

**NM1 - \_\_41\_\_**

**GENERAL  
CORRESPONDENCE**

**YEAR(S):**

**2015-2018**

State of New Mexico  
Energy, Minerals and Natural Resources Department

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**Susana Martinez**  
Governor

**David Martin**  
Cabinet Secretary

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

**David R. Catanach, Division Director**  
Oil Conservation Division



June 22, 2015

Mr. Daniel C. Berry  
Lazy Ace Landfarm, LLC  
P.O. Box 130  
Eunice, NM 88231-0130

**RE: 2013-2014 Semi-Annual Sampling Vadose Zone Monitoring Results Review  
Lazy Ace Landfarm, LLC  
Permit NM1-041  
Location: SW/2 SW/4 Section 22, Township 20 South, Range 34 East, NMPM  
Lea County, New Mexico**

Dear Mr. Berry:

The Oil Conservation Division (OCD) has completed the review of Lazy Ace Landfarm, LLC's (Lazy Ace) June 2013 Semi-Annual Vadose Zone Monitoring Results; December 2013 Semi-Annual Vadose Zone Monitoring Results; June 2014 Semi-Annual Vadose Zone Monitoring Results; and the December 2014 Semi-Annual Vadose Zone Monitoring Results. The review of the 2013 and 2014 monitoring data has resulted in the discovery of some issues that must be addressed in order for Lazy Ace to remain compliant with Permit NM1-041 and Part 36.

OCD has reviewed the administrative files (OCD Online) for the facility and has been unable to locate the semi-annual treatment zone (soils to be remediated) monitoring required of 19.15.36.15.D NMAC. Pursuant to the transitional provisions of Part 36 (19.15.36.20.A NMAC), "Existing surface waste management facilities shall comply with the operational, waste acceptance and closure requirements provided in 19.15.36 NMAC, except as otherwise specifically provided in the applicable permit or order, or in a specific waiver, exception or agreement that the division has granted in writing to the particular surface waste management facility." In accordance with 19.15.36.15.D NMAC, "The operator shall collect and analyze at least one composite soil sample, consisting of four discrete samples, from the treatment zone at least semi-annually using the methods specified below for TPH and chlorides." As underlined in the above reference of Subsection D of 19.15.36.15 NMAC, the "methods specified below for TPH and chlorides" are those identified in Subsection F of 19.15.36.15 NMAC: such as "TPH, as determined by EPA method 418.1 or other EPA method approved by the division..." OCD is willing to accept an equivalent method to EPA Method 418.1 that is capable of demonstrating a carbon range from C<sub>6</sub> to C<sub>36</sub>. Please review OCD's letter dated June 30, 2011 and titled "*Compliance with the Transitional Provisions of the Surface Waste Management Facilities rule (Rule 36) and Treatment and Vadose Monitoring Requirements at Existing Landfarms*" for

expectation of compliance. If the sampling has occurred, please provide OCD copies of the laboratory results to demonstrate compliance. If not, please initiate the required sampling and submit the results

In accordance with Paragraph (1) of 19.15.36.15.E NMAC, "The operator shall monitor the vadose zone beneath the treatment zone in each landfarm cell." Pursuant to Paragraph (3) of 19.15.36.15.E NMAC, "The operator shall collect and analyze a minimum of four randomly selected, independent samples from the vadose zone, using the methods specified below for the constituents listed in Subsections A and B of 20.6.2.3103 NMAC at least every five years and shall compare each result to the higher of the PQL or the background soil concentrations to determine whether a release has occurred." OCD has reviewed the administrative file and has been unable to locate the five year vadose zone monitoring program demonstration. Part 36 became effective February 14, 2007. The five year sampling event has been due since March 2012, please complete the demonstration. As underlined in the above reference of Paragraph (3) of 19.15.36.15.E NMAC, the "methods specified below for the constituents listed in Subsections A and B of 20.6.2.3103 NMAC" are those identified in Subsection F of 19.15.36.15 NMAC: such as "determined by EPA SW-846 methods 6010B or 6020 or other EPA method approved by the division..." Please perform the five year vadose zone monitoring program demonstration on all of the active landfarm cells and submit the sampling results and comparison to background and/or PQLs demonstrating compliance of Paragraph (3) of 19.15.36.15.E NMAC by EPA SW-846 methods 6010B or 6020.

OCD has reviewed the administrative files for the facility and determined that the vadose zone monitoring frequency changed from the permit condition "The soil samples will be analyzed using approved EPA methods for TPH and BTEX quarterly, and for major cations/anions and Water Quality Control Commission (WQCC) metals annually," to semi-annual in June 2010. The annual vadose zone sampling event by permit condition for the additional constituents of "for major cations/anions and Water Quality Control Commission (WQCC) metals annually," was last performed on Cells A-1, A-2, A-3, A-4, A-5 and X-1 on December 17, 2012. OCD also received results for Cell A-7 from an annual sampling event that occurred on January 29, 2013. OCD has been unable to locate Lazy Ace's submittal of a modification request for the change in sampling frequency or OCD's approval for such a modification request. Please provide OCD a copy of Lazy Ace's modification request submittal and OCD approval in order to continue the semi-annual sampling frequency. If Lazy Ace is unable to demonstrate the approval, Lazy Ace shall revert back to the permitted vadose zone monitoring frequency and constituents. Please note that the transitional provisions of 19.15.36.20 NMAC must be considered. Please review OCD's letter dated June 30, 2011 and titled "*Compliance with the Transitional Provisions of the Surface Waste Management Facilities rule (Rule 36) and Treatment and Vadose Monitoring Requirements at Existing Landfarms*" for expectation of compliance.

Please note that the submittal of vadose zone monitoring results alone does not constitute as a demonstration of compliance to the vadose zone monitoring assessment requirements. Pursuant to 19.15.36.15.E NMAC, the operator is required to compare the vadose results "to the higher of the PQL or the background soil concentrations to determine whether a release has occurred." OCD's review of the administrative files for the facility resulted in the discovery of the absence of the initial facility background data set which was required by permit, prior to acceptance of any waste. Pursuant to Condition 1, under the heading Treatment Zone Monitoring of the

September 2004 permit, "Prior to waste acceptance, one (1) background soil sample must be taken from the center portion of the landfarm two (2) feet below the native ground surface. The sample must be analyzed for total petroleum hydrocarbons (TPH), volatile aromatic organics (BTEX), major cations/anions and Water Quality Control Commission (WQCC) metals." Please provide OCD a copy of the initial background data set in order to demonstrate compliance to the conditions of Permit NM1-041.

Also, pursuant to the transitional provisions of Subsection B of 19.15.36.20 NMAC "Major modification of an existing surface waste management facility and a new landfarm cells constructed at an existing surface waste management facility shall comply with the requirements provided in 19.15.36 NMAC." Based upon OCD's review of the administrative file (OCD Online), the vadose zone monitoring results suggest that Cells A-5, A-6, and A-7 were activated after the effective date of February 14, 2007 for Part 36. The importance of the transitional provision is compliance to Subsection B of 19.15.36.15 NMAC. In accordance with Subsection B of 19.15.36.15 NMAC, "Background testing. Prior to beginning operation of a new landfarm or to opening a new cell at an existing landfarm at which the operator has not already established background, the operator shall take, at a minimum, 12 composite background soil samples, with each consisting of 16 discrete samples from areas that previous operations have not impacted at least six inches below the original ground surface, to establish background soil concentrations for the entire surface waste management facility. The operator shall analyze the background soil samples for TPH, as determined by EPA method 418.1 or other EPA method approved by the division; BTEX, as determined by EPA SW-846 method 8021B or 8260B; chlorides; and other constituents listed in Subsections A and B of 20.6.2.3103 NMAC, using approved EPA methods." The regulation has been in effect for eight years. At this point in time, the complete facility background should have been established. In order for Lazy Ace to proceed, the facility background need to be resolved. Currently, Lazy Ace does not have the complete background data to perform the vadose zone assessments (quarterly, annual, and 5-year) and remain in compliance with Part 36 and Permit NM1-041. Part 36 specifies EPA Method 418.1 as the required vadose zone analyses for TPH. OCD is willing to accept an equivalent method to EPA Method 418.1 that is capable of demonstrating a carbon range from C<sub>6</sub> to C<sub>36</sub> (e.g. Method 8015 for GRO/DRO/MRO or ORO). To remain compliant to Part 36 and the existing permit, background needs to be established and the vadose zone assessment comparison demonstrated to OCD. Please submit a background sampling plan to OCD under a separate cover, for OCD's consideration of approval to update the existing background data set (if available) or to establish a facility background/PQL data set and complete the vadose zone assessments.

Please note that the submittal of treatment zone monitoring results alone does not constitute a request for a successive/additional lift. The permit condition specifies "Authorization from the OCD must be obtained prior to application of successive lifts and/or removal of remediated soils." OCD requires such request to be made under a separate cover from other reporting and include the supporting analytical results and an updated facility map that illustrates and identifies the individual landfarm cells within the facility boundary and indicate the approximate location within the landfarm cells in which the samples were obtained.

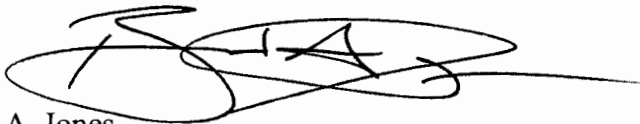
Please provide OCD copies of the treatment zone (soils to be remediated) laboratory results to demonstrate compliance of the semi-annual sampling required of 19.15.36.15.D NMAC within 45 days of the date of this letter and/or initiate the required sampling and submit the results.

Mr. Berry  
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Please ensure that TPH is assessed by EPA method 418.1 or an equivalent method capable of demonstrating a carbon range from C<sub>6</sub> to C<sub>36</sub> for future demonstrations. Also, please submit all future vadose zone (native soils) sampling results demonstrating TPH by EPA Method 418.1 or an equivalent method capable of demonstrating a carbon range from C<sub>6</sub> to C<sub>36</sub>. Please ensure that the laboratory's reporting limit does not exceed the established background and/or PQLs for all future vadose zone sampling events. Please provide OCD a copy of Lazy Ace's modification request and OCD approval in order to continue the semi-annual sampling frequency within 45 days of the date of this letter. Please perform the five year vadose zone monitoring program demonstration on all of the active landfarm cells and submit the sampling results and comparison to background and/or PQLs demonstrating compliance of Paragraph (3) of 19.15.36.15.E NMAC by EPA SW-846 methods 6010B or 6020 within 60 days of the date of this letter. Please provide OCD a copy of the initial laboratory data set required of Permit NM1-041 within 45 days of the date of this letter. Please submit a background sampling plan in accordance with Subsection B of 19.15.36.15 NMAC to OCD under a separate cover, for OCD's consideration of approval to update the existing background data set within 60 days of the date of this letter. If statistics are proposed in the demonstration, please provide references from EPA statistical guidance documents to support proposed statistical methods.

OCD has implemented some new policies for submittal. For future submittals, please include a cover letter from the owner/operator, on the owner's/operator's company letterhead, that recognizes the owner/operator has reviewed the submittal, signed by the owner/operator. Also, please provide an updated facility map, for each individual sampling event, that identifies the individual landfarm cells within the facility boundary and indicate the approximate location within the landfarm cells in which the samples were obtained. If there are any questions regarding this matter, please do not hesitate to contact me at (505) 476-3487 or [brad.a.jones@state.nm.us](mailto:brad.a.jones@state.nm.us).

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad A. Jones', with a long horizontal line extending to the right.

Brad A. Jones  
Environmental Engineer

BAJ/baj

cc: OCD District I Office, Hobbs  
Roxana Johnson, Arc Environmental, LLC, PO Box 1772, Lovington NM 88260