

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

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CASE NO. 15617

**APPLICATION OF CK DISPOSAL, LLC  
FOR A PERMIT TO OPERATE A COMMERCIAL  
SURFACE WASTE MANAGEMENT FACILITY,  
LEA COUNTY, NEW MEXICO**

**APPLICANT'S MOTION TO QUASH SUBPOENA OF ELIZABETH BISBEY-KUEHN**

COMES NOW, CK Disposal, LLC ("Applicant"), and files this Motion to Quash Subpoena of Elizabeth Bisbey-Kuehn, which was requested by Protestant URENCO ("Protestant" or "URENCO" or "LES") and requires her attendance and testimony at the hearing on the merits that is set to commence on February 8, 2017, in Santa Fe. Applicant moves to quash the referenced subpoena to keep the hearing focused on admissible matters relevant to permitting of the subject application, to maintain an efficient proceeding and to avoid wasting the time of the Commission and the parties, and to avoid undue burden that the addition of this witness (who is not related to the subject application or its review) would cause to both the witness and to the Applicant.

- I. The subpoena should be quashed because the evidence in the hearing is required to be relevant, not immaterial, repetitious or otherwise unreliable.**

Pursuant to NMAC 19.15.4.17, the Commission or division examiner may admit relevant evidence, unless it is immaterial, repetitious or otherwise unreliable. Protestant URENCO has requested a subpoena for Elizabeth Bisbey-Kuehn of the Air Quality Bureau of NMED. Ms. Bisbey-Kuehn has no connection to the subject application, nor to the agency's review of that application. Thus, her testimony is not relevant or material to the issue of whether this application meets the requirements for a permit. The subpoena should be quashed because Ms.

Bisbey-Kuehn was not responsible for any aspects of the responsible permitting agency's review of this application.

**II. The subpoena should be quashed because the Applicant, the Commission, and all parties have an interest in an efficient proceeding that will be completed in the allotted time.**

Applicant requests that the subject subpoena be quashed so that the hearing on the subject application can proceed efficiently and be completed in the three-day setting contemplated for this matter. The Applicant, the Commission, and the parties have an interest in an efficient hearing proceeding that focuses on relevant evidence and contested issues. To further an efficient hearing, Applicant has been attempting to work toward an agreement with Protestant URENCO to narrow the scope of hearing issues, as contemplated by NMAC 19.15.4.16(B). Applicant continues its attempts to reach an agreement, but an agreement has not yet been reached. Therefore, Applicant has filed a Motion to Limit the Scope of Hearing Issues on the same day as this Motion as a conservative measure and requested that it be considered at the prehearing conference on Monday, January 30, 2017.

To further promote an efficient hearing process, the subpoena for this witness should be quashed, because the witness does not have relevant and admissible evidence in accordance with NMAC 19.15.4.17. Protestant URENCO has requested and received one continuance of the hearing in this matter. The evidentiary hearing has been reset for February 8–10, 2017. To ensure that further delays are not caused, Applicant respectfully request that the subpoena be quashed.

**III. The subpoena should be quashed because it is unduly burdensome to Applicant and the person subpoenaed.**

The subpoena should be quashed because it is unduly burdensome to Applicant and to the person subpoenaed. It is unduly burdensome to the Applicant to allow substantial portions of the

limited 3-day hearing setting to be allocated to a witness that does not have relevant evidence to submit relating to whether the regulatory requirements for permit issuance are met. It is unduly burdensome to the person subpoenaed to be forced to attend and testify at a hearing in which the witness' testimony is not relevant to the inquiry of the hearing.

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully requests that the subpoena of Elizabeth Bisbey-Kuehn be quashed. Further, given that the hearing is less than two weeks away, Applicant further requests that this matter be considered at the prehearing conference on Monday, January 30, 2017.

Respectfully submitted,

**HANCE SCARBOROUGH, LLP**

/s/ Michael L. Woodward

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**CERTIFICATE OF SERVICE**

I hereby certify that the above pleading was served on the following parties by electronic mail on January 27, 2017.

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