

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 CONSOLIDATED REPLY TO PROTESTANT URENCO'S RESPONSE
TO APPLICANT'S MOTION TO LIMIT THE SCOPE OF HEARING ISSUES,
RESPONSE TO APPLICANT'S MOTION TO QUASH SUBPOENA OF ELIZABETH
BISBEY-KUEHN, AND RESPONSE TO APPLICANT'S MOTION TO QUASH
SUBPOENA OF JOE CARRILLO**

COMES NOW, CK Disposal, LLC ("Applicant"), and files this Consolidated Reply to Protestant URENCO's ("Protestant" or "LES") Response to Applicant's Motion to Limit the Scope of Hearing Issues, Response to Applicant's Motion to Quash Subpoena of Elizabeth Bisbey-Kuehn, and Response to Applicant's Motion to Quash Subpoena of Joe Carrillo. Applicant files this reply to promptly address specific and significant omissions of OCD rules and to highlight and challenge LES' inappropriate request that the agency examine and apply requirements that exceed its regulatory requirements.

I. PROTESTANT URENCO HAS OMITTED DISCUSSION OF TWO CONTROLLING RULE PROVISIONS THAT (1) SPECIFICALLY EXCLUDES IMMATERIAL EVIDENCE, AND (2) SPECIFICALLY CONTEMPLATES NARROWING OF ISSUES AT A PREHEARING CONFERENCE.

Yesterday, LES filed its Reply to Applicant's Motion to Limit the Scope of Hearing Issues arguing that the OCD should examine and apply requirements that exceed its applicable regulatory requirements. At the same time, LES filed its respective Responses to Applicant's Motions to Quash depositions of Joe Carrillo and Elizabeth Bisbey-Kuehn. In each of its Responses to Applicant's Motions to Quash, LES represents that:

“‘[s]ubject to other provisions of 19.15.4.16 NMAC, the commission ... shall afford full opportunity to the parties at an adjudicatory hearing before the commission ... to present evidence and to cross-examine witnesses.’ 19.15.4.17.A NMAC. (The ‘other provisions’ of 19.15.4.16 NMAC relate to subpoenas, *pre-hearing conferences* and hearings on motions [...]).”

See LES Response to Motion to Quash Subpoena for Ms. Bisbey-Kuehn at 3.

First, LES failed to acknowledge the remaining applicable language of 19.15.4.17.A NMAC, which mandates that relevant evidence may only be admitted if it is not immaterial. (“The commission or division examiner may admit relevant evidence, unless it is immaterial ...”). See 19.15.4.17.A NMAC. Thus, not only must the evidence be relevant, it must be material to the permitting determination.

Without directly stating it, LES appears to seek an erroneous determination that its unrelated witnesses and issues are material to the permitting determination. To this end, LES improperly requests that the OCD expand the inquiry and analysis beyond the scope of its regulations. See LES Response to Applicant’s Motion to Limit the Scope of Hearing Issues at 4 (“The second and third prongs require that the *OCD look beyond its own regulations* in issuing a permit, including whether the facility can be constructed and operated *in accordance with other agency permitting requirements*”). Indeed, LES requests that the scope of inquiry and analysis be expanded so far that it conflicts with the regulatory authority of other agencies (such as air permitting, transportation, etc.) and improperly makes decisions within those other agencies’ areas of expertise and regulatory jurisdiction.

Second, LES admits that 19.15.4.17.A NMAC is subject to the rules on pre-hearing conferences, but neglects to disclose the relevant regulatory language mandating that one purpose of the pre-hearing conference is to narrow issues. “The pre-hearing conference’s purpose shall be to narrow issues...” 19.15.4.16.B NMAC. Contrary to LES’ arguments, there

is specific authority and instruction in the rules that contemplates and encourages narrowing of issues.

II. CONCLUSION

The OCD rules do not allow immaterial evidence. It does not make sense and there is not legal justification to spend time or energy making inquiries and analysis into other agencies' areas of specialization. These other agencies have been, are, and will be performing their own relevant inquiries in accordance with applicable legal requirements, and it is inappropriate to presuppose, duplicate, or intrude upon their specialized analyses. The OCD rules contemplate narrowing of issues at a pre-hearing conference, and this case is the appropriate time to do so. Therefore, Applicant respectfully requests that each of its respective motions be granted.

Respectfully submitted,

HANCE SCARBOROUGH, LLP

/s/ Michael L. Woodward

Michael L. Woodward

Wesley P. McGuffey

NM State Bar No. 148103

400 West 15th Street, Suite 950

Austin, Texas 78701

Tel: 512.479.8888

Fax: 512.482.6891

CERTIFICATE OF SERVICE

I hereby certify that the above pleading was served on the following parties by electronic

mail on February 3, 2017.

David K. Brooks
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
Telephone (505) 476-3415
Facsimile (505) 476-3462
Email: davidk.brooks@state.nm.us

Attorney for Oil Conservation Division

Henry M. Bohnhoff
Cynthia A. Loehr
Rodey Law Firm
201 3rd Street NW, Suite 2200
Albuquerque, NM 87102
Phone (505) 768-7237
Fax (505) 768-7395
Email: hbohnhoff@rodey.com
Email: cloehr@rodey.com

*Attorneys for Louisiana Energy Services, LLC
dba URENCO USA*

/s/ Michael L. Woodward
Michael L. Woodward