

BRUCE HALL
JOHN P. SALAZAR
JOHN P. BURTON
CATHERINE T. GOLDBERG
EDWARD RICCO
W. MARK MOWERY
ELLEN T. SKRAK
HENRY M. BOHNHOFF
CHARLES K. PURCELL
ANDREW G. SCHULTZ
SCOTT D. GORDON
NELSON FRANSE
THERESA W. PARRISH
PAUL R. KOLLER
CHARLES J. VIGIL
THOMAS L. STAHL
DAVID W. BUNTING
LESLIE MCCARTHY APODACA
JEFFREY M. CROASDELL
SUNNY J. NIXON
JEFFREY L. LOWRY
R. TRACY SPROULS
DONALD B. MONNHEIMER
ALAN HALL
SETH L. SPARKS
LISA CHAVEZ ORTEGA
JOCELYN C. DRENNAN
MICHAEL J. BRESCIA

AARON C. VIETS
KURT B. GILBERT
RICK BEITLER
JUSTIN A. HORWITZ
SANDRA L. BEERLE
VALERIE REIGHARD DENTON
BRENDA M. SAIZ
BRIAN P. BRACK
TODD E. RINNER
CHARLES R. HUGHSON
JOSE R. BLANTON
MICHAEL E. KAEMPER
MARGOT A. HEFLICK
KRYSTLE A. THOMAS
GLENN A. BEARD
ROBERT L. LUCERO
DENISE M. CHANEZ
PERRY E. BENDICKSEN III
DAVID P. BUCHHOLTZ
TYLER M. CLUFF
MELANIE B. STAMBAUGH
SHANNON M. SHERRELL
JESSICA R. TERRAZAS
STEPHANIE L. LATIMER
LUIS G. CARRASCO
JUAN M. MARQUEZ
TAYLOR C. ZANGARA

RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A.

ATTORNEYS AT LAW
201 THIRD STREET NW, SUITE 2200
ALBUQUERQUE, NEW MEXICO 87102

P.O. BOX 1888
ALBUQUERQUE, NEW MEXICO 87103
WWW.RODEY.COM

TELEPHONE (505) 765-5900
FACSIMILE (505) 768-7395

OF COUNSEL
ROBERT M. ST. JOHN
MARK K. ADAMS
RICHARD C. MINZNER
JO SAXTON BRAYER
DEWITT M. MORGAN
PATRICK M. SHAY
CHARLES A. SEIBERT III
CRISTINA ADAMS
CYNTHIA A. LOEHR
JOHN N. PATTERSON

BERNARD S. RODEY (1858-1927)
PEARCE C. RODEY (1889-1958)
DON L. DICKASON (1908-1998)
WILLIAM A. SLOAN (1910-1993)
JACKSON G. AKIN (1919-2010)
JOHN D. ROBB (1924-2014)

SANTA FE OFFICE
119 EAST MARCY STREET, SUITE 200
SANTA FE, NEW MEXICO 87501-2048
P.O. BOX 1357
SANTA FE, NEW MEXICO 87504-1357
TELEPHONE (505) 954-3900
FACSIMILE (505) 954-3942

WRITER'S DIRECT NUMBER
(505) 768-7237

HBOHNHOFF@RODEY.COM

December 21, 2016

VIA E-MAIL (florene.davidson@state.nm.us)

Florene Davidson
Commission Clerk
Oil Conservation Division
N.M. Energy, Minerals and Natural Resources Department
1220 South St. Francis Dr.
Santa Fe, NM 87505

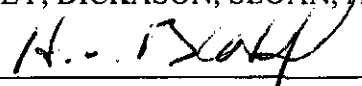
Re: October 13, 2016 Tentative Decision regarding Commercial Surface Waste Management
Facility Permit NM1-61, To Be Issued to C.K. Disposal, LLC – Case No. 15617

Dear Ms. Davidson:

Per your telephone conversation with my assistant, Jill Medford, I am enclosing for filing, an Entry of Appearance on behalf of Louisiana Energy Services, LLC, d/b/a URENCO USA and a Motion for Continuance of the merits hearing scheduled for January 9-11, 2017, in this matter.

Very truly yours,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: 
Henry M. Bohnhoff

HMB/jcm
Enclosures (as indicated)

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

Florene Davidson
Commission Clerk
December 21, 2016
Page 2

cc: Bill Brancard (via e-mail - bill.brancard@state.nm.us)
David Sexton (via e-mail - Dave.Sexton@urenco.com)
Perry Robinson (via e-mail - Perry.Robinson@urenco.com)
Brandt Graham (via e-mail - Brandt.Graham@urenco.com)

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

**IN THE MATTER OF APPLICATION
OF C.K. DISPOSAL, LLC, FOR PERMIT
TO CONSTRUCT AND OPERATE A
COMMERCIAL SURFACE WASTE
MANAGEMENT FACILITY, PERMIT
NO. NM1-61**

CASE NO. 15617

ENTRY OF APPEARANCE

COMES NOW Rodey, Dickason, Sloan, Akin & Robb, P.A. (Henry M. Bohnhoff and Cynthia A. Loehr), and enters its appearance on behalf of Louisiana Energy Services, LLC, d/b/a URENCO USA, in the above-captioned matter.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: 

Henry M. Bohnhoff

Cynthia A. Loehr

Post Office Box 1888

Albuquerque, New Mexico 87103-1888

Telephone: (505) 765-5900

Hbohnhoff@rodey.com

CLoehr@rodey.com

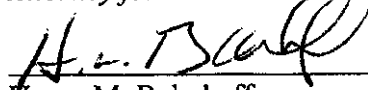
*Attorneys for Louisiana Energy Services, LLC,
d/b/a URENCO USA*

CERTIFICATE OF SERVICE:

We hereby certify that a copy of the foregoing pleading was e-mailed on December 21, 2016 to the following:

Michael L. Woodward
Wes McGuffey
Hance Scarborough, LLP
400 W. 5th Street, Suite 950
Austin, Texas 78701
Telephone: (512) 479-8888
mwoodward@hslawmail.com
wmcguffey@hslawmail.com
Attorneys for C.K. Disposal

David K. Brooks
Oil Conservation Division
1220 South St. Francis Dr.
Santa Fe, NM 87505
Telephone: (505)476-3440
DavidK.Brooks@state.nm.us
Attorney for Oil Conservation Division



Henry M. Bohnhoff

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

**IN THE MATTER OF APPLICATION
OF C.K. DISPOSAL, LLC, FOR PERMIT
TO CONSTRUCT AND OPERATE A
COMMERCIAL SURFACE WASTE
MANAGEMENT FACILITY, PERMIT
NO. NM1-61**

CASE NO. 15617

MOTION FOR CONTINUANCE

Interested and protesting party Louisiana Energy Services, LLC, d/b/a URENCO USA ("LES"), respectfully moves the New Mexico Oil Conservation Commission ("OCC") to vacate the merits hearing in this matter that has been scheduled for January 9-11, 2017, and reschedule it for a later date no earlier than February 1, 2017. As grounds in support of this motion, LES states that:

A. Background

C.K. Disposal, LLC ("C.K. Disposal"), filed the subject application on November 6, 2015. Following the New Mexico Oil Conservation Division's ("OCD's") determination that the application was administratively complete, C.K. Disposal provided notice to the public, neighboring landowners and government agencies on May 6, 2016. LES and other interested parties subsequently submitted written comments regarding the application to the OCD on June 2 and 22, 2016. On October 25, 2016, C.K. Disposal provided notice of the OCD's October 13, 2016 tentative decision to approve the application and grant a permit. On November 22, 2016, LES timely requested a hearing on the C.K. Disposal application, and also requested a pre-hearing conference.

Based on the foregoing chronology, LES understands that no party has ever sought to expedite, and the OCD has taken no action to expedite, a determination on the application. On the contrary, to date this proceeding has progressed without any apparent or claimed urgency. The OCC nevertheless has now, by notice posted on its website dated December 20, 2016, scheduled a three-day evidentiary hearing on the merits of the application for January 9-11, 2017. Particularly given the intervening Christmas and New Year holidays, such notice is unnecessarily short. In any event, it does not comply with the notice requirements of 19.15.4.9(B) and .12(B) NMAC, and in any event is unnecessarily limited and prejudicial to LES.

B. Governing Legal Authority

19.15.4.9(B) NMAC requires the OCD to publish notice of an adjudicatory hearing before the OCC or the OCD by taking each of the following steps "at least" 20 days in advance of the hearing: (1) posting the notice on the OCD's website; (2) "delivering" (i.e., completing delivery of) a copy of the notice by first class mail or email to each person who has requested a hearing notice; and (3) (if the hearing is before the OCC) publishing notice in a newspaper of general circulation in the counties the application affects. Further, 19.15.4.12(A)(7) and (B) NMAC require as well that the applicant, in this case C.K. Disposal, give notice to neighboring surface owners "at least" 20 days in advance of the hearing by either certified mail or publication in a newspaper of general circulation in the county where the proposed facility is located.

Assuming timely notice is given in compliance with 19.15.4.9 and .12 NMAC, 19.15.4.13(C) NMAC generally authorizes a party to a move to continue a hearing before the

OCC. The fact that a continuance request generally¹ may be requested up to 48 hours before an OCC hearing, 19.15.4.13(C) NMAC, reflects a liberal approach to granting the request.

19.15.4.13(C) NMAC does not specify the grounds for requesting a continuance. However, other New Mexico state agencies recognize, as grounds for continuance of an administrative hearing, witness unavailability, the need for additional time to complete expert witnesses' investigations and preparation of testimony, and "unfair hardship" to hearing participants. See, e.g., 19.17.2.19(F) NMAC (hearings before the Interstate Stream Commission under the Weather Control Act), 19.25.2.19(B) NMAC (water rights application hearings before the State Engineer). New Mexico courts recognize that it is an abuse of discretion to deny a motion for continuance where a party has inadequate time to prepare for an adjudicatory hearing. See, e.g., March v. State, 1987-NMSC-010, ¶ 7.

C. Notice of the January 9-11, 2017 Hearing Does Not Meet the Requirements of 19.15.4.9(B) and .12(A).

19.15.4.9(B) NMAC requires the OCC to provide notice of a hearing "at least" 20 days in advance of the hearing by (1) posting the notice on the OCD's website; (2) "delivering" (i.e., completing delivery of) a copy of the notice by first class mail or email to each person who has requested a hearing notice; and (3) publishing notice in a newspaper of general circulation in the counties the application affects. If the hearing was to take place on January 9, 2017, all such notice had to be provided by December 20, 2016. While the OCC posted a hearing notice on its website on December 20, 2016, and published notice in a Hobbs newspaper on December 16, 2016, it did not deliver notice to LES (or, to LES' knowledge, the other parties who have requested notice).

¹ A continuance may be requested less than 48 hours in advance of the hearing if "the reasons for requesting a continuance arise after the [48-hour] deadline. 19.15.4.14(C) NMAC.

Similarly, 19.15.4.12(B) requires C.K. Disposal to give notice to neighboring surface owners "at least" 20 days in advance of the hearing by either certified mail or publication in a newspaper of general circulation in the county where the proposed facility is located. C.K. Disposal did not provide such notice to LES (or, to LES' knowledge, other neighbors) by December 20, 2016.²

For these reasons, notice of the January 9, 2016 hearing is defective, and therefore the hearing cannot proceed on January 9, 2017.

D. LES Requires a Continuance.

LES needs additional time, until at least February 1, 2017, to fully and fairly prepare its case for opposing C.K. Disposal's application. The application raises complex issues regarding the impact that the proposed oil and gas waste disposal facility will have on water supply, public health, safety and the environment. See 19.15.36.12(A)(1) NMAC. Among other areas that LES expects to address at the hearing, its expert witnesses need additional time to complete their investigations of the technical issues surrounding the extent to which the proposed facility's expected traffic and emission of air contaminants will conflict with applicable statutes and regulations, and adversely affect public health, safety and the environment. This is due in part to the fact that OCD permitted C.K. Disposal to supplement its application with modeling of hydrogen sulfide emissions, a copy of which was not provided to LES until the last week of September, and then only as a result of LES' public records requests. LES respectfully submits that no court would schedule trial of similarly complex litigation on less than three weeks' notice and with only three months' opportunity to evaluate and respond to such scientific evidence. This agency should not do so either, particularly where the Christmas and New Year holidays,

² Among other deadlines, 19.15.4.13(B)(2) NMAC requires the parties to file a pre-hearing statement, including copies of their hearing exhibits, by January 3, 2017.

with their attendant interference with the ability of the parties, counsel and witnesses to prepare for hearing, fall in between the notice and hearing dates.

As a predicate³ to granting the requested permit, C.K. Disposal must demonstrate, and the OCC must be satisfied, that it can comply with “applicable statutes and rules.” 19.15.36.12(A)(1). The New Mexico Environment Department (“NMED”) has advised C.K. Disposal that its proposed facility is subject to that agency’s air quality regulatory jurisdiction, in particular, that C.K. Disposal is expected to comply with requirements under 20.2.72 and .73 NMAC that it either obtain from the Department an air quality construction permit or demonstrate, by submission of required documentation (a “Notice of Intent”), that the proposed facility’s emissions of regulated contaminants will not exceed established permitting thresholds. See December 13, 2016 letter from Elizabeth Bisbey-Kuehn to Bryce Karger, attached hereto as Exhibit 1. LES submits that, as a matter of logic as well as proper respect for the jurisdiction of the NMED, OCC must permit this regulatory process of a sister state agency to be completed in advance of conducting any hearing on C.K. Disposal’s oil and gas waste disposal facility. If not, the OCC risks second-guessing and/or prematurely substituting its opinion on a permitting decision that the Legislature has delegated to the NMED. Respectfully, there is no way that the OCC can assess C.K. Disposal’s compliance with federal and state air quality control laws and regulations until after the NMED has completed its consideration of C.K. Disposal’s compliance with those requirements.

³ Because the regulation permits issuance of a surface waste disposal facility permit only after a finding, among other requirements, that the applicant can comply with all applicable statutes and regulations, establishing compliance necessarily must be a precondition, and not a condition, to granting the application.

D. No Party Will Be Prejudiced by a Continuance.

To date this matter has not been prosecuted with any degree of urgency. C.K. Disposal, in particular, has not requested that a decision on its application be expedited. Neither C.K. Disposal nor any other party will be prejudiced by LES' requested approximately three-week delay of the evidentiary hearing. Indeed, even assuming that, due to conflicting agency obligations, it was necessary to postpone the hearing until after the 2017 sixty-day legislative session is completed in March, no party would be unduly prejudiced (and LES would not object to such further postponement).

E. Conclusion

A continuance is mandated because the notice of the January 9-11, 2017 hearing that has been given does not comply with 19.15.4.9 and .12 NMAC. In any event, LES requires a continuance to permit its expert witnesses to complete their investigations and otherwise properly prepare the case that it will present at the hearing. A continuance also is appropriate to permit the NMED to complete its review, and determination of any required air quality regulation, of C.K. Disposal's proposed facility. To date this matter has not been subject to any request or effort to expedite its resolution, and no party will be unduly prejudiced by a continuance. LES respectfully requests the OCC to vacate the January 9-11, 2017 hearing and reschedule the hearing for a date that is no earlier than February 1, 2017. LES further requests that the OCC schedule a pre-hearing conference for all of the parties that will participate in the hearing may participate and at which, among other issues to be discussed, a hearing date can be determined that will accommodate the schedules of all parties' and their witnesses.

Respectfully submitted:

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: 

Henry M. Bohnhoff

Cynthia A. Loehr

P.O. Box 1888

Albuquerque, New Mexico 87103

Telephone: (505) 765-5900

Hbohnhoff@rodey.com

CLoehr@rodey.com

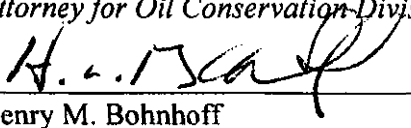
*Attorneys for Louisiana Energy Services, LLC,
d/b/a URENCO USA*

CERTIFICATE OF SERVICE:

We hereby certify that a copy of the foregoing pleading was e-mailed on December 21, 2016 to the following:

Michael L. Woodward
Wes McGuffey
Hance Scarborough, LLP
400 W. 5th Street, Suite 950
Austin, Texas 78701
Telephone: (512) 479-8888
mwoodward@hslawmail.com
wmcguffey@hslawmail.com
Attorneys for C.K. Disposal

David K. Brooks
Oil Conservation Division
1220 South St. Francis Dr.
Santa Fe, NM 87505
Telephone: (505)476-3440
DavidK.Brooks@state.nm.us
Attorney for Oil Conservation Division


Henry M. Bohnhoff



SUSANA MARTINEZ
GOVERNOR

JOHN A. SANCHEZ
LIEUTENANT GOVERNOR

New Mexico
ENVIRONMENT DEPARTMENT

525 Camino de los Marquez Suite 1
Santa Fe, NM 87505-1816
Phone (505) 476-4300
Fax (505) 476-4375
www.nmenv.state.nm.us



BUTCH TONGATE
CABINET SECRETARY DESIGNATE

JC BORREGO
DEPUTY SECRETARY

December 13, 2016

CERTIFIED MAIL NO. 7005 1820 0001 5773 6163

Bryce Karger
CK Disposal, LLC
5909 86th Street
Lubbock, Texas 79424

Re: Potential Applicability of Air Quality Permit or Notice of Intent (NOI) Requirements to the Proposed
C.K. Disposal E&P Landfill and Processing Facility

Dear Mr. Karger:

In November 2016, the New Mexico Environment Department (NMED) Air Quality Bureau (Bureau) was contacted by members of the public regarding whether the proposed referenced facility was subject to air quality requirements and, if so, whether it had submitted an air quality permit or NOI application to the Bureau. The Department has researched the above facility and determined NMED has not received any air quality permit or NOI application regarding this facility to date. The NMED regulates the emissions from oil and gas related facilities if the uncontrolled potential emission rate exceeds certain regulatory thresholds under the construction permitting and NOI regulation, 20.2.72 and 20.2.73 NMAC.

Based on the Department's understanding of the proposed facility process, the potential emission rate from the facility may exceed permitting thresholds under 20.2.72 NMAC or NOI thresholds under 20.2.73 NMAC. However, since the Department has not received air emission estimates and other technical information from the company necessary to make a conclusive determination, the Department cannot determine whether or not this facility would trigger any requirements under these regulations. Based on the above, the Department urges the applicant to request a formal determination regarding permit or NOI applicability from the Air Quality Bureau prior to constructing this source, as it is possible an air quality permit or, at a minimum, a NOI will be required prior to construction.

If you have any questions, please feel free to call me directly at 505-466-4338.

Elizabeth Bisbey-Kuehn
Minor Source Manager
Air Quality Bureau
New Mexico Environment Department

EXHIBIT 1