

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

L011 -15 f

CASE NO 15617

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

LOUISIANA ENERGY SERVICES, LLC'S MOTION TO STAY

Pursuant to 19 15 4 23(B) NMAC Louisiana Energy Services LLC (LES) respectfully requests that the Oil Conservation Commission stay its Order No R 14254 B issued on April 4 2017 ('Order) The Commission has already recognized that there are valid public concerns regarding the issuance of a permit for CK Disposal LLC (CK) to build a proposed oil field waste disposal facility (Facility) in Lea County New Mexico A stay of the Commission s Order will allow time for CK to obtain all necessary permits for the Facility including those for construction and will allow the Commission to review CK s revised hydrogen sulfide monitoring plan A stay will also allow appellate review of the public concerns associated with the Facility and a final determination or judgment of whether CK has legal access to the property where the Facility is proposed to be built LES requests that the Commission stay its Order until each of these necessary steps have been accomplished

The Commission may grant a stay of its own order if the stay is necessary to prevent waste protect correlative rights protect public health or the environment or prevent gross negative consequences to an affected party ' 19 15 4 23(B) NMAC A proposed stay order is attached to this Motion as Exhibit A LES requests a stay on the following grounds

1 A stay is necessary to protect public health and the environment

The Commission recognizes that *public concerns* regarding hydrogen sulfite [sic] gas emissions truck traffic and the tracking of liquid and solid waste from the facility onto public roadways *are valid concerns*. See 3/8/17 Tr. 459 attached hereto as Exhibit B (emphasis added). The Commission's approach is to address these concerns by requiring CK to obtain all necessary permits before it begins operations. (Order at 68) Several permits are required

First a New Mexico Department of Transportation (DOT) permit is necessary to protect the public from dangerous traffic conditions at the entrance to the Facility even as construction begins. See Statement of Michael L. Woodward 1/9/17 Tr. at 48 relevant portions attached hereto as Exhibit C (And before CK Disposal can turn one shovel of dirt out there they will have to go to the New Mexico Department of Transportation with engineering studies with traffic studies to get permission to build their driveway) (Order at 7 (off site traffic entering the facility [to] compl[y] with New Mexico Department of Transportation requirements))

Second an air quality permit may be necessary to protect the public and the environment from the emissions that will be discharged by the Facility. See 20.2.70 NMAC 20.2.72 NMAC (Louisiana Energy Services LLC's Final Argument Br. In Opp. To Application of C K Disposal LLC for Surface Waste Management Facility Lea County New Mexico and Tentative Decision to Issue Permit (LES Brief) at 27). Such permits are required prior to construction 20.2.72.200 E NMAC (For all sources subject to this part applications for permits shall be filed prior to the commencement of the construction modification or installation. Regardless of the anticipated commencement date no construction modification or installation shall begin prior to issuance of the permit.)

Third CK must also obtain a storm water permit from the EPA prior to construction See 2/17 Tr at 768 7 18 relevant portions attached as Exhibit D (notice of intent must be filed with EPA before contractor is even able to turn a blade of dirt)

Fourth as described in Section 3 below CK must also establish that it has a legal right to cross State land to begin construction In this sense a permit from the State Land Office is required

A stay will allow time to determine whether all of the required permits can be obtained A stay will ensure the required permits are in place for the protection of public health and the environment at the proper time which for at least some of the permits is before construction begins

A stay will also allow due process to the citizens who may oppose those permits For example interested parties may participate in permitting actions before the New Mexico Environment Department (NMED) See 20 1 2 207 NMAC 20 1 4 300 NMAC 20 1 5 7 NMAC Similarly the public is entitled to notice and the opportunity to comment on permits for storm water under the EPA s National Pollutant Discharge Elimination System (NPDES) See https://www.epa.gov/npdes/npdes_permit_basics Absent a stay there is no opportunity for the public to comment on the permits that are required before construction begins

The Commission has also required CK to produce a more comprehensive hydrogen sulfide monitoring plan before it begins operations at the Facility (Order at 6) A stay would allow time for the public and particularly LES to comment¹ on the new plan before it is reviewed by the Commission A stay would also allow the Commission to review and approve the new plan prior to operations Absent a stay CK could comply with the Commission s Order

¹ See 19 15 36 9 – 10 NMAC (2015) (public entitled to notice and opportunity to comment on application) (see also Order at 2 (Division Director found that there is significant public interest in CK Disposal LLC s application))

by simply submitting a new hydrogen sulfide monitoring plan on the day it begins operations there would be no opportunity for public comment or for the Commission to determine that the new plan is in fact more comprehensive

A stay is also necessary to protect the already recognized public concerns pending full review of the Commission's Order. A full review of the Commission's Order includes a request for a rehearing NMSA § 70-2-25(A), a request for a *de novo* hearing before the Secretary NMSA § 70-2-26 and an appeal to a district court NMSA §§ 70-2-25(B) & 39-3-1-1.

As demonstrated in the LES Brief, there are public health, safety, environmental protection and due process issues associated with the Commission's Order. The Commission has already recognized that some of these issues are valid public concerns. Ex. B 3/8/17 Tr. at 4. It would be unwise to allow construction and operation of the Facility to proceed before these valid public concerns have been addressed through the appellate process. A stay for an appellate review of the Order is necessary to protect the public health and environment.

2 A stay would prevent a waste of resources and the appearance of “prejudgment” by the Commission

Absent a stay, CK could begin construction of the Facility at any time². Allowing construction to proceed now would effectively be a prejudgment by the Commission that all permits needed for construction and operation *will be issued* and the revised hydrogen sulfide monitoring plan *will be considered sufficient and be approved* – whatever that revised plan says. These are matters of valid public concern. Ex. B 3/8/17 Tr. at 4, which should not be prejudged. A stay is necessary to demonstrate to the public and to other state and federal agencies that the permitting process is still open and is being fairly administered. The

² Although CK's lawyer has represented publicly that it will not begin construction until the other permits are obtained, see Section 4 below, there is nothing in the Commission's Order binding CK to that promise.

Commission has not predetermined that all permits will be issued and the revised hydrogen sulfide plan will be approved

A stay would also prevent a potential waste of resources by interested parties including the public and the State Land Office. If construction of the Facility begins before the necessary permits are obtained, the citizens of Eunice or Lea County may have to take legal action to enjoin construction pending issuance of the permits. If construction begins before a legal right of access to CK's property is established, LES and/or the State Land Office may have to take legal action to enjoin a trespass. A stay will prevent a waste of the considerable resources that would be expended in any such legal actions.

3 A stay is necessary to prevent gross negative consequences to an affected party

As demonstrated in the LES Brief, LES holds a lease on the State property that must be crossed by CK to build and operate the Facility (LES Br. at 17, LES Exs. L 1 & L 2). CK does not have an easement across the State property where it plans to access the Facility or at any other location (LES Br. at 19-26). LES's agreement with the State Land Office precludes any granting of an easement without LES consent, which it has not given (LES Exs. L 1 & L 2, LES Br. at 23-24).

A stay is necessary to prevent a trespass on LES's leasehold. NMSA 1978 § 19-6-3 (person, association or corporation entering, occupying or using State land without legal authority guilty of misdemeanor and subject to fine), 19-2-10-9 NMAC (Any use of trust lands for right of way or easement purposes prior to the grant of a right of way or easement as provided by this Part 10 shall constitute an unauthorized use of such lands and will be deemed a trespass). The Commission's Order does not provide the authority to cross the State land, only

the Commissioner of Public Lands may approve such use. See 19 2 10 9 NMAC (The use of trust lands for easement or right of way purposes if based upon any approval by any means other than as provided for in this Part 10 will likewise be deemed a trespass) The issue of access to CK s property must be resolved before construction of the Facility may begin

Indeed LES has a duty to stop the trespass contemplated by the Commission s Order. Every lessee of state lands shall protect the land leased by him from waste or trespass by unauthorized persons and failure so to do shall subject his lease to forfeiture and cancellation. NMSA 1978 § 19 6 5

A stay would allow LES time to obtain a determination from the State Land Office regarding whether CK has any right of access across LES s leasehold. See 19 2 15 8 A NMAC (contest proceeding before Commissioner of Public Lands requires prior agency determination) 19 2 15 9 A NMAC (right to contest agency determination). Absent a stay LES will suffer the gross negative consequence of a trespass by CK on its leasehold.

4 A stay will not prejudice CK

A stay will not prejudice CK because CK has conceded that it needs other permits to operate the Facility. Indeed CK has stated publicly that it will not begin construction until the other permits are obtained. At the January 9 2017 hearing counsel for CK made the following representation:

One thing that I did want to point out is that this is the first in a series of multiple regulatory agencies that CK Disposal will have to respond *to before they construct this facility*. And we ve heard concerns about the traffic. And *before CK Disposal can turn one shovel of dirt out there* they will have to go to the New Mexico Department of Transportation with engineering studies, with traffic studies *to get permission to build their driveway* and will have to work with the State of New Mexico to assure that there is no unreasonable risk of additional traffic accidents from their facility being there. So that s a next step for CK Disposal.

Additionally for air emissions CK Disposal will have to go to the New Mexico Environment Department with the proper engineering analysis to assure that this facility meets air quality standards of the State of New Mexico

Ex C 1/9/17 Tr at 48 (emphasis added) Thus there is no harm to CK in staying the Order while CK attempts to obtain the other required permits It has promised to wait for the permits anyway

For these reasons the Commission should issue a Stay Order in the form attached as Exhibit A

Respectfully submitted

RODEY DICKASON SLOAN AKIN & ROBB P A

By 

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CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing pleading was e mailed on April 6 2017 to the following

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By



Scott D Gordon

EXHIBIT A

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

CASE NO 15617

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

ORDER ON LOUISIANA ENERGY SERVICES, LLC'S MOTION TO STAY

THIS MATTER came before the Commission on Louisiana Energy Services LLC's Motion to Stay. The Commission finds that the Motion should be granted.

THEREFORE IT IS ORDERED that Commission Order No. R 14254 B is stayed. This stay shall remain in effect until (a) all appeals related to Order No. R 14254 B are final or withdrawn, (b) all permits required by Order No. R 14254 B are obtained by CK Disposal LLC, (c) a revised hydrogen sulfide monitoring plan has been approved by the Commission, and (d) there is a final unappealed declaratory judgment or unappealed determination by the Commissioner of Public Lands that CK Disposal LLC has a legal right of access to the land upon which the Facility is proposed to be built.

DATE _____

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

ROBERT BALCH Member

PATRICK PADILLA Member

DAVID R. CATANACH Chair

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4 IN THE MATTER OF THE HEARING CALLED
5 BY THE OIL CONSERVATION COMMISSION FOR
6 THE PURPOSE OF CONSIDERING
7 APPLICATION OF C K DISPOSAL, LLC CASE NO 15617
8 FOR PERMIT TO CONSTRUCT AND OPERATE
9 A COMMERCIAL SURFACE WASTE MANAGEMENT
10 FACILITY, PERMIT NO NM1-16, LEA
11 COUNTY, NEW MEXICO

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS
13 COMMISSION HEARING
14 RETURN TO OPEN SESSION AND DECISION OF THE COMMISSION
15 February 27, 2017
16 and
17 March 8, 2017
18 Santa Fe, New Mexico

19 BEFORE DAVID R CATANACH, CHAIRPERSON
20 PATRICK PADILLA, COMMISSIONER
21 DR ROBERT S BALCH, COMMISSIONER
22 CHERYL BADA, ESQ

23 This matter came on for hearing before the
24 New Mexico Oil Conservation Commission on Monday,
25 February 27 2017 and Wednesday, March 8, 2017, at the
New Mexico Energy, Minerals and Natural Resources
Department, Wendell Chino Building, 1220 South St
Francis Drive, Porter Hall, Room 102, Santa Fe, New
Mexico

26 REPORTED BY Mary C Hankins, CCR, RPR
27 New Mexico CCR #20
28 Paul Baca Professional Court Reporters
29 500 4th Street, Northwest, Suite 105
30 Albuquerque, New Mexico 87102

**PAUL BACA PROFESSIONAL COURT REPORTERS
500 FOURTH STREET NW - SUITE 105, ALBUQUERQUE NM 87102**

EXHIBIT B

1 I will ask the Commissioners to identify
2 themselves for the record, please

3 COMMISSIONER PADILLA Patrick Padilla,
4 designee of the New Mexico Commissioner of Public Lands

5 COMMISSIONER BALCH Dr Robert Balch,
6 designee of the Secretary of Minerals and Natural
7 Resources

8 CHAIRMAN CATANACH Thank you, gentlemen
9 Also present today is Ms Florene Davidson

10 This special meeting notice today was for
11 the purpose of announcing a decision in Case Number
12 15617, which was the application of C K Disposal, LLC
13 for a permit to operate a commercial surface waste
14 management facility in Lea County, New Mexico

15 A little bit of background This case was
16 initially heard on January 9th, 2017 in Eunice, New
17 Mexico to hear public comments on the proposed facility
18 The case was then continued to the OCC hearing held on
19 February 8th through the 10th, 2017 to hear the
20 technical portion of the case OCC deliberations were
21 conducted in executive session on February 27th

22 Upon review of the evidence and testimony
23 presented in Case Number 15617, the Oil Conservation has
24 determined that the Applicant -- the application has met
25 all the requirements for approval contained within

1 Division [sic] 19 15 36 NMAC Consequently, the
2 application of C K Disposal, LLC, in Case Number 15617,
3 with the conditions contained in the OCD's October 13th,
4 2016 draft permit will be approved

5 However, the Oil Conservation Commission
6 recognizes that public concerns regarding hydrogen
7 sulfite gas emissions, truck traffic and the tracking of
8 liquid and solid waste from the facility onto public
9 roadways are valid concerns Consequently, the

10 Commission will, as part of the permit for this
11 facility, require the following additional conditions of
12 approval

13 Number 1 A more comprehensive H2S
14 monitoring plan that includes monitoring of the site
15 boundaries will be required A plan detailing this
16 monitoring plan shall be submitted to the OCD prior to
17 commencement of operations Also, C K Disposal, LLC
18 will be required to submit the monitoring results to the
19 OCD monthly for the first two years of operation and
20 quarterly thereafter

21 Number 2 C K Disposal, LLC shall manage
22 the facility in such a manner that all truck traffic
23 disposing waste at the facility is accommodated on site,
24 and off-site truck traffic entering the facility shall
25 comply with DOT requirements,

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

NEW MEXICO OIL CONSERVATION COMMISSION HEARING

January 9, 2017
Eunice Community Center
1115 Avenue I
Eunice, New Mexico
8 07 a m

PURSUANT TO THE APPLICABLE RULES, this hearing was

REPORTED BY KIM KAY SHOLLENBARGER, RPR, CCR #236
PAUL BACA PROFESSIONAL COURT REPORTERS
500 4th STREET NORTHWEST, SUITE 105
ALBUQUERQUE, NEW MEXICO 87102

**PAUL BACA PROFESSIONAL COURT REPORTERS
500 FOURTH STREET NW - SUITE 105, ALBUQUERQUE, NM 87102**

EXHIBIT C

1 MR WOODWARD Representative Scott, would you
2 mind if I followed up just a little bit One thing that
3 I did want to point out is that this is the first in a
4 series of multiple regulatory agencies that CK Disposal
5 will have to respond to before they construct this
6 facility And we've heard concerns about the traffic

7 And before CK Disposal can turn one shovel of dirt out
8 there they will have to go to the New Mexico Department
9 of Transportation with engineering studies, with traffic
10 studies, to get permission to build their driveway, and

11 will have to work with the State of New Mexico to assure
12 that there is no unreasonable risk of additional traffic
13 accidents from their facility being there So that's a
14 next step for CK Disposal

15 Additionally, for the air emissions, CK
16 Disposal will have to go to the New Mexico Environment
17 Department with the proper engineering analysis to assure
18 that this facility meets air quality standards of the
19 State of New Mexico So CK's committed to complying with
20 all necessary laws and regulations, required regulations
21 And as exhibited in this application, go beyond the
22 minimum They want to put in a first-class facility that
23 meets the regulations and complies with the standards of
24 both for air quality, water quality, traffic safety, and
25 be a good neighbor They want to be part of this

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

3 CASE NO 15617

4 IN THE MATTER OF APPLICATION
OF C K DISPOSAL, LLC, FOR PERMIT
5 TO CONSTRUCT AND OPERATE A
COMMERCIAL SURFACE WASTE
6 MANAGEMENT FACILITY, PERMIT
NO NM1-16

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10 FEBRUARY 10, 2017

11 VOLUME 3

12 PAGES 546 - 782

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17 BEFORE DAVID CATANACH, CHAIRMAN
PATRICK PADILLA, COMMISSIONER
18 DR ROBERT BALCH, COMMISSION

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EXHIBIT D

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1 Q If we get a real gully washer and there
2 potentially is some kind of damage to these wiers,
3 is there any requirement to repair them?

4 A Yeah They will be required to go in and
5 replace that

6 Q As soon as practically possible, isn't it?

7 A As soon as practically possible You
8 know, part of that, too, is going to be governed by
9 their storm water permit that they are going to have
10 to get through EPA Region 6, which Mr Bohannan
11 mentioned yesterday That is a fact That will
12 have to actually have a couple of permits One will
13 be a permit to operate the facility, the other will
14 have to be obtained by their construction
15 contractor Before he is even able to turn a blade
16 of dirt he has to get his notice of intent filed
17 with the EPA He has to have storm water controls
18 constructed during construction And likewise a lot

19 of those controls will remain during the life of the
20 landfill to prevent erosion You know, this
21 facility is -- you know, this is a higher level of a
22 facility than what has been constructed before and
23 so it will be maintained at a higher level

24 Q That would include maintenance of roads?

25 A Yes