

# BELIN SUGARMAN

**Alletta Belin**  
Attorney at Law

**RECEIVED**

June 16, 2005

JUN 20 2005

Florene Davidson, Commission Secretary  
Oil Conservation Commission  
1220 S. St. Francis Dr.  
Santa Fe, New Mexico 87505

**OIL CONSERVATION  
DIVISION**

Re: Oil Conservation Commission Case No. 13402 (Loco Hills Exemption Application)

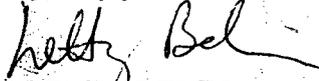
Dear Ms. Davidson:

I enclose an original plus five copies of the following documents for filing:

- 1) Pre-Hearing Statement of New Mexico Citizens for Clean Air & Water, Inc.
- 2) Motion to Dismiss

Please call me if you have any questions about the above. Thanks very much for your attention to this matter.

Very truly yours.

  
ALLETTA BELIN

Attorney for New Mexico Citizens for Clean Air & Water, Inc.

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STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION OIL CONSERVATION  
DIVISION

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

APPLICATION OF LOCO HILLS GSF FOR AN  
EXEMPTION, AND APPROVAL OF ABATEMENT PLANS  
WITH PROVISIONS FOR ALTERNATIVE ABATEMENT  
STANDARDS.

CASE NO. 13402

PRE-HEARING STATEMENT

This prehearing statement is submitted by the New Mexico Citizens for Clean Air & Water, Inc. (NMCCA&W), pursuant to Oil Conservation Division Rule 19.15.14.1208 NMAC.

**PARTIES AND ATTORNEYS:**

Applicant Attorney	Loco Hills GSF William F. Carr Holland & Hart, LLP
Respondent Attorney	New Mexico Oil Conservation Division David K. Brooks Assistant General Counsel Energy, Minerals and Natural Resources Department
Interested Party Attorney	New Mexico Environment Department Charles de Saillan Assistant General Counsel New Mexico Environment Department
Interested Party Attorney	Donald A. Neeper (concurrently filing Notice of Withdrawal) <i>Pro Se</i>
Interested Party Attorney	New Mexico Citizens for Clean Air & Water, Inc. Alletta Belin Belin & Sugarman

## 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. Applicant 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.

## NMCCA&W's STATEMENT OPPOSITION TO THE APPLICATION:

Applicant seeks exception to determining the nature and extent of contamination, as would be required by a proper Stage 1 remediation plan. Applicant's proposed remediation method of extracting contaminated groundwater as needed for makeup at the proposed pond and hoped-for brine sales does not provide any estimate of whether, or to what extent, remediation will occur. Applicant argues that the proposed pond will not release significant quantities of saline water, and furthermore that it would be acceptable to add contamination to groundwater that has already been contaminated by previous operations at this site. Applicant's case is based upon calculations that assume uniform seepage through the primary liner of the proposed pond. Applicant seeks exemption from a secondary liner with wide-area leak detection system. The calculations presented in the application underestimate the release rate of the proposed pond and the impact of the continuing routine release on groundwater. The transport of contamination in porous media, such as the clay liner or 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 that might occur 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.

## NMCCA&W WITNESS TO TESTIFY AT THE HEARING:

Donald A. Neeper  
Ph.D., thermal physics  
Experience in vadose zone flow and transport calculations.  
Experience as supervisor of a RCRA Facility Investigation of sites containing subsurface hazardous and radioactive wastes.

**TIME REQUIRED FOR TESTIMONY:**

30 minutes

**EXHIBITS:**

- 1) Resume of Dr. Donald A. Neeper
- 2) Written analysis of the proposed remediation and operational pond, with charts and tables depicting subsurface flow of brine.

**PROCEDURAL MATTERS:**

In conjunction with the filing of this Pre-Hearing Statement by NMCCA&W, Dr. Donald Neeper is filing a notice of withdrawal of his appearance in this case in his individual capacity. Henceforward, Dr. Neeper will appear in this matter only in his capacity as an expert witness for NMCCA&W.

NMCCA&W is submitting simultaneously herewith a Motion to Dismiss. The grounds for the Motion are that, at Applicant's request, four successive continuances have been requested and granted, continuing the scheduled hearing from March 8, April 14, May 12, and June 8, 2005. The hearing is currently set for July 7, 2005. NMCCA&W's witness, Dr. Neeper, has been available to testify at all previously scheduled hearing dates, but would not be available to testify if a hearing were held on July 7<sup>th</sup>. Therefore, NMCCA&W requests that a hearing not be set for that date if NMCCA&W's Motion to Dismiss is denied.

Respectfully submitted,



Alletta Belin  
Belin & Sugarman  
618 Paseo de Peralta  
Santa Fe, NM 87501  
505-983-8936  
[belin@bs-law.com](mailto:belin@bs-law.com)

Attorney for NMCCA&W

**CERTIFICATE OF SERVICE**

I certify that on June 16, 2005, I served a copy of the foregoing Motion to Dismiss on the following by U.S. Mail or Facsimile:

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

David K. Brooks, Assistant General Counsel  
Energy, Minerals and Natural Resources Department  
1220 S. St. Francis Dr.  
Santa Fe, NM 87505-4000

Charles de Saillan  
Assistant General Counsel  
New Mexico Environment Department  
P.O. Box 26110  
Santa Fe, NM 87502-0110

  
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Alletta Belin

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

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CASE NO. 13402

MOTION OF NMCCA&W TO DISMISS THIS CASE

The New Mexico Citizens for Clean Air & Water, Inc., (NMCCA&W) hereby moves to dismiss the above-captioned application filed by Loco Hills GSF (Loco Hills).

Loco Hills has corresponded and conversed with the Oil Conservation Division (OCD) for approximately two years regarding its intent to install a new brine pond and to investigate groundwater at the site. Loco Hills submitted a formal Application to OCD in this case late in 2004, and a hearing was scheduled for March 8, 2005. On March 7<sup>th</sup>, Loco Hills requested that the hearing be continued to April 14. On or about April 8, Loco Hills requested that the hearing be continued to May 12. A few days before May 12, Loco Hills again requested that the hearing be continued to June 9. On or about June 2, Loco Hills yet again requested that the hearing be continued.

The witness now appearing for NMCCA&W, Dr. Donald Neeper, has been prepared to participate and to offer testimony on each of the hearing dates set in April, May, and June. This commitment to appear as an expert witness in this matter has required the commitment of personal and professional time on each successive hearing date, even though a hearing has yet to

take place. It is apparent that while Dr. Neeper has expended considerable time and effort in order to be fully prepared to testify at each of the previously scheduled hearing dates, Loco Hills either has not been prepared to present its case, or else is seeking to avoid opposition by repeatedly continuing the hearing until such time as this or other opposition is unable to participate in the hearing. Such repeated last-minute continuances, in addition to making participation by other parties exceedingly difficult and time-consuming, may also effectively discourage any participation by the public or other entities who have not filed a pre-hearing statement, but who may wish to make unsworn statements.

Wherefore, NMCCA&W respectfully requests that Loco Hills's Application in Case No. 13402 be dismissed.

Respectfully submitted,



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Belin & Sugarman  
618 Paseo de Peralta  
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[belin@bs-law.com](mailto:belin@bs-law.com)

Attorney for NMCCA&W

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