

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

NMOCD - OGA 04- 85

**IN THE MATTER OF GANDY MARLEY, INC.,**

**Respondent.**

**AGREED ORDER DIRECTING COMPLIANCE  
AND ASSESSING CIVIL PENALTY**

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, as amended ("Act"), the Director of the Oil Conservation Division ("OCD") issues this Order to GANDY MARLEY, INC. ("Gandy Marley"), directing compliance with the Act and the OCD Rules, and assessing a penalty for violations of the Act and OCD Rules.

**FINDINGS**

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. Gandy Marley is a domestic profit corporation authorized to do business in the State of New Mexico under Public Regulation Commission ("PRC") SCC number 1690171.
3. The OCD issued Permit #NM-01-019 to Gandy Marley on October 22, 1999 to operate a commercial landfarm located in Sections 4, 5, 8 and 9 of Township 11 South, Range 31 East, NMPM, in Chaves County, New Mexico.
4. The OCD issued the permit under 19.15.9.711.B NMAC [Rule 711], which states in pertinent part, "...all commercial and centralized facilities including facilities in operation on the effective date of Section 19.15.9.711 NMAC...shall be permitted by the Division."
5. Permit #NM-01-019, under Items 1, 2 and 3 of "Treatment Zone Monitoring," requires quarterly sampling and analysis for total petroleum hydrocarbons (TPH) and volatile aromatic organics (BTEX), and annual sampling and analysis for major cations and anions and Water Quality Control Commission (WQCC) metals. Item 3 under "Reporting," requires that "[a]nalytical results from the treatment zone monitoring will be submitted to the OCD Santa Fe office within thirty (30) days of receipt from the laboratory."
6. An OCD desk audit of Gandy Marley's reporting for the period of January 1, 2003 through December 31, 2004, showed that the OCD received no quarterly or annual reports from Gandy Marley during this time period.

7. NMSA 1978, Section 70-2-31(A) authorizes the assessment of civil penalties of up to one thousand dollars per day per violation against any person who knowingly or willfully violates any provision of the Oil and Gas Act or any rule adopted pursuant to the Act.
8. NMSA 1978, Section 70-2-33(A) defines "person" to include corporations.
9. On September 6, 2005, the OCD issued a Notice of Violation to Gandy Marley for failing to submit reports as required under the terms of its permit #NM-01-019.
10. Gandy Marley has submitted timely reports in 2005 showing that all regulated contaminants are within acceptable limits.

### **CONCLUSIONS**

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Gandy Marley is a "person" subject to civil penalties for knowing and willful violations of the Oil and Gas Act or OCD Rules.
3. Gandy Marley knowingly and willfully violated the terms of its permit issued pursuant to OCD Rule 711 by failing to submit treatment zone monitoring reports during the period January 1, 2003 through December 31, 2004 in plain indifference to or reckless disregard of the requirements of the permit.

### **ORDER AND CIVIL PENALTY**

1. The OCD hereby assesses a civil penalty of two thousand dollars (\$2,000) against Gandy Marley for failing to file reports as required under the terms of its permit issued pursuant to OCD Rule 711.
2. Gandy Marley has paid the civil penalty assessed in this Agreed Compliance Order.
3. Gandy Marley agrees to the following additional terms for Permit #NM-01-019:
  - a) Gandy Marley shall take the quarterly treatment zone samples required under Permit #NM-01-019 during the last two weeks of each calendar quarter. Quarterly reports showing the results of these sample analyses shall be received in the OCD Santa Fe office no later than the 15<sup>th</sup> day of the second month following the end of each calendar quarter, as follows:

First Calendar Quarter Report due on or before May 15

Second Calendar Quarter Report due on or before August 15

Third Calendar Quarter Report due on or before November 15

Fourth Calendar Quarter Report due on or before February 15

- b) Gandy Marley shall take the annual treatment zone samples required under Permit #NM-01-019 during the last two weeks of the fourth calendar quarter. Gandy Marley shall submit its annual reports showing the results of these sample analyses to the OCD Santa Fe office with its fourth calendar quarter report on or before the 15<sup>th</sup> day of February.
4. Beginning with the third quarter report of 2005, due on or before November 15, 2005, for each day that any report required under Permit #NM-01-019 is late, Gandy Marley, Inc. shall pay a \$1,000 penalty.
5. By signing this Order, Gandy Marley expressly
- a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
  - b) agrees to comply with Ordering Paragraphs (3) and (4);
  - c) waives any right, pursuant to the Oil and Gas Act or otherwise, to a hearing either prior or subsequent to the entry of this Order or to an appeal from this Order; and
  - d) agrees that if it fails to comply with this Order, the Order may be enforced by suit or otherwise to the same extent and with the same effect as a final Order of the Division entered after notice and hearing in accordance with all terms and provisions of the Oil and Gas Act (NMSA 1978, Sections 70-2-1 through 70-2-38, as amended).

Done at Santa Fe, New Mexico this 13<sup>th</sup> day of Sept 2005

By: [Signature]  
MARK FESMIRE, P.E., Director  
Oil Conservation Division

**ACCEPTANCE**

Gandy Marley, Inc. hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in the Order.

GANDY MARLEY, INC.

By: [Signature]  
Title: Bill Marley  
Date: 9-13-05