

January 2022

Variance Request for Fencing Requirement

Statement Explaining Why the Applicant Seeks a Variance

The prescriptive mandates of the Rule that are the subject of this variance request are presented below with emphasis added:

D. Fencing.

(1) The operator shall fence or enclose a recycling containment in a manner that deters unauthorized wildlife and human access and shall maintain the fences in good repair. The operator shall ensure that all gates associated with the fence are closed and locked when responsible personnel are not onsite.

(2) Recycling containments shall be fenced with a four foot fence that has at least four strands of barbed wire evenly spaced in the interval between one foot and four feet above ground level.

E. Netting. The operator shall ensure that a recycling containment is screened, netted or otherwise protective of wildlife, including migratory birds. The operator shall on a monthly basis inspect for and, within 30 days of discovery, report the discovery of dead migratory birds or other wildlife to the appropriate wildlife agency and to the division district office in order to facilitate assessment and implementation of measures to prevent incidents from reoccurring.

The subject AST employs netting or sonic bird hazing (Mega Bird X with bird calls specific to the Permian Basin). These methods effectively protect avian species such as waterfowl and bats. OCD and BLM have approved both methods per Rule 34 and by BLM Rules respectively.

The steel structure of the AST is 11-feet high, which obviously encloses the containment "in a manner that deters...[terrestrial] wildlife." Thus, the steel structure meets the mandate of the Rule for enclosure. Thus, netting and the steel structure meet the mandate of Rule 34 for deterring/protecting avian and terrestrial wildlife.

Because AST Containments have a steel stairway between ground surface and the open top, the operator proposes the following deterrent to unauthorized human access:

1. Install gate (e.g. <https://www.saferack.com/product/industrial-safety-gates/safety-swing-gates/>) or chain across the stairway
2. Place an appropriate sign on the gate or chain to help deter unauthorized human access to the open top of the containment
3. Provide for a mechanism to lock the gate when responsible personnel are not onsite.

Demonstration That the Variance Will Provide Equal or Better Protection of Fresh Water, Public Health and the Environment

We believe the proposed protocol provides equal protection of Public Health as a 4-strand barbed wire fence.



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State of New Mexico
Energy Minerals and Natural Resources
Department Oil Conservation Division
1220 South St. Francis Dr.
Santa Fe, NM 87505

Form C-147
Revised October 11, 2022

<https://www.emnrd.nm.gov/ocd/ocd-e-permitting/>

Recycling Facility and/or Recycling Containment

Type of Facility: ☒ Recycling Facility ☒ Recycling Containment*
Type of action: ☐ Permit ☒ Registration
☐ Modification ☐ Extension
☐ Closure ☒ Other (explain) requesting a fence variance

* At the time C-147 is submitted to the division for a Recycling Containment, a copy shall be provided to the surface owner.

Be advised that approval of this request does not relieve the operator of liability should operations result in pollution of surface water, ground water or the environment. Nor does approval relieve the operator of its responsibility to comply with any other applicable governmental authority's rules, regulations or ordinances.

1.
 Operator: Solaris Water Midstream, LLC. (For multiple operators attach page with information) OGRID #: 371643
 Address: 9651 Katy Fwy, Suite 400, Houston Texas 77024
 Facility or well name (include API# if associated with a well): Keg Shell RF & Containments
 OCD Permit Number: 2RF-197 (For new facilities the permit number will be assigned by the district office)
 U/L or Qtr/Qtr B Section 35 Township 26S Range 28E County: Eddy
 Surface Owner: ☒ Federal ☐ State ☐ Private ☐ Tribal Trust or Indian Allotment

2.
☒ **Recycling Facility:**
 Location of recycling facility (if applicable): Latitude 32.00374° Longitude -104.058209° NAD83
 Proposed Use: ☒ Drilling* ☒ Completion* ☒ Production* ☒ Plugging *
**The re-use of produced water may NOT be used until fresh water zones are cased and cemented*
☐ Other, *requires permit for other uses. Describe use, process, testing, volume of produced water and ensure there will be no adverse impact on groundwater or surface water.*
☒ Fluid Storage
☐ Above ground tanks ☒ Recycling containment ☐ Activity permitted under 19.15.17 NMAC explain type _____
☐ Activity permitted under 19.15.36 NMAC explain type: _____ ☐ Other explain _____
☐ For multiple or additional recycling containments, attach design and location information of each containment
☐ **Closure Report (required within 60 days of closure completion):** ☐ Recycling Facility Closure Completion Date: _____

3.
☒ **Recycling Containment:**
☐ Annual Extension after initial 5 years (attach summary of monthly leak detection inspections for previous year)
 Center of Recycling Containment (if applicable): Latitude 32.0040642° Longitude -104.0569976° NAD83
☐ For multiple or additional recycling containments, attach design and location information of each containment
☐ Lined ☒ Liner type: Thickness 60 Primary mil ☐ LLDPE ☒ HDPE ☐ PVC ☐ Other 40 mil HDPE
☐ String-Reinforced
 Liner Seams: ☒ Welded ☐ Factory ☐ Other _____ Volume: _____ bbl Dimensions: L _____ x W _____ x D _____
☐ Recycling Containment Closure Completion Date: _____

4.

Bonding:

- ☐ Covered under bonding pursuant to 19.15.8 NMAC per 19.15.34.15(A)(2) NMAC (These containments are limited to only the wells owned or operated by the owners of the containment.)
- ☒ Bonding in accordance with 19.15.34.15(A)(1). Amount of bond \$ _____ (work on these facilities cannot commence until bonding amounts are approved)
- ☐ Attach closure cost estimate and documentation on how the closure cost was calculated. to be submitted per letter

5.

Fencing:

- ☐ Four foot height, four strands of barbed wire evenly spaced between one and four feet
- ☒ Alternate. Please specify Game Fence

6.

Signs:

- ☒ 12"x 24", 2" lettering, providing Operator's name, site location, and emergency telephone numbers
- ☐ Signed in compliance with 19.15.16.8 NMAC

7.

Variances:

Justifications and/or demonstrations that the proposed variance will afford reasonable protection against contamination of fresh water, human health, and the environment.

Check the below box only if a variance is requested:

- ☐ Variance(s): Requests must be submitted to the appropriate division district for consideration of approval. If a Variance is requested, include the variance information on a separate page and attach it to the C-147 as part of the application.

If a Variance is requested, it must be approved prior to implementation.

8.

Siting Criteria for Recycling Containment

Instructions: The applicant must provide attachments that demonstrate compliance for each siting criteria below as part of the application. Potential examples of the siting attachment source material are provided below under each criteria.

General siting**Ground water is less than 50 feet below the bottom of the Recycling Containment.**

NM Office of the State Engineer - iWATERS database search; USGS; Data obtained from nearby wells

☐ Yes ☒ No
☐ NA

Within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended.

- Written confirmation or verification from the municipality; written approval obtained from the municipality

☐ Yes ☒ No
☐ NA

Within the area overlying a subsurface mine.

- Written confirmation or verification or map from the NM EMNRD-Mining and Minerals Division

☐ Yes ☒ No

Within an unstable area.

- Engineering measures incorporated into the design; NM Bureau of Geology & Mineral Resources; USGS; NM Geological Society; topographic map

☐ Yes ☒ No

Within a 100-year floodplain. FEMA map

☐ Yes ☒ No

Within 300 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse, or lakebed, sinkhole, or playa lake (measured from the ordinary high-water mark).

- Topographic map; visual inspection (certification) of the proposed site

☐ Yes ☒ No

Within 1000 feet from a permanent residence, school, hospital, institution, or church in existence at the time of initial application.

- Visual inspection (certification) of the proposed site; aerial photo; satellite image

☐ Yes ☒ No

Within 500 horizontal feet of a spring or a fresh water well used for domestic or stock watering purposes, in existence at the time of initial application.

- NM Office of the State Engineer - iWATERS database search; visual inspection (certification) of the proposed site

☐ Yes ☒ No

Within 500 feet of a wetland.

- US Fish and Wildlife Wetland Identification map; topographic map; visual inspection (certification) of the proposed site

☐ Yes ☒ No

9.

Recycling Facility and/or Containment Checklist:*Instructions: Each of the following items must be attached to the application. Indicate, by a check mark in the box, that the documents are attached.*

- ☒ Design Plan - based upon the appropriate requirements.
- ☒ Operating and Maintenance Plan - based upon the appropriate requirements.
- ☒ Closure Plan - based upon the appropriate requirements.
- ☒ Site Specific Groundwater Data -
- ☒ Siting Criteria Compliance Demonstrations -
- ☒ Certify that notice of the C-147 (only) has been sent to the surface owner(s)

10.

Operator Application Certification:

I hereby certify that the information and attachments submitted with this application are true, accurate and complete to the best of my knowledge and belief.

Name (Print): Chad Gallagher Title: Permitting Agent
Signature:  Date: 10/30/23
e-mail address: chad.gallagher@ariswater.com Telephone: (575)444-9786

11.

OCD Representative Signature: Victoria Venegas Approval Date: 11/14/2023Title: Victoria Venegas OCD Permit Number: 2RF-197

- ☒ OCD Conditions
- ☒ Additional OCD Conditions on Attachment

Venegas, Victoria, EMNRD

From: Venegas, Victoria, EMNRD
Sent: Tuesday, November 14, 2023 2:43 PM
To: 'Chad Gallagher'
Subject: 2RF-197 - KEG SHELL RF & CONTAINMENTS FACILITY ID [fVV2323353410]

2RF-197 - KEG SHELL RF & CONTAINMENTS FACILITY ID [fVV2323353410]

Mr. Gallagher,

NMOCD has reviewed the variance request application and related documents, submitted by [371643] SOLARIS WATER MIDSTREAM LLC for 2RF-197 - KEG SHELL RF & CONTAINMENTS FACILITY ID [fVV2323353410] in Unit Letter B, Section 35, Township 26S, Range 28E, Eddy County, New Mexico. [371643] SOLARIS WATER MIDSTREAM, LLC requested a variance from 19.15.34 NMAC for 2RF-197 - KEG SHELL RF & CONTAINMENTS FACILITY ID [fVV2323353410].

The following variance have been approved:

- The variance to 19.15.34.12.D NMAC to install a gate or chain across the stairway between the ground surface and the open-top of the AST containment. The operator shall place an appropriate sign on the gate or chain to help prevent unauthorized human access to the open top of the containment and will provide a mechanism to lock the gate when responsible personnel is not onsite.

Please let me know if you have any additional questions.

Regards,

Victoria Venegas • Environmental Specialist

Environmental Bureau

EMNRD - Oil Conservation Division

506 W. Texas Ave. Artesia, NM 88210

(575) 909-0269 | Victoria.Venegas@emnrd.nm.gov

<https://www.emnrd.nm.gov/oed/>



District I

1625 N. French Dr., Hobbs, NM 88240
Phone:(575) 393-6161 Fax:(575) 393-0720

District II

811 S. First St., Artesia, NM 88210
Phone:(575) 748-1283 Fax:(575) 748-9720

District III

1000 Rio Brazos Rd., Aztec, NM 87410
Phone:(505) 334-6178 Fax:(505) 334-6170

District IV

1220 S. St Francis Dr., Santa Fe, NM 87505
Phone:(505) 476-3470 Fax:(505) 476-3462

State of New Mexico
Energy, Minerals and Natural Resources
Oil Conservation Division
1220 S. St Francis Dr.
Santa Fe, NM 87505

CONDITIONS

Action 280932

CONDITIONS

Operator: SOLARIS WATER MIDSTREAM, LLC 907 Tradewinds Blvd, Suite B Midland, TX 79706	OGRID: 371643
	Action Number: 280932
	Action Type: [C-147] Water Recycle Long (C-147L)

CONDITIONS

Created By	Condition	Condition Date
vvenegas	NMOCD has reviewed the variance request application and related documents, submitted by [371643] SOLARIS WATER MIDSTREAM LLC for 2RF-197 - KEG SHELL RF & CONTAINMENTS FACILITY ID [fVV2323353410] in Unit Letter B, Section 35, Township 26S, Range 28E, Eddy County, New Mexico. [371643] SOLARIS WATER MIDSTREAM, LLC requested a variance from 19.15.34 NMAC for 2RF-197 - KEG SHELL RF & CONTAINMENTS FACILITY ID [fVV2323353410]. The following variance have been approved: • The variance to 19.15.34.12.D NMAC to install a gate or chain across the stairway between the ground surface and the open-top of the AST containment. The operator shall place an appropriate sign on the gate or chain to help prevent unauthorized human access to the open top of the containment and will provide a mechanism to lock the gate when responsible personnel is not onsite.	11/14/2023