

HOLLAND & HART^{LLP}



William F. Carr
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June 1, 2004

VIA HAND DELIVERY

Mark E. Fesmire, P. E.
Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals & Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

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JUN - 1 2004

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

Case 13291

Re: Application of Marbob Energy Corporation for an order rescinding special pit closure stipulations and conditions, Eddy County, New Mexico.

Dear Mr. Fesmire:

Enclosed is the Application of Marbob Energy Corporation in the above-referenced case as well as a copy of the proposed legal advertisement. Marbob requests that this matter be placed on the docket for the June 24, 2004 Examiner hearings.

Your attention to this matter is appreciated.

Very truly yours,

William F. Carr

cc: Gail MacQuesten, Esq.
Raye Miller

Enclosures

Holland & Hart LLP

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

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APPLICATION OF MARBOB ENERGY CORPORATION
FOR AN ORDER RESCINDING SPECIAL PIT
CLOSURE STIPULATIONS AND CONDITIONS,
EDDY COUNTY, NEW MEXICO.

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505
CASE NO. 13291

APPLICATION

MARBOB ENERGY CORPORATION ("Marbob"), through its undersigned attorneys, applies to the New Mexico Oil Conservation Division for an order rescinding the special pit closure stipulations and conditions imposed by the Division's Artesia District Office for the Nichols "30" State Com Well No. 1 (API NO. 30-015-33372) located in Unit G of Section 30, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico. In support of this application, Marbob states:

1. Marbob is the operator of the N/2 of Section 30, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico on which it proposes to drill the Nichols "30" State Com Well No. 1 ("Nichols Well") at a location 1370 feet from the North line and 1500 feet from the East line (Unit G) to test all formations from 500 feet below the top of the San Andres formation to the base of the Morrow formation.

2. As part of its efforts to drill this well and in accordance with the rules of the Division's interim "Pit and Below-Grade Tank Guidelines" ("Interim Guidelines"), Marbob filed Division Form C-144, entitled "Pit or Below-Grade Tank Registration or Closure." With this form, Marbob confirmed that the drilling pit at this location was covered by a general plan and that it would be lined with a 12-mil synthetic liner. A copy of this form is attached hereto as Marbob Exhibit A.

3. The Interim Guidelines contain provisions governing soil and water remediation and use a risk-based approach to determine the relative threat to public health, fresh waters and the environment. They contain ranking criteria to determine appropriate soil remediation levels. The ranking criteria are (i) Depth To Groundwater, (ii) Wellhead Protection Area and (iii) Distance To Surface Water Body and each

pit is ranked on a scale of 1 to 20 for each of these criteria. The Interim Guidelines state that the total ranking score determines the level of remediation for hydrocarbon constituents that may be required at any given site. (Guidelines Section IV.A.)

4. On April 21, 2004, Marbob filed Form C-144 for the Nichols Well. Using the Division's ranking system and Division Form C-144, Marbob determined the no points should be assigned to the pit for the Depth to Ground Water criteria since vertical distance from the bottom of the proposed pit to the seasonal high water elevation of ground water was more than 100 feet. Since the pit is more than 100 feet from any private domestic water source and more than 1000 feet from all other water sources, Marbob assigned zero points for the Division's Wellhead Protection Area criteria. Since the pit is more than 1000 feet from any wetlands, playas, irrigation canals, ditches, and perennial and ephemeral watercourses, Marbob assigned zero points for the Distance to Surface Water criteria. The total ranking score for this pit is zero and, according the Interim Guidelines, this score determines the level of remediation for hydrocarbon constituents that may be required.

5. The Interim Guidelines also provide that the OCD retains the right to require remediation to more stringent levels than those proposed "If warranted by site specific conditions...." (emphasis added)

6. On April 22, 2004, the Division approved Marbob's Form C-144. However, even though the ranking score for this pit is zero, the Division conditioned its approval on a "...12-mil woven liner" and provided that "The pits contents and liner shall be removed and disposed of in a manner approved by the division."

7. These conditions substantially and unnecessarily increase Marbob's costs and, because of the conditions at this site, are unreasonable and should be rescinded by the Division.

8. Form C-144 appears to contain the ranking criteria set forth in the Interim Guidelines.

9. The powers of the Division are set out in the Oil and Gas Act. To carry out these powers and duties "the Division is empowered to make and enforce rules, regulations and orders, and to do

whatever may be reasonably necessary to carry out the purpose of this act,....” The criteria in the Interim Guidelines does not appear to be contained in the rules, regulations or orders of the Division. They are contained only in Interim Guidelines, should not be enforced. Furthermore, these guidelines do not appear to be followed by the Division in approving Form C-144’s.

10. The actions of the Division in approving the Division Form C-144 for the Nichols well and the conditions imposed on this approval are arbitrary and capricious.

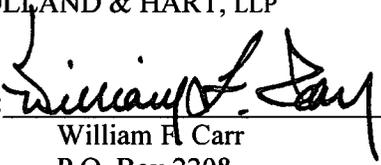
11. The conditions imposed by the Division on the C-144 for the pit at Nichols well will cause waste and are not in the best interest of conservation.

WHEREFORE, Marbob Energy Corporation requests that this application be set for hearing before an Examiner of the Oil Conservation Division on the next available docket and that, after notice and hearing, the Division enter its order rescinding the stipulations and conditions imposed by the Oil Conservation Division in its approval of Form C-144 for the Nichols “30” State Com Well No. 1.

Respectfully submitted,

HOLLAND & HART, LLP

By:



William F. Carr
P.O. Box 2208
Santa Fe, NM 87504-2208
505/988-4421 (telephone)

ATTORNEYS FOR MARBOB ENERGY
CORPORATION

PROPOSED LEGAL AD:

CASE 13291:

Application of Marbob Energy Corporation for an order rescinding special pit closure stipulations and conditions, Eddy County, New Mexico. Applicant seeks an order rescinding the Special Stipulations and conditions imposed by the Oil Conservation in approving Division Form C-144 for the Nichols "30" State Com Well No. 1 located 1370 feet from the North line and 1500 feet from the East Line of Section 30, Township 18 South, Range 28 East, NMPM. Said well is located approximately 15 miles south southeast of Artesia, New Mexico.

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Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

District I
1625 N. French Dr., Hobbs, NM 88240
District II
1301 W. Grand Avenue, Artesia, NM 88210
District III
1000 Rio Brazos Road, Aztec, NM 87410
District IV
1720 S. St. Francis Dr., Santa Fe, NM 87505

State of New Mexico
Energy Minerals and Natural Resources

Form C-144
March 12, 2004

Oil Conservation Division
1220 South St. Francis Dr.
Santa Fe, NM 87505

For drilling and production facilities, submit to appropriate NMOCD District Office.
For downstream facilities, submit to Santa Fe office

Pit or Below-Grade Tank Registration or Closure

Is pit or below-grade tank covered by a "general plan"? Yes No

Type of action: Registration of a pit or below-grade tank Closure of a pit or below-grade tank

Operator: Marbob Energy Corporation Telephone: 748-3303 e-mail address: marbob@marbob.com
Address: PO Box 227, Artesia, NM 88211-0227
Facility or well name: Nichols "30" State APN #1 U/L or Q/t/Qr G Sec 30 T 18S R 28E API #30-015-33372
County: Eddy Latitude _____ Longitude _____ NAD: 1927 1983 Surface Owner Federal State Private Indian

Site Type: Drilling <input checked="" type="checkbox"/> Production <input type="checkbox"/> Disposal <input type="checkbox"/> Workover <input type="checkbox"/> Emergency <input type="checkbox"/> Lined <input checked="" type="checkbox"/> Unlined <input type="checkbox"/> Liner type: Synthetic <input checked="" type="checkbox"/> Thickness <u>12</u> mil Clay <input type="checkbox"/> Volume _____ bbl	Below-grade tank Volume: _____ bbl Type of fluid: _____ Construction material: _____ Double-walled, with leak detection? Yes <input type="checkbox"/> If not, explain why not: _____
Depth to ground water (vertical distance from bottom of pit to seasonal high water elevation of ground water.)	Less than 50 feet (20 points) 50 feet or more, but less than 100 feet (10 points) <u>100 feet or more</u> (0 points) 0 points
Wellhead protection area: (Less than 200 feet from a private domestic water source, or less than 1000 feet from all other water sources.)	Yes (20 points) <u>No</u> (0 points) 0 points
Distance to surface water: (horizontal distance to all wetlands, playas, irrigation canals, ditches, and perennial and ephemeral watercourses.) <u>No records found</u>	Less than 200 feet (20 points) 200 feet or more, but less than 1000 feet (10 points) <u>1000 feet or more</u> (0 points) 0 points
	Ranking Score (Total Points) 0 points

If this is a pit closure: (1) attach a diagram of the facility showing the pit's relationship to other equipment and tanks. (2) Indicate disposal location: onsite offsite If offsite, name of facility: _____ (3) Attach a general description of remedial action taken including remediation start date and end date. (4) Groundwater encountered: No Yes If yes, show depth below ground surface _____ ft. and attach sample results. (5) Attach soil sample results and a diagram of sample locations and excavations.

I hereby certify that the information above is true and complete to the best of my knowledge and belief. I further certify that the above-described pit or below-grade tank has been/will be constructed or closed according to NMOCD guidelines , a general permit or an (attached) alternative NMOCD-approved plan .
Date: 04/21/04
Printed Name/Title: Melanie Parker, Land Dept. Signature: Melanie Parker
Your certification and NMOCD approval of this application/closure does not relieve the operator of liability should the contents of the pit or tank contaminate ground water or otherwise endanger public health or the environment. Nor does it relieve the operator of its responsibility for compliance with any other federal, state, or local laws and/or regulations.

APR 22 2004
Date: _____
Printed Name/Title: Wild Dog ID Signature: _____

Your C-144 is approved with the following stipulation; the liner must be a 12-mil woven. Also note your choice of liner mandates the manner in which the pit may be closed. The pit's contents and the liner shall be removed and disposed of in a manner approved by the division.

EXHIBIT A