

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

RECEIVED 000

2017 JAN 30 A 8:04

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 JOE CARRILLO**

COMES NOW, CK Disposal, LLC ("Applicant"), and files this Motion to Quash Subpoena of Joe Carrillo, which was requested by Protestant URENCO ("Protestant" or "URENCO" or "LES") and requires his 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 Joe Carrillo of Sundance Services, Inc. Mr. Carrillo has no connection to the subject application, nor to the agency's review of that application. Thus, his testimony is both irrelevant and immaterial. Additionally, Mr. Carrillo is associated with Sundance Services, Inc., an operator of an oil and gas waste disposal facility (the "Sundance Facility") that shares a

boundary with Protestant URENCO. Thus, as a competitor, his testimony is likely to be biased and therefore potentially unreliable.

Worthy of note, URENCO has previously raised arguments relating to “Sundance” facility in its comments on the subject application. These arguments do not appear to have any relevance to the permitting requirements for the subject application. URENCO has alleged that the Sundance facility does not present unnecessary new risks to URENCO, and that the Sundance facility has applied for a new facility permit for which URENCO knows of no new and unnecessary risks to the detriment of public health and safety. While these statements may attempt to explain URENCO’s failure to protest or oppose the Sundance facility operations that border URENCO, these statements are not issues that are relevant to this permitting matter. The statements have no bearing on whether the regulatory requirements for permit issuance have been met by CK Disposal. In its Motion to Limit Hearing Issues, Applicant has requested that these issues be excluded from the hearing because they are unnecessary, irrelevant, and a waste of limited hearing time.

The subpoena should be quashed because Mr. Carrillo has no connection to this application or its review, because he is associated with a competing oil and gas waste facility leading to increased potential for bias, and because URENCO has failed to raise issues relating to this witness that have a bearing on whether the subject application meets regulatory requirements.

**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. Further, on information and belief, Mr. Carrillo will be forced to travel more than 100 miles and be forced to forfeit time at work in order to attend the hearing.

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully requests that the subpoena of Joe Carrillo 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

Michael L. Woodward  
Wesley P. McGuffey  
NM State Bar No. 148103  
400 West 15<sup>th</sup> 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 January 27, 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](mailto:davidk.brooks@state.nm.us)

*Attorney for Oil Conservation Division*

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

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

/s/ Michael L. Woodward  
Michael L. Woodward