

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

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION COMMISSION FOR THE )  
PURPOSE OF CONSIDERING: )

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, CHAVES COUNTY, NEW MEXICO )

CASE NO. 13,480

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
WILLIAM C. OLSON, COMMISSIONER

October 13th, 2005

Santa Fe, New Mexico

2005 OCT 31 PM 1 59

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, October 13th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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 Commission Hearing  
 CASE NO. 13,480

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\* \* \*

## A P P E A R A N C E S

## FOR THE COMMISSION:

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 By: PETER V. DOMENICI, JR.

## FOR CONTROLLED RECOVERY, INC.:

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 By: MICHAEL H. FELDEWERT

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 12:20 p.m.:

3           MR. BROOKS: Mr. Chairman, honorable  
4 Commissioners, I have here for each of the Commissioners a  
5 red-lined -- underlined and strikeout copies, draft copies,  
6 of the order showing the changes from order we submitted  
7 this morning.

8           In the unlikely event that the order that is  
9 currently submitted is found to be perfect, I have also  
10 prepared a copy in final form for signature.

11           COMMISSIONER OLSON: So these are both the same,  
12 it's just highlighting --

13           CHAIRMAN FESMIRE: The differences are  
14 underlined.

15           (Off the record)

16           CHAIRMAN FESMIRE: Mike, do each of you guys want  
17 to take a look?

18           MR. FELDEWERT: Can we?

19           CHAIRMAN FESMIRE: Do you see anything wrong with  
20 that?

21           MR. BROOKS: No, it's up to the Commission.

22           MR. FELDEWERT: Do you have extra copies?

23           CHAIRMAN FESMIRE: No.

24           MR. BROOKS: I'll let you look at what was going  
25 to be the signature copy. But as I remarked to the

1 Commission, it would only be useful if it were perfect, and  
2 I assumed it probably would not be perfect, so it's going  
3 to have to be reprinted anyway.

4 (Off the record)

5 MR. BROOKS: Obviously, due to the tight time  
6 schedule since yesterday, it was not possible for the  
7 Commissioners to review the order in advance of the meeting  
8 as is usually the case.

9 (Off the record)

10 CHAIRMAN FESMIRE: At this time we're going to  
11 reconvene Cause Number 13,480 for discussion -- Well, we're  
12 going to reconvene Cause Number 13,480. This cause has  
13 been continued from yesterday's Oil Conservation Commission  
14 meeting.

15 The item before us is the proposed order of the  
16 Oil Conservation Commission as drafted by Counsel Brooks.

17 Commissioner Olson, you had some comments?

18 COMMISSIONER OLSON: Yeah, one on -- under the  
19 conclusions, item number 8, I'd just like to put in there  
20 just a statement as to why I had opposed the motion, and I  
21 would suggest just adding some language to state that  
22 opposition to the motion by one Commissioner was based on  
23 his opinion that Gandy Marley's proposed interim design for  
24 management of salt-contaminated wastes should be subject to  
25 the procedural rules of OCD Rule 711. I think that's what

1 I had stated during the hearing.

2 CHAIRMAN FESMIRE: Okay, I wouldn't have any  
3 problem with that. Would you, Commissioner?

4 COMMISSIONER BAILEY: No.

5 CHAIRMAN FESMIRE: The order is drafted for  
6 signature by all three, so I think Mr. Olson, who's the  
7 dissenting vote, can include his reasons for dissent.

8 The one thing that I would like to clarify -- and  
9 it's in two places, and I've already given those  
10 corrections to Counsel Brooks -- is that the intent of the  
11 order was to allow for the disposal of salt-contaminated  
12 soils and drill cuttings. And there are two places in the  
13 order that don't quite make that clear, and I think we need  
14 to make sure that that's clear and that it's not simply  
15 limited to drill cuttings and drill fluids, so that we  
16 change the phrase to salt-contaminated soils and drill  
17 cuttings.

18 COMMISSIONER OLSON: Where does that appear?

19 CHAIRMAN FESMIRE: The first one is on 7 under  
20 the Conclusions, and the second one is under 3.b in the  
21 findings -- or in the ordering paragraphs.

22 MR. BROOKS: It's ordering paragraph 3.b.

23 CHAIRMAN FESMIRE: Right. And does that  
24 represent the intent of the Commission in their vote  
25 yesterday?

1 COMMISSIONER BAILEY: Yes.

2 COMMISSIONER OLSON: Mr. Chair, one thing. I was  
3 looking at -- in 3.b, and I'm not sure if that was the  
4 intent of the motion that was made. It talks about -- in  
5 3.b, about -- well just the way that it's written, I think,  
6 it says to -- it talks about in the third line, is to  
7 proceed expeditiously to close the landfill cell herein  
8 authorized in accordance with the rule and remove -- it  
9 goes, then, on to remove all salts deposited therein,  
10 dispose of salt-contaminated soils.

11 I thought you were discussing they may  
12 potentially be able to close it without removing -- you  
13 know, that would be an option, I guess, of the -- at the  
14 discretion of the Division. I don't know if that was  
15 exactly the way you had --

16 CHAIRMAN FESMIRE: I think that was the --

17 COMMISSIONER OLSON: -- phrased that.

18 CHAIRMAN FESMIRE: -- the intent of what we  
19 worked out, that they be able to close it in place as long  
20 as they designed that.

21 So Mr. Brooks, I guess in accordance with the  
22 Division rule, remove All salts deposited therein or -- and  
23 dispose of the salts and salt-contaminated soils, or close  
24 it -- or close that facility in accordance with Oil  
25 Conservation Commission rules.

1 COMMISSIONER BAILEY: Close the cell.

2 CHAIRMAN FESMIRE: Close the cell, yeah, that's  
3 what I mean. We need to do that.

4 MR. BROOKS: Or close the cell where these wastes  
5 were placed --

6 CHAIRMAN FESMIRE: -- in accordance with Oil  
7 Conservation --

8 MR. BROOKS: -- in accordance with Division rules  
9 and orders. Okay.

10 CHAIRMAN FESMIRE: Now, is that the consensus of  
11 the Commission, and is that what we agreed to yesterday?  
12 Commissioner Bailey?

13 COMMISSIONER BAILEY: Yes.

14 CHAIRMAN FESMIRE: Commissioner Olson?

15 COMMISSIONER OLSON: I believe that summarizes  
16 what accurately happened.

17 CHAIRMAN FESMIRE: Okay, we'll ask Counsel Brooks  
18 to make those changes to the order and temporarily adjourn  
19 until --

20 MR. DOMENICI: Could I make a comment?

21 CHAIRMAN FESMIRE: Oh, I'm sorry.

22 MR. DOMENICI: On 3.a, the last line there where  
23 it says Division-approved leak-detection system, that was  
24 not discussed yesterday. The 40- -- The only change to the  
25 drawings and the design was the 40-mil liner.

1 CHAIRMAN FESMIRE: The leachate collection system  
2 lacks a leak-detection system.

3 MR. DOMENICI: Pardon me?

4 CHAIRMAN FESMIRE: The leachate collection system  
5 on that design -- if they place another liner under that  
6 leachate --

7 MR. DOMENICI: Yes.

8 CHAIRMAN FESMIRE: -- collection system, will act  
9 as the --

10 MR. DOMENICI: Well, that's the design, so I  
11 don't think we need this. I mean, that -- isn't -- that is  
12 the design that you accepted as -- you included as Exhibit  
13 A. That will be constructive, Mr. Chairman. I'm just  
14 saying, this could add some confusion. It says, And a  
15 Division-approved leak-detection system. That to me is  
16 confusing.

17 CHAIRMAN FESMIRE: Well, what if we were to take  
18 -- attached to the order as Exhibit A, with the addition  
19 thereto of a 40-mil synthetic primary liner. I think what  
20 he's saying is that the leachate collection system that  
21 acts as the leak-detection system -- hopefully, there's be  
22 no --

23 MR. DOMENICI: Is already in the design.

24 CHAIRMAN FESMIRE: Right.

25 MR. DOMENICI: So it's -- this -- I think this is

1 confusing. I would ask that a period be put after that 40-  
2 mil --

3 CHAIRMAN FESMIRE: -- and the rest of it struck?

4 MR. DOMENICI: Yes.

5 CHAIRMAN FESMIRE: I think that's -- that's the  
6 intent of the Commission.

7 Mr. Feldewert, did you have any comments?

8 MR. FELDEWERT: Well, I mean, we obviously did  
9 not get the design until yesterday, so I have not had a  
10 chance to have anyone with knowledge look at the designs  
11 that they submitted. So I don't know -- I can't say on  
12 behalf of CRI whether that design includes a leak-detection  
13 system in any format at all. I mean, we simply just don't  
14 know, not having gotten any designs until yesterday.

15 CHAIRMAN FESMIRE: Well, it is the intention of  
16 the Commission -- and I think I can speak for the  
17 Commissioners -- that a leak-detection system be included  
18 and that the leachate-collection system will act as a leak-  
19 detection system.

20 MR. FELDEWERT: Okay. And then I have one  
21 question.

22 CHAIRMAN FESMIRE: Shoot.

23 MR. FELDEWERT: I'm still a little confused about  
24 what waste streams they're going to be allowed to accept.

25 CHAIRMAN FESMIRE: In this cell --

1 MR. FELDEWERT: In this cell.

2 CHAIRMAN FESMIRE: -- it is the intention of the  
3 Commission that they be allowed to take salt-contaminated  
4 soils and drilling wastes, drilling cuttings -- salt-  
5 contaminated soils and drilling wastes, drilling cuttings.

6 MR. DOMENICI: Could we add drilling wastes and  
7 drilling cuttings?

8 CHAIRMAN FESMIRE: Within the limits of the  
9 liquid content in the normal rules.

10 MR. DOMENICI: Yeah.

11 CHAIRMAN FESMIRE: Okay. Mr. Brooks, they ask  
12 that the -- and I don't see any reason --

13 COMMISSIONER BAILEY: No, that's fine.

14 CHAIRMAN FESMIRE: -- not to -- that the list  
15 include salt-contaminated soils, drilling wastes and  
16 cuttings.

17 MR. BROOKS: Salt-contaminated soils, comma,  
18 drilling wastes --

19 CHAIRMAN FESMIRE: -- and cuttings.

20 MR. FELDEWERT: What would be the difference  
21 between drilling wastes and drill cuttings?

22 CHAIRMAN FESMIRE: I think you could argue that  
23 the mud residue might be excluded, and that's not our  
24 intent. It's the intention that they be allowed to dispose  
25 of that during this period.

1 MR. BROOKS: I need to get the exact language if  
2 Commissioner Olson wants that --

3 COMMISSIONER OLSON: I have it right here.

4 MR. BROOKS: Only what you have written under 8  
5 here?

6 COMMISSIONER OLSON: Yeah, it would just be  
7 attached to the final sentence. This here too.

8 MR. BROOKS: Oh.

9 COMMISSIONER OLSON: That's the whole thing.

10 MR. BROOKS: Opposition to the motion by one  
11 Commissioner was --

12 COMMISSIONER OLSON: That's my scribble.

13 MR. BROOKS: -- based on his opinion that Gandy  
14 Marley's proposed interim design for management of salt-  
15 contaminated wastes could be subject to the procedural  
16 rules of -- to be consistent we'd say Division --

17 COMMISSIONER OLSON: Yeah.

18 MR. BROOKS: -- Rule 711. Correct.

19 COMMISSIONER OLSON: Correct.

20 MR. BROOKS: Now, I had one point of  
21 clarification.

22 The duration of the order. The discussion of the  
23 Commission that appears in ordering paragraph 4, the  
24 discussion of the Commission yesterday seemed to me to be  
25 that it would be six months or until the final order was

1 entered, whichever is greater. But after thinking about  
2 that, it was difficult for me to understand why it would --  
3 why the Commission in any event would want the interim  
4 order to continue after the entry of the final order, so I  
5 had to assume that -- I kind of assumed that the  
6 Commissioners may have misspoken and that the actual  
7 intention was six months, or until final order, whichever  
8 occurs first. So I thought I'd better clarify that.

9 CHAIRMAN FESMIRE: My intention was to make sure  
10 that they didn't dally in getting this approved, so that  
11 this order would last six months, or, if the final order  
12 was approved earlier, that period. Is that --

13 MR. DOMENICI: That's fine. The language that's  
14 in there, I think --

15 MR. BROOKS: That is the way that it had been  
16 written, because I was inclined to assume after thinking  
17 about it, that that is probably what the Commission meant,  
18 although I was somewhat confused by exactly what was said  
19 yesterday.

20 CHAIRMAN FESMIRE: Was that your intention,  
21 Commissioner?

22 COMMISSIONER BAILEY: Uh-huh.

23 CHAIRMAN FESMIRE: That's what I meant, that's  
24 what we talked about.

25 MR. BROOKS: Do I understand, then, that I'm to

1 prepare a final order for signature?

2 CHAIRMAN FESMIRE: Yes.

3 MR. BROOKS: Very good.

4 CHAIRMAN FESMIRE: We will again adjourn this  
5 cause until Mr. Brooks has completed his order. Do we want  
6 to go to lunch first?

7 COMMISSIONER OLSON: Do you want to sign it after  
8 lunch? Is that what -- before we start up?

9 CHAIRMAN FESMIRE: Mr. Brooks, why don't we just  
10 meet at 25 after and sign the order?

11 MR. BROOKS: Okay.

12 CHAIRMAN FESMIRE: That will give you time to  
13 prepare it and --

14 COMMISSIONER BAILEY: -- eat?

15 (Laughter)

16 CHAIRMAN FESMIRE: When he gets done, that's all  
17 he has to do for here today. He can go home.

18 I guess we're off.

19 (Off the record)

20 MR. BROOKS: I'm sorry, I added a paragraph in  
21 your drafts that were passed out, I believe. If you would  
22 look at your drafts, do you have just above, "It is  
23 therefore ordered that" -- Okay, I added a paragraph that  
24 did not get into that draft. It is this paragraph on this  
25 draft.

1 CHAIRMAN FESMIRE: Double eight?

2 MR. BROOKS: Yes, there are two eights, and the  
3 first eight was added just a few moments ago, and I  
4 apparently did not get it in the draft that the Commission  
5 is reviewing.

6 I would add that that additional finding was put  
7 in there at the suggestion of the General Counsel, although  
8 she has not reviewed what is actually written.

9 CHAIRMAN FESMIRE: Pete, you might want to look  
10 at it.

11 MR. DOMENICI: Okay.

12 CHAIRMAN FESMIRE: It's basically reserving any  
13 finding that this is an adequate design until we've gone  
14 through the formal hearing and that the closure will  
15 protect public health and the environment.

16 COMMISSIONER OLSON: Right, that the final permit  
17 will --

18 COMMISSIONER BAILEY: Yes.

19 MR. DOMENICI: I don't have any objection to  
20 that.

21 There is something I would like to maybe tie into  
22 that, which is in paragraph 6, David.

23 MR. BROOKS: Paragraph 6 under --

24 MR. DOMENICI: Page 2.

25 MR. BROOKS: -- conclusions?

1 MR. DOMENICI: No, it would be the original  
2 paragraph 6.

3 MR. BROOKS: Paragraph 6 under findings, on the  
4 first page -- on the second page?

5 MR. DOMENICI: In that where you say that the  
6 Applicant was ordered to submit a new application --

7 CHAIRMAN FESMIRE: Or -- you're right, the  
8 applicant has submitted a new application.

9 MR. DOMENICI: Well, I wanted to say to the  
10 Commission.

11 COMMISSIONER OLSON: The new application to the  
12 Commission.

13 MR. DOMENICI: To the Commission. And then  
14 somewhere in here I would like to say we did submit that,  
15 that was submitted last week. That didn't make it anywhere  
16 in the document. Maybe right there it would be okay.

17 CHAIRMAN FESMIRE: Just change that to the  
18 applicant has submitted a new application.

19 MR. DOMENICI: That's fine.

20 MR. FELDEWERT: You know what I want to add then?

21 CHAIRMAN FESMIRE: What?

22 MR. FELDEWERT: That has not been deemed  
23 administratively --

24 MR. BROOKS: We need to be precise about this if  
25 we're going to final.

1 MR. DOMENICI: Okay. That's true --

2 CHAIRMAN FESMIRE: Yeah, that has not yet been  
3 deemed administratively complete.

4 Is that okay with you ---- Commissioner?

5 COMMISSIONER BAILEY: Uh-huh.

6 CHAIRMAN FESMIRE: -- Commissioner?

7 Commissioner?

8 COMMISSIONER OLSON: Yeah.

9 CHAIRMAN FESMIRE: Okay --

10 MR. BROOKS: Okay, paragraph --

11 CHAIRMAN FESMIRE: -- sold.

12 MR. BROOKS: Paragraph 6 reads, Order Number  
13 R-12,306-B denied applicant's request that a permit  
14 modification be granted on the existing record and ordered  
15 applicant to submit a new application and give public  
16 notice.

17 CHAIRMAN FESMIRE: That application was  
18 submitted.

19 MR. BROOKS: Okay. That application was  
20 submitted --

21 CHAIRMAN FESMIRE: -- on -- last Thursday.

22 MR. BROOKS: -- on -- October 6th?

23 MR. DOMENICI: October 6th.

24 CHAIRMAN FESMIRE: But it's not yet been deemed  
25 administratively complete.

1 MR. DOMENICI: Put to the Commission.

2 CHAIRMAN FESMIRE: Yeah, to the Commission, it  
3 has not yet been deemed administratively complete.

4 MR. BROOKS: That has not yet been determined to  
5 be administratively complete. Okay.

6 CHAIRMAN FESMIRE: Mr. Brooks, if you'd make  
7 those changes, we'll reconvene at 1:25 --

8 MR. BROOKS: Okay.

9 CHAIRMAN FESMIRE: -- and we're in recess until  
10 then.

11 (Thereupon, a recess was taken at 12:51 p.m.)

12 (The following proceedings had at 1:37 p.m.)

13 CHAIRMAN FESMIRE: He left out the word liner,  
14 which is kind of important. He's going to change it, and  
15 we'll take a quick -- we'll go ahead and start and take a  
16 quick break when we get a chance.

17 (Off the record at 1:37 p.m.)

18 (The following proceedings had at 2:00 p.m.)

19 CHAIRMAN FESMIRE: We'll move back into Cause  
20 Number 13,480. David, your turn.

21 Okay, go ahead.

22 MR. BROOKS: I believe the Commission has before  
23 it a proposed final order in Case Number 13,480. I believe  
24 that that order has been reviewed by both counsel.

25 CHAIRMAN FESMIRE: Commissioner Bailey, have you

1 had a chance to look at the order?

2 COMMISSIONER BAILEY: Yes, I have, and I move  
3 that we sign the order.

4 CHAIRMAN FESMIRE: Commissioner Olson?

5 COMMISSIONER OLSON: I'll second that.

6 CHAIRMAN FESMIRE: Okay, all those in favor?

7 COMMISSIONER BAILEY: Aye.

8 COMMISSIONER OLSON: Aye.

9 CHAIRMAN FESMIRE: Aye.

10 All those opposed?

11 Let the record reflect that the motion to sign  
12 the order has passed. The order will now be signed by each  
13 one of the Commissioners.

14 (Thereupon, these proceedings were concluded at  
15 2:10 p.m.)

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## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO )  
 ) ss.  
 COUNTY OF SANTA FE )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL October 21st, 2005.




---

STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006