

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

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APPLICATION OF MARBOB ENERGY CORPORATION FOR AN ORDER
AUTHORIZING A CENTRALIZED SURFACE WASTE MANAGEMENT
FACILITY, EDDY COUNTY, NEW MEXICO.

CASE NO. 14102

AMENDED
RESPONDENT'S ENTRY OF APPEARANCE AND
PRE-HEARING STATEMENT

The Oil Conservation Division submits this entry of appearance and pre-hearing statement pursuant to OCD Rule 1211 [19.15.14.1211 NMAC].

APPEARANCES

APPLICANT

Marbob Energy Corporation

APPLICANT'S ATTORNEY

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RESPONDENT

Oil Conservation Division

RESPONDENT'S ATTORNEY

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STATEMENT OF THE CASE

Marbob Energy Corporation (Marbob) seeks approval of a pilot project for a centralized surface waste management facility to be located in Eddy County, New Mexico. Marbob plans to use an unlined caliche pit for landfarm and landfill cells to

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dispose of drilling reserve pit solids and liquids, hydrocarbon and/or chloride-impacted soils resulting from leaks or spills and tank bottom solids and produced water (BS&W). Marbob filed its original application on February 14, 2006, under 19.15.9.711 NMAC (Rule 711). The application's terms have changed several times through correspondence, and some key provisions remain undefined. The original application describes the landfill operations only "in general terms," explaining that Marbob will develop and submit site-specific engineering drawings and specifications only after several full-scale tests of its proposed protocol. By letter dated April 12, 2007 Marbob again proposed a pilot testing program, stating that it would submit plans and specifications for its landfill operations and alter its proposed permit conditions and submissions to conform with 19.15.36 NMAC [Part 36], the new rules governing surface waste management facilities, after completion of the pilot project. At the time Marbob filed its original application, and at least through April 12, 2007, it did not own the property on which the facility was to be located and did not have a use agreement with the owner of the property.

The Oil Conservation Division's Environmental Bureau (EB) rejected Marbob's application. By letter dated May 7, 2007, Bureau Chief Wayne Price rejected Marbob's April 12, 2007 request for a pilot project, and informed Marbob that if it wanted a permit for the facility it should proceed under Part 36. By letter dated January 14, 2008, Mr. Price, in response to a question regarding the status of the application, wrote that the application was never accepted by the OCD, or noticed on the hearing docket, because Marbob did not own the property or have approval of the land owner.

In its hearing application, Marbob argues that the EB improperly rejected the application, and claims for the first time that it has acquired ownership of the property on which the facility is to be located. It seeks approval of its permit under Rule 711, arguing that under the transitional provisions of Part 36, "[t]he division shall process an application for a surface waste management facility permit filed prior to May 18, 2006 in accordance with 19.15.9.711 NMAC..."

The Oil Conservation Division (OCD) takes the position that Marbob's application must be denied.

First, the EB properly denied the application. The EB acted correctly in denying Marbob's application for what amounts to a pilot test project. Rule 711 does not contemplate pilot test projects. Instead, applicants must demonstrate up front through the permitting process that the proposed facility will not adversely impact public health or the environment. The EB also acted correctly in denying the application on the ground that Marbob did not own the property or have a land use arrangement in place with the owner. The information required to evaluate a surface waste management facility is specific to the location. The OCD cannot and should not be required to devote its scarce resources to evaluating hypothetical permit applications. Additional grounds support denying the application as incomplete: Rule 711 sets out specific application requirements, including a complete Form C-137 and compliance with OCD guidelines. Under this standard, the deficiencies in Marbob's application include but are not limited to: failure to provide an adequate description of the proposed facility as required by

19.15.9.711.B(1)(d) NMAC, C-137, and 1997 Guidelines; failure to provide adequate designs as required by 19.15.9.711.B(1)(d) NMAC, C-137 and 1997 Guidelines; failure to provide adequate description of the operations as required by the 1997 Guidelines.

Second, if the hearing examiner chooses to reach the merits of the application, the application must be denied as a matter of law. The application provides insufficient information on the existing site conditions, the construction of the proposed facility and the operation of the proposed facility to allow the OCD to review it to determine if it will adversely impact public health or the environment and whether the facility will be in compliance with OCD rules and orders, as required by 19.15.9.711.B(1)(m) NMAC. In addition, the application contains terms that, on their face, contradict Rule 711. Examples of such terms include but are not limited to the following: Marbob intends to accept "free liquids (e.g., BS&W)" and "clean produced water" under 19.15.9.711.A(3)(b) NMAC, although Marbob's proposed facility does not meet the requirements of that provision; Marbob does not provide or propose any on-site facilities for the effluent management of process/produced water, as required by the 1997 Guidelines; Marbob fails to provide a hydrogen sulfide prevention and contingency plan as required by 19.15.9.711.B(1)(i) NMAC; Marbob provides no plan to detect leaching of contaminants, measures to be taken in the event of pit failure, or a contingency spill plan including proposed notification threshold levels, as required in the 1997 Guidelines. In short, Marbob's application as submitted cannot, as a matter of law, demonstrate that the proposed facility will not adversely impact public health or the environment.

APPLICANT'S PROPOSED EVIDENCE

WITNESS:

ESTIMATED TIME:

Brad Jones, Solid Waste Management

10 Hours

Wayne Price, Environmental Bureau Chief

1 Hour

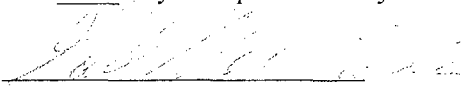
Ed Hanson, Solid Waste Management

1 Hour

PROCEDURAL MATTERS

The OCD has a pending motion to dismiss.

Respectfully submitted
this 24th day of April 2008 by

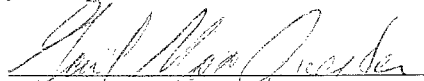

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Attorney for the Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was faxed to Mr. Carr and Ms. Munds-Dry at 505 983-6043 this 24th day of April 2008.


Gail MacQuesten