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

APPLICATION OF LOCO HILLS GSF FOR APPROVAL OF ITS STAGE I AND II ABATEMENT PLANS AND BEST MANAGEMENT PRACTICES PLAN AND AN EXEMPTION TO DIVISION RULE 50, EDDY COUNTY, NEW MEXICO.

CASE NO. 13339

OIL CONSERVATION DIVISION'S MOTION TO DISMISS

The Oil Conservation Division (OCD) moves to dismiss the application filed by Loco Hills GSF (Loco Hills) for approval of its stage I and II abatement plans and best management practices plan and an exemption to Rule 50. The issues are not ripe for decision by the Commission. Loco Hills should be required to develop the information necessary to decide the issues by following the required administrative processes.

Loco Hills' application includes a request for approval of its stage I and II plans to abate existing water pollution at the site. Abatement of water pollution is conducted under an administrative process pursuant to Rule 19. As described in the rule, the purpose of a stage I abatement plan is to design and conduct a site investigation that will adequately define site conditions, and provide the data necessary to select and design an effective abatement option. Rule 19.E(3). The purpose of the stage II abatement plan is to select and design an abatement option that will result in attainment of the abatement standards and requirements set out in the rule. Rule 19.E(4)(a). Once the applicant has

filed administratively complete stage I and II plans, the applicant must follow the extensive public notice requirements set out in the rule. These requirements include written notice to surface owners, the county commission, the appropriate city officials, those persons who have requested notification, the New Mexico trustee for natural resources, and any other local, state or federal governmental agency affected, and the appropriate governor or president of any affected Indian tribe, pueblo or nation. See Rule 19.G(1). In addition, the applicant must publish notice in a newspaper of general circulation in the affected county and in a newspaper of general circulation in the state. The published notice must include a description of the source extent and estimated volume of the release, whether the release occurred into the vadose zone, ground water or surface water, a description of the proposed stage I or stage II abatement plan, and a statement that written comments and requests for public hearing must be received by the director within 30 days of the date of publication. Rule 50.G(2). The plans themselves must be available for public view. Rule 50.G(2)(e). After the 30-day public comment period the OCD reviews the plan for approval, and attempts to resolve issues raised in the public comments. If the disputes are not resolved, the director may schedule the abatement plan for public hearing.

Loco Hills has attempted to bypass the Rule 19 administrative procedures by submitting their most recent stage I and stage II plans directly to the Commission for hearing. Had the plans been submitted to the OCD under the process set out by Rule 19 they would have been rejected as administratively incomplete because of Loco Hills' failure to provide a plan to delineate the horizontal and vertical extent of contamination and their failure to provide a public notification proposal. See Rules 19.E(3) and

19.E(4)(b). Once the administrative deficiencies had been corrected, the plans would have gone out for public comment. After public comments were received, the plans and comments would have been reviewed by the OCD for technical sufficiency.

Loco Hills cannot remedy this procedural defect by dismissing the Rule 19 abatement issues and proceeding to hearing on their request for an exemption to Rule 50. Loco Hills' abatement plan is the central to their request for an exemption to Rule 50's liner requirements. Loco Hills' argument, in a nutshell, is that they acknowledge that the clay-lined pond they are proposing will leak chloride contaminated water, but they argue that they will pump out more contaminated water under their abatement plan than they will introduce through their exempted pond, resulting in a net environmental gain. Their application seeks the Commission's approval of this concept, and approval of an exemption to Rule 50, before they provide details on how the pond will be constructed and how contamination will be minimized. For example, they have not provided specifications for the proposed pond ("Loco Hills GSF will provide NMOCD a complete set of engineering drawings and specifications for the proposed clay-lined pond #2 after approval of this Best Management Practices Plan and NMOCD approval of the required exemption from Rule 50." Best Management Plan (BMP), August 17, 2004, page 2.) And although they claim that adding bentonite to the existing clay in the pond will result in a permeability of 1 E-7 or less, they have not done the work to make that showing ("Upon approval of this BMP and the requested exemption from Rule 50, Loco Hills GSF will retain Pettigrew and Associates to create the specifications required to improve the existing clay liner such that it meets a permeability of 1 E-7 or less." BMP, August 17, 2004, page 5).

The OCD recognizes that the director has the authority under Rule 1216 to set the hearing in any matter before the Commission. But this case is not ready for hearing before either the Commission or a division examiner. Loco Hills has not followed the administrative process set out in Rule 19 to develop the facts necessary to evaluate an abatement plan, and has not gone through the public notice procedures that are essential to the proper development of an abatement plan.

Conclusion

The OCD respectfully moves the Commission to dismiss Loco Hills' application. Loco Hills may then re-apply through the correct administrative processes.

RESPECTFULLY SUBMITTED,
this 1st day of September, 2004 by



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Certificate of Service

I hereby certify that I a true and correct copy of the foregoing pleading was transmitted to Mr. Carr, attorney for Loco Hills GSF, by fax (983-6043) and e-mail wcarr@hollandhart.com) this 1st day of September, 2004.



Gail MacQuesten