

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 13402

APPLICATION OF
Loco Hills GSF

PRE-HEARING STATEMENT

This prehearing statement is submitted by Donald A. Neeper
as required by the Oil Conservation Division.

APPEARANCES OF PARTIES

APPLICANT

ATTORNEY

name, address, phone and
contact person

OPPOSITION OR OTHER PARTY

ATTORNEY

Donald A. Neeper, individual

2708 B Walnut St.

Los Alamos, NM 87544-2050

505-662-4592

dneeper@earthlink.net

name, address, phone and
contact person

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STATEMENT OF CASE

APPLICANT

(Please make a concise statement of what is being sought with this application and the reasons therefore.)

OPPOSITION OR OTHER PARTY

(Please make a concise statement of the basis for opposing this application or otherwise state the position of the party filing this statement.)

The applicant argues his case based upon assumptions of uniform flow beneath the proposed pond. The applicant seeks exemption from a secondary liner with wide-area leak detection system. The application suggests that it is acceptable to add contamination to water that has previously been contaminated. The transport of contamination in the ground does not usually occur by uniform flow, but follows selected pathways in which the flow is faster than average. Therefore, a secondary liner is needed, together with a system that can detect a leak from anywhere in the pond. Furthermore, it is not acceptable to add contamination to ground water simply because the water is already contaminated above standards. Such logic would invite contamination of water, simply to make continued releases permissible.

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PROPOSED EVIDENCE

APPLICANT

WITNESSES (Name and expertise)	EST. TIME	EXHIBITS
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OPPOSITION

WITNESSES (Name and expertise)	EST. TIME	EXHIBITS
Donald A. Neeper Ph.D., thermal physics. Experience in vadose zone transport calculations. Experience as supervisor of RCRA Facility Investigation	20 min.	Prints of charts used during testimony

PROCEDURAL MATTERS

(Please identify any procedural matters which
need to be resolved prior to the hearing)

The Commission may wish to consider whether, under Rule 1212A, this
witness may present technical testimony without a lawyer.

Donald A. Neeper

Signature

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

IN THE MATTER OF:)
CONSOLIDATED APPLICATION OF) Case No. 13402
LOCO HILLS GAS STORAGE)
FACILITY FOR AN EXEMPTION TO)
THE LINER AND LEAK DETECTION)
REQUIREMENTS OR)
APPROVAL OF ABATEMENT)
PLANS WITH PROVISIONAL)
ALTERNATE ABATEMENT)
STANDANRDS,)
EDDY COUNTY, NEW MEXICO.)

2005 APR 7 PM 12 43

PRE-HEARING STATEMENT

In accordance with the Oil Conservation Division Rules at 19.15.14.1208 NMAC, the New Mexico Environment Department hereby submits this Pre-Hearing Statement in the above-referenced matter. The Environment Department is a party having an interest in this proceeding. The hearing is scheduled for April 14, 2005.

I. PARTIES AND THEIR ATTORNEYS

APPLICANT:

Loco Hills Gas Storage Facility

APPLICANT'S ATTORNEY:

William F. Carr
Holland & Hart LLP
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
(505) 988-4421
www.wcarr@hollandhart.com

OPPONENT:

The Oil Conservation Division of the
New Mexico Energy, Minerals and Natural Resources Department

OPPONENT'S ATTORNEY:

Gail MacQueston
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, New Mexico 87505
(505) 476-3451
gmacqueston@state.nm.us

INTERESTED PARTY:

New Mexico Environment Department

ATTORNEY:

Charles de Saillan
Office of General Counsel
New Mexico Environment Department
P.O. Box 26110
Santa Fe, New Mexico 87501
(505) 827-2985
charles_desaillan@nmenv.state.nm.us

II. ENVIRONMENT DEPARTMENT'S STATEMENT OF THE CASE

Loco Hills Gas Storage Facility (Loco Hills GSF) seeks an exception to the New Mexico Oil Conservation Division (OCD) Rule 50 provisions requiring that storage pits have a primary and secondary liner, and a leak detection system between the liners. The proposed exception would allow for designed seepage of saturated brine from a single clay lined storage pit into subsurface soils and ground water.

OCD Rule 50 provides that storage pits must be "designed, constructed and operated so as to contain liquids and solids to prevent contamination of fresh water and protect public health and the environment. 19.15.2.50.C(1) NMAC. Storage pits must be constructed with "at a minimum, a primary and secondary liner." 19.15.2.50.C(2)(b)(ii) NMAC. Storage pits must also be constructed with "a leak detection system . . . installed between the primary and secondary liner." 19.15.2.50.C(2)(c) NMAC.

Pursuant to OCD Rule 50.G(2), the OCD may only grant an exception from Rule 50 "if the operator demonstrates that the granting of such exemption will not endanger fresh water, public health or the environment." 19.15.2.50.G(2) NMAC. In its application, Loco Hills GSF acknowledges that its proposed storage pit design may contaminate ground water. Thus, Loco Hills GSF has not demonstrated that its alternative pit design will not endanger fresh water, public health or the environment.

Loco Hills GSF is attempting to negotiate a land transfer with the State Land Office (SLO) for ownership of the land at the Loco Hills GSF and is planning to acquire adjacent land from a private landowner. It appears from the proposal that Loco Hills GSF maintains that it may contaminate groundwater so long as the contamination does not extend beyond a "point of compliance" at its property line. Loco Hills GSF hopes to restrict use of water down-gradient of the facility by encouraging the SLO to prohibit construction of any supply wells on this down-gradient property. Loco Hills is also communicating with the Bureau of Land Management (BLM) regarding a similar restriction for any adjacent United States government land.

The Environment Department disagrees with the assertion of Loco Hills GSF. The ground waters of New Mexico in designated basins are public waters, owned by the State of New Mexico for use by the public, regardless of land ownership. The ground water beneath the Loco Hills facility is of good quality, having less than 10,000 parts per million total dissolved solids. The ground water has a present or reasonably foreseeable future use. This ground water is protected under the New Mexico Oil and Gas Act and the New Mexico Water Quality Act. A landowner cannot be permitted to intentionally contaminate the water, and place restrictions on water use as a substitute for implementing mechanisms for prevention of water pollution. Even if the property owner places land use restrictions on the property, such restrictions are not necessarily enforceable by the State of New Mexico.

In its application, Loco Hills GSF makes a second, alternate proposal. It proposes an alternate abatement standard (AAS) for ground water pursuant to OCD Rule 19.B(6). 19.15.1.19.B(6) NMAC. Under that rule, a person who is abating contaminated ground water may, under limited circumstances, obtain alternate abatement standards that exceed the numerical ground water quality standards established by the New Mexico Water Quality Control Commission (WQCC). This proposal would be a serious misapplication of the rules on alternative abatement standards. The OCD rules on alternative abatement standards were modeled on the WQCC regulations at 20.6.2.4103.F NMAC for prevention and abatement of water pollution. The purpose of the WQCC abatement regulations, and the OCD abatement rules, is to abate ground water that has already become polluted. If it is not feasible to attain the standards, then alternative abatement standards may be approved. However, these regulations were never intended to allow pollution of clean ground water to alternative standards.

Significantly, many of the issues that are raised in the Loco Hills GSF application, such as the proposal for a "point of compliance" and the proposal for alternate abatement standards, have policy implications for the State of New Mexico beyond the authority of the OCD. Acceptance of the Loco Hills GSF proposal would set a troublesome precedent for ground water pollution prevention and abatement activities conducted under the WQCC regulations pursuant to the Water Quality Act.

For these reasons, Loco Hills GSF's application for an exception from OCD Rule 50, which requires double liners and leak detection in storage pits, should be denied.

Loco Hills GSF's alternative proposal for alternate abatement standards, allowing it to pollute ground water as long as it meets those standards, should also be denied.

III. ENVIRONMENT DEPARTMENT'S WITNESS

The following witness will present testimony on behalf of the Environment Department at the hearing:

William C. Olson
Chief, Ground Water Quality Bureau
New Mexico Environment Department

IV. APPROXIMATE TIME FOR ENVIRONMENT DEPARTMENT'S CASE

The Department estimates that Mr. Olson's testimony will last for approximately 30 minutes.

V. ENVIRONMENT DEPARTMENT'S EXHIBITS

The Environment Department will offer the following exhibit at the hearing:

1. Resume of William C. Olson

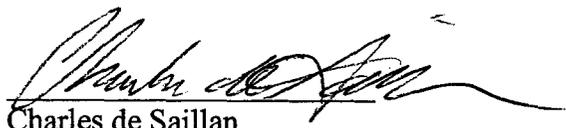
The Environment Department's exhibit is attached hereto.

VI. PROCEDURAL MATTERS

The Environment Department has not raised any procedural matters, and is not aware of any procedural matters, that need to be resolved prior to the hearing.

Respectfully submitted,

Dated: April 7th, 2005


Charles de Saillan
Office of General Counsel
New Mexico Environment Department
P.O. Box 26110
Santa Fe, New Mexico 87501
(505) 827-2985

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2005, a copy of the foregoing Environment Department's Pre-Hearing Statement was sent by first class mail, postage prepaid, to the following:

Gail MacQueston
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, New Mexico 87505

Attorney for the Oil Conservation Division

William F. Carr
Holland & Hart LLP
P.O. Box 2208
Santa Fe, New Mexico 87504-2208

Attorney for Loco Hills Gas Storage Facility


Charles de Saillan

Resume

William C. Olson
87A Old Lamy Trail
Lamy, NM 87540
(505) 466-2969

Education

M.S. Hydrology, 1989, NM Institute of Mining and Technology, Socorro, NM
B.S. Geology, 1983, NM Institute of Mining and Technology, Socorro, NM

Employment

**NM Environment Department
Ground Water Quality Bureau
1190 St. Francis Drive
Santa Fe, NM 87505**

**Title: Bureau Chief
Dates Employed: 10/04 – present**

Supervise and manage environmental regulatory personnel for the Ground Water Quality Bureau which includes the Pollution Prevention Section, Remediation Oversight Section, Mining Environmental Compliance Section, Superfund Oversight Section, and Grants and Planning Section. Supervise fiscal management of budgets. Direct and approve permitting and enforcement of discharge plans, and investigation and abatement of contaminated soil and ground water pursuant to the New Mexico Water Quality Act and New Mexico Water Quality Control Commission (WQCC) regulations; investigation and remediation of contaminated properties pursuant to the Voluntary Remediation Act (VRA) and Voluntary Remediation Regulations; investigation and remediation of abandoned sites in support of the U.S. Environmental Protection Agency (EPA) Superfund Program, and implementation of the New Mexico Environment Department's (NMED) responsibilities under the New Mexico Mining Act. Develop and write rules and regulatory language and guidelines. Conduct, lead and participate in public and industry regulatory work groups and meetings. Coordinate activities and actions with state, federal and local governmental organizations. Testify as an expert witness at regulation and rule making hearings. Testify as an expert witness at permitting and enforcement hearings. Represent the NMED at public meetings and conferences. Write and present papers on technical and environmental regulatory issues at conferences. Interpret federal and state rules and regulations. Communicate with and advise industry and the public on laws, rules, regulations and procedures, and their interpretation.

**NM Energy, Minerals & Natural Resources Dept.
Oil Conservation Division
Environmental Bureau
1220 St. Francis Dr.
Santa Fe, NM 87505**

**Title: Senior Hydrologist
Dates Employed: 11/97 – 10/04**

Implement environmental regulatory permitting and enforcement programs under the New Mexico Oil & Gas Act, Water Quality Act and Geothermal Act for permitting of discharge plans, and reclamation

and abatement of contaminated soil and ground water at oil, natural gas and geothermal facilities. Serve on the New Mexico Water Quality Control Commission as designee for the Director of the OCD. Supervise and review hydrological, geological and engineering work products of 3 Bureau staff. Train district staff in permitting and enforcement of rules, regulations and guidelines, sample collection and inspections. Develop and write rules and regulatory language and guidelines for environmental permitting. Conduct, lead and participate in public and industry regulatory work groups and meetings. Coordinate activities and actions with state, federal and local governmental organizations. Testify as an expert witness at regulation and rule making hearings. Develop, write and evaluate pricing agreements and contracts for soil and ground water remediation, and laboratory analytical services. Direct and supervise contractors on state funded investigations of ground water contamination under the Oil & Gas Reclamation Fund. Oversee, manage, develop, evaluate, write, issue and enforce environmental permits for the protection of ground water and surface water, and soil and ground water remediation and abatement plans. Negotiate technical engineering controls and hydrogeological issues on soil and ground water remediation permits and plans with industry, environmental groups, governmental agencies, consultants and private landowners. Testify as an expert witness at OCD and New Mexico Oil Conservation Commission permitting and enforcement hearings. Evaluate, conduct and supervise analyses of hydrological, geological, engineering and chemical data, and engineering controls for technical adequacy and feasibility on environmental permits, and for abatement of soil and ground water pollution. Perform and supervise field inspections, water and waste quality sampling and other field tests to ensure compliance with applicable permits, rules, orders and regulations. Respond to public complaints and concerns of ground water and soil contamination. Conduct and supervise soil, water, effluent and waste quality sampling for field and laboratory analysis. Represent the OCD at public meetings and conferences. Write and present papers on technical and environmental regulatory issues at conferences. Interpret federal and state rules and regulations. Communicate with and advise industry and the public on laws, rules, regulations and procedures, and their interpretation.

NM Energy, Minerals & Natural Resources Dept.

Oil Conservation Division

Environmental Bureau

1220 St. Francis Dr.

Santa Fe, NM 87505

Title: Geologist 4

Dates Employed: 6/92 – 11/97

Implement and enforce environmental regulatory programs under the New Mexico Oil & Gas Act, Water Quality Act and Geothermal Act for permitting of discharge plans, and reclamation and abatement of contaminated soil and ground water at oil, natural gas and geothermal facilities. Serve on the New Mexico Water Quality Control Commission as designee for the Director of the OCD. Develop and write rules and regulatory language and guidelines for environmental permitting. Conduct, lead and participate in public and industry regulatory work groups and meetings. Coordinate activities and actions with state, federal and local governmental organizations. Testify as an expert witness at regulation and rule making hearings. Train district staff in permitting and enforcement of rules, regulations and guidelines, sample collection and inspections. Oversee, manage, develop, evaluate, write, issue and enforce environmental permits for the protection of ground water and surface water, and soil and ground water remediation and abatement plans. Negotiate technical engineering controls and hydrogeological issues on soil and ground water remediation permits and plans with industry, environmental groups, governmental agencies, consultants and private landowners. Testify as an expert witness at OCD and New Mexico Oil Conservation Commission permitting and enforcement hearings. Evaluate, conduct and supervise analyses of hydrological, geological, engineering and chemical data,

and engineering controls for technical adequacy and feasibility on environmental permits, and for abatement of soil and ground water pollution. Conduct and supervise field inspections, and soil, water and waste quality sampling and other field tests to ensure compliance with applicable permits, rules, orders and regulations. Respond to public complaints and concerns of ground water and soil contamination. Represent the OCD at public meetings and conferences. Write and present papers on technical and environmental regulatory issues at conferences. Interpret federal and state rules and regulations. Communicate with and advise industry and the public on laws, rules, regulations and procedures, and their interpretation.

NM Energy, Minerals & Natural Resources Dept.

Oil Conservation Division

Environmental Bureau

310 Old Santa Fe Trail

Santa Fe, NM 87505

Title: Geologist 3

Dates Employed: 2/90 – 6/92

Implement and enforce environmental regulatory programs under the New Mexico Oil & Gas Act, Water Quality Act and Geothermal Act for permitting of discharge plans, and reclamation and abatement of contaminated soil and ground water at oil and natural gas facilities. Serve on the New Mexico Water Quality Control Commission as designee for the Director of the OCD. Develop and write rules and regulatory language and guidelines for environmental permitting. Conduct, lead and participate in public and industry regulatory work groups and meetings. Coordinate activities and actions with state, federal and local governmental organizations. Testify as an expert witness at regulation and rule making hearings. Train district staff in permitting and enforcement of rules, regulations and guidelines, sample collection and inspections. Oversee, manage, develop, evaluate, write, issue and enforce environmental permits for the protection of ground water and surface water, and soil and ground water remediation and abatement plans. Negotiate technical engineering controls and hydrogeological issues on soil and ground water remediation permits and plans with industry, environmental groups, governmental agencies, consultants and private landowners. Testify as an expert witness at OCD and New Mexico Oil Conservation Commission permitting and enforcement hearings. Evaluate and conduct analyses of hydrological, geological, engineering and chemical data, and engineering controls for technical adequacy and feasibility on environmental permits, and for abatement of soil and ground water pollution. Conduct field inspections, and soil, water and waste quality sampling and other field tests to ensure compliance with applicable permits, rules, orders and regulations. Respond to public complaints and concerns of ground water and soil contamination. Represent the OCD at public meetings and conferences. Write and present papers on technical and environmental regulatory issues at conferences. Interpret federal and state rules and regulations. Communicate with and advise industry and the public on laws, rules, regulations and procedures, and their interpretation.

NM Environmental Improvement Division

Ground Water Bureau

1190 St. Francis Dr.

Santa Fe, NM 87505

Title: Water Resource Spec 2

Dates Employed: 3/88 – 2/90

Oversee, manage, develop, evaluate, write, issue and enforce environmental permits for soil and ground water remediation, reclamation and abatement under the New Mexico Water Quality Act and Water

Quality Control Commission Regulations. Negotiate technical engineering controls and hydrogeological issues on soil and ground water remediation permits and plans with industry, environmental groups, governmental agencies, consultants and private landowners. Train staff in monitor well drilling, monitor well construction and water quality sampling activities. Participate in public and industry regulatory work groups and meetings. Coordinate activities and actions with state, federal and local governmental organizations. Evaluate and conduct analyses of hydrological, geological, engineering and chemical data, and engineering controls for technical adequacy and feasibility for remediation and abatement of soil and ground water pollution. Conduct field inspections, and soil, water and waste quality sampling and other field tests to ensure compliance with applicable permits, rules, orders and regulations. Respond to and investigate public complaints and concerns of ground water and soil contamination. Represent the New Mexico Environmental Improvement Division at public meetings. Write and present papers on technical and environmental regulatory issues at conferences. Interpret federal and state rules and regulations. Communicate with and advise industry and the public on laws, rules, regulations and procedures, and their interpretation. Serve as Quality Assurance Officer and develop and write EPA Quality Assurance/Quality Control plans. Supervise and operate drilling rig for installation of soil borings and ground water monitoring wells.

**NM Energy, Minerals & Natural Resources Dept.
Oil Conservation Division
Environmental Bureau
310 Old Santa Fe Trail
Santa Fe, NM 87505**

**Title: Water Resource Spec. 2
Dates Employed: 9/86 – 3/88**

Conducted a hydrogeologic study on the impact of oil and gas waste disposal practices on ground water in the San Juan Basin. Evaluate geologic and hydrologic information submitted with permit applications. Conduct field inspections, and soil, water and waste quality sampling and other field tests to ensure compliance with applicable permits, rules, orders and regulations. Respond to and investigate public complaints and concerns of ground water and soil contamination. Participate in public and industry regulatory work groups and meetings. Assist and advise industry and the public on laws, rules, regulations and procedures, and their interpretation.

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT 43
OIL CONSERVATION DIVISION

**CONSOLIDATED APPLICATION OF LOCO HILLS GSF FOR AN
EXEMPTION TO THE LINER AND LEAK DETECTION REQUIREMENTS OF
19.15.2.50.C NMAC AND APPROVAL OF STAGE 1 AND STAGE 2
ABATEMENT PLANS, WITH PROVISIONS FOR ALTERNATIVE
ABATEMENT STANDARDS; EDDY COUNTY, NEW MEXICO**

CASE NO. 13402

PRE-HEARING STATEMENT

PARTIES AND ATTORNEYS:

Applicant	Loco Hills GSF
Attorney	William F. Carr Holland & Hart, LLP
Respondent	New Mexico Oil Conservation Division
Attorney	David K. Brooks Assistant General Counsel Energy, Minerals and Natural Resources Department
Interested Party	New Mexico Environment Department
Attorney	Charles de Saillan Assistant General Counsel New Mexico Environment Department
Interested Party	Donald A. Neeper
Attorney	<i>Pro Se</i>

STATEMENT OF THE CASE

Applicant is the operator of a liquefied petroleum gas (LPG) facility located in Section 22, Township 17 South, Range 29 East, Eddy County, New Mexico. The operation of the LPG facility entails the storage on site of a large quantity of brine which is used to displace LPG stored in underground caverns when the LPG is pumped out for distribution to users. Applicant proposes to construct a brine storage pit with a single clay liner and, for this purpose, seeks an exemption from the requirement of OCD Rule 50.C(2)(b)(ii) that storage pits are required to be double-lined with leak detection between the liners.

There is existing ground water contamination at the site believed to result from past operation of the facility. Furthermore, applicant concedes that some brine leakage will occur from the new pit for which it seeks approval. It has therefore submitted an abatement plan to remediate existing and possible future ground water contamination. As to existing contamination, Applicant characterizes its abatement plan as voluntary. OCD disagrees with the characterization to the extent that OCD contends that Applicant, as operator of the facility, is a responsible party with respect to any contamination that has resulted from operation of the facility at any time.

WTNESSES

Wayne Price	environmental compliance specialist	1 1/2 hours
Glenn von Gonten	hydrologist and hydrogeologist	2 hours
W. Jack Ford	geologist	15 minutes
Roger Anderson	environmental and chemical engineer	15 minutes

PROCEDURAL MATTERS

None

RESPECTFULLY SUBMITTED,



David K. Brooks
Assistant General Counsel
Energy, Minerals and Natural
Resources Department of the State of
New Mexico
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505)-476-3450

Attorney for The New Mexico Oil
Conservation Division