

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

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO EXTEND  
THE EFFECTIVE DURATION OF AN EMERGENCY ORDER TO OPERATE ISSUED TO  
GANDY MARLEY, INC.**

FEB 21 2006 **CASE NO. 13454**

**ENTRY OF APPEARANCE  
and  
PRE-HEARING STATEMENT**

This Entry of Appearance and Pre-Hearing Statement is submitted by Domenici Law Firm, P.C. (Pete V. Domenici, Jr., Esq.) on behalf of Gandy Marley, Inc.

**APPEARANCES**

Operator of Record

Gandy Marley, Inc.  
PO Box 1658  
Roswell, NM 88202

Attorney for Operator of Record

Pete V. Domenic, Jr., Esq.  
Domenici Law Firm, P.C.  
6100 Seagull Street NE, Suite 205  
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(505) 883-6250  
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**ENTRY OF APPEARANCE**

The Domenici Law Firm, P.C. (Pete V. Domenici, Jr., Esq., & Charles N. Lakins, Esq.) does hereby enter its appearance in the above referenced matter on behalf of Gandy Marley, Inc.

**OPERATOR OF RECORD'S STATEMENT OF THE CASE**

Gandy Marley, Inc. ("Gandy") is the operator of record of a commercial landfarm located in Chavez County, New Mexico, that is permitted pursuant to 19.15.9.711 NMAC under permit number NM-01-0019.

In a letter dated March 4, 2005, OCD Division Director Mark Fesmire issued an administrative modification to Gandy's landfarm permit, which stated that:

"Effective immediately, the NMOCD permitted landfarm identified above is prohibited from accepting oilfield waste contaminated with salts."

The letter stated that for a landfarm to accept salts, the operator would need to apply for a modification of the permit pursuant to 19.15.9.711.B(1) NMAC and follow the notice requirements of 19.15.9.711.B(2). Gandy was informed that the modification would be necessary because the initial public notice given prior to issuing landfarm permits were for landfarming to remediate hydrocarbon-contaminated soils, but the language of the permits is broader than the notice, and allows the facility to accept oilfield contaminated solids that are either exempt from the Federal RCRA Subtitle C regulations or are "nonhazardous" by characteristic testing or listing.

Gandy has applied for a modification of its permit to allow it to accept salt-contaminated oilfield wastes. On March 10, 2005 Gandy applied for an emergency order allowing it to accept salt-contaminated oilfield waste pending a decision on its permit modification. On March 11, 2005 OCD issued its Emergency Order R-12306 to Gandy, which allows its landfarm to accept salt-contaminated oilfield waste. By statute the emergency order, issued without public notice or hearing, is only effective for fifteen (15) days from issue. Due to the notice period required for Gandy's permit modification, the Division is not able to act on Gandy's application before the emergency order expires. For that reason, Gandy seeks that the Division issue its Order extending the duration of the emergency order until the Division can act on the pending permit modification. Gandy states that there is no danger to fresh water supplies, human health or the environment by extending the duration of the emergency order because:

1. The depth to groundwater at the location of the landfarm is 150 feet.
2. The TDS level of the groundwater at the landfarm location is in excess of 15,000 ppm.
3. There are no fresh water wells or watercourses (wet or dry) within 1,000 feet of the landfarm.
4. There is an impermeable redbed clay barrier of approximately 150 feet between the landfarm surface and the groundwater.
5. The groundwater at the site is nonproductable in both volume and quality.
6. An emergency order is necessary because there is a critical need in the area of the landfarm for a facility that can accept salt-contaminated soils due to the extensive drilling programs and remediation programs in the area.

#### **OPERATOR'S PROPOSED EVIDENCE**

Witness: No witness other than those listed by OCD

Estimated Time: 5 minutes.

Respectfully Submitted,



Pete V. Domenici, Jr. Esq.  
Attorney for Operator of Record  
6100 Seagull Street NE, Suite 205  
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**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
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**CASE NO. 13454**

**PRE-HEARING STATEMENT**

This entry of appearance and pre-hearing statement is submitted by the applicant, the Oil Conservation Division.

**APPEARANCES**

**APPLICANT**

Oil Conservation Division

**APPLICANT'S ATTORNEY**

Gail MacQuesten  
Oil Conservation Division  
Energy, Minerals and Natural  
Resources Department  
1220 S. St. Francis Drive  
Santa Fe, NM 87505  
(505) 476-3451  
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**OPPONENTS**

No appearance has been entered.

**OPPONENTS' ATTORNEY**

No appearance has been entered.

**APPLICANT'S STATEMENT OF THE CASE**

Gandy Marley Inc. ("Gandy") is the operator of record of a commercial landfarm located in Chaves County, New Mexico. The landfarm is permitted pursuant to 19.15.9.711 NMAC under permit number NM-01-0019.

The public notice given prior to issuance of this and other landfarm permits stated that the permits were for landfarming to remediate hydrocarbon-contaminated soils. The language of the landfarm permits, however, was broader than the language in the public notice, allowing the facilities to accept oilfield contaminated solids that are either exempt from the Federal RCRA Subtitle C (hazardous waste) regulations or are "nonhazardous" by characteristic testing or listing.

By letter dated March 4, 2005, Division Director Mark Fesmire issued the following administrative modification to the landfarm permits, in order to protect fresh water, human health and the environment:

"Effective immediately, the NMOCD permitted landfarm identified above is prohibited from accepting oilfield waste contaminated with salts."

The letter stated that for a landfarm to accept salts, the operator would need to apply for a modification of the permit pursuant to 19.15.9.711.B(1) NMAC and follow the notice requirements of 19.15.9.711.B(2) NMAC.

Gandy has applied for a modification of its permit to allow it to accept salt-contaminated oilfield wastes.

On March 10, 2005, Gandy applied for an emergency order allowing it to accept salt-contaminated oilfield waste pending a decision on its application for a permit modification. In support of its request, Gandy asserted the following:

- a. The depth to groundwater at the location of the landfarm is 150 feet.
- b. The TDS level of the groundwater at the location of the landfarm is in excess of 15,000 PPM.
- c. There are no fresh water wells or watercourses (wet or dry) within 1,000 feet of the landfarm.
- d. There is an impermeable redbed clay barrier of approximately 150 feet between the surface and the groundwater.
- e. The groundwater at the site is nonproduceable in both volume and quality.
- f. An emergency order is necessary because there is a critical need in the area of the landfarm for a facility that can accept salt-contaminated soils due to extensive drilling programs and remediation programs in the area.

In addition, Division staff confirmed that the Operator will keep salt-contaminated oilfield waste separate from hydrocarbon-contaminated oilfield waste.

On March 11, 2005, the Division issued Emergency Order R-12306 to Gandy allowing its landfarm to accept salt-contaminated oilfield waste. By statute, an emergency order issued without public notice and a hearing shall remain in effect no longer than fifteen days from its effective date. See NMSA 1978, § 70-2-23. Because of the notice period required for permit modifications under 19.15.9.711.B(2) NMAC the Division will not be able to act on Gandy's application before the fifteen day period expires. For that reason, the Division seeks an order extending the duration of the emergency order until the Division acts on the pending application for permit modification.

#### APPLICANT'S PROPOSED EVIDENCE

WITNESS:

ESTIMATED TIME:


Ed Martin

15 min.

#### PROCEDURAL MATTERS

The Division requests that this case be heard with case 13455, which presents similar issues regarding a landfarm operated by Artesia Aeration, LLC.

Respectfully submitted,  
This 17<sup>th</sup> day of March 2005 by

  
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Attorney for the Oil Conservation Division