pending a determination by the Hearing Examiner on Operator's application to amend the current permit.

IT IS THEREFORE ORDERED THAT:

- (1) Artesia Aeration, LLC's request for an emergency order allowing it to accept salt-contaminated oilfield wastes pending a decision on its application for a permit modification is granted.
- (2) This order shall remain effective as provided in NMSA 1978, § 70-2-23.
- (3) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

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

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION



*ME* MARK E. FESMIRE, P.E.  
Director

SEAL