

Davidson, Florene, EMNRD

From: Toni M. Harris [tharris@mstLAW.com]
Sent: Friday, July 08, 2011 4:35 PM
To: Davidson, Florene, EMNRD
Cc: omundsdry@hollandhart.com; Swazo, Sonny, EMNRD; Gerholt, Gabrielle, EMNRD; Bada, Cheryl, EMNRD; Tom Bunting; Rick L. Alvidrez; Karen S. Williams
Subject: Application of Duke Energy Field Services, LP for an Acid Gas Injection Well, Lea County, NM, Case No. 13589
Attachments: The Smiths' Pre-Hearing Statement.pdf

Ms. Davidson,

Attached please find for filing The Smiths' Pre-Hearing Statement in this matter.

Thank you for your assistance in this regard.

Toni M. Harris
Assistant to Attorney Tom Bunting
Miller Stratvert P.A.
(505) 842-1950

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

APPLICATION OF DUKE ENERGY FIELD
SERVICES, LP FOR AN ACID GAS INJECTION
WELL, LEA COUNTY, NEW MEXICO.

CASE NO. 13589

THE SMITHS' PRE-HEARING STATEMENT

Randy Smith, Naomi Smith, and the Smith Farm and Ranch (collectively the "Smiths") hereby present the Commission with their pre-hearing statement for the hearing on the Motion to Amend Order No. R-12546 ("Motion") filed by DCP Midstream, LP ("DCP"). The Smiths oppose DCP's Motion because DCP has not proven it can safely and reliably operate the Linam Ranch AGI well under the conditions it proposes.

Statement of the Case

DCP filed its complete Motion on June 13, 2011. The Motion requests an order from the Commission amending Order No. R-12546-D to allow DCP to remove the maximum injection rate for its Linam Ranch AGI facility in Lea County, New Mexico, which is currently 4MMcfd. DCP's Motion also requests, as an alternative or in addition to removing the injection limitation, that the Commission waive Paragraph "N" of Order R-12546. Paragraph N mandates that, "[p]rior to commencing injection," DCP obtain an appropriate modification to its Linam Ranch Water Quality Act discharge permit to authorize the injection. The Commission has stayed the conditions of Paragraph N in a series of Orders, ending with Order No. R-12546-G in which a stay of indeterminate length was entered on July 19, 2010.

The Environmental Bureau of the Division has apparently informed DCP that it no longer needs a discharge permit under the Water Quality Act to operate the injection facility.

The Commission set a hearing on the Motion for July 14, 2011. The Smiths filed a Response requesting, among other things, a continuance of the hearing until such time that the parties could conduct discovery on the technical issues involved in the Motion. DCP filed a Response opposing any continuance. By order dated July 5, 2011, the Commission denied the Smiths' request and ordered that the hearing would proceed as scheduled.

On July 5, 2011, the Smiths served their first Set of Interrogatories and Requests for Production on DCP's counsel. Those requests are pending.

Reasons for Opposition

The Smiths oppose the Motion because DCP has not presented evidence that it can safely inject increased (and potentially unlimited) amounts of acid gas. In fact, the Linam Ranch AGI well's operating history suggests that DCP cannot even safely and reliably operate it under the current volume limitations. This poses a potentially grave problem for the environment and for the health of nearby humans and wildlife.

Condition 3 of Order R-12546-D limits the injection volume to the current 4MMcfd, and requires step-rate tests "to demonstrate that these rates and pressures will not result in formation damage." This suggests that the volume limitation was, at least in part, based on questions of whether or not it is safe to increase injection rates. The results of the required step-rate tests, if DCP has performed any as Order R-12546-D required, are not available on the Division's web site and the Smiths have therefore requested them through discovery. Until the Smiths and the Commission can evaluate these data, it is doubtful that any ruling regarding increasing volume limitations would be based on adequate evidence.

DCP has not complied with Paragraph "O" of Order R-12546, which required it to install an audible alarm in the Smiths' home to alert occupants of H₂S releases. This failure has always

posed a health risk to the Smiths because, as Mr. Smith will testify, the AGI facility has had many operational difficulties and has at times vented acid gas into the atmosphere unflared. That risk will become even greater if DCP is allowed to inject more acid gas each day; it is highly unlikely that the facility's difficulties will decrease as it is taxed with higher volumes of gas. To be fair, Mr. Smith indicated that he did not want to have to live with an alarm in his house. This likely caused DCP to drop the issue, because it has made no efforts to install the alarm or explore alternative forms of warning. However, the issue remains a condition of DCP's operation of the facility and it has not sought to remove or modify Paragraph O. The Smiths therefore believe that, at the very least, the Commission should require DCP to revisit its H₂S contingency plan as it relates to warnings.

Witnesses

Randy Smith will testify at the hearing. Mr. Smith plans to share his personal experiences with the spotty operational record of the facility. He will testify to the effects the facility has on his family's life and their farming and ranching operations. He will also testify regarding DCP's failure to comply with the Commission's Order and its own H₂S contingency plan by not installing an alarm system in his home.

Contrary to DCP's assertion in its Reply that Mr. Smith is attempting to take "another bite at the apple," he does not wish to rehash his prior testimony or revisit issues the Commission has already heard and ruled upon. However, he does have the right to testify regarding how the well has operated since it commenced injection – the March 13, 2006 hearing took place before the facility became operational and much has happened since then.

Exhibits

As stated in the Smiths' request for continuance, this Motion involves questions of a highly technical nature. Because they have not had time to conduct discovery they have no technical evidence to present that is not already part of the record. They attach hereto, unnumbered, two photographs of the injection facility as possible exhibits.

Conclusion

The Smiths look forward to presenting their case at the hearing.

Respectfully submitted,

MILLER STRATVERT P.A.

By: 
RICHARD L. ALVIDREZ
THOMAS J. BUNTING
Attorneys for Randy Smith, Naomi Smith,
and the Smith Farm and Ranch
P. O. Box 25687
Albuquerque, NM 87125
Phone: (505) 842-1950
Fax: (505) 243-4408

I HEREBY CERTIFY that a true and correct copy of the foregoing was transmitted to the following counsel of record via email on this the 8th day of July, 2011:

Ocean Munds-Dry, Esq.
Holland & Hart, LLP
Attorney for DCP Midstream, LP
P. O. Box 2208
Santa Fe, NM 87504-2208

Sonny Swazo, Esq.
Gabiëlle Gerholt, Esq.
New Mexico Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87504

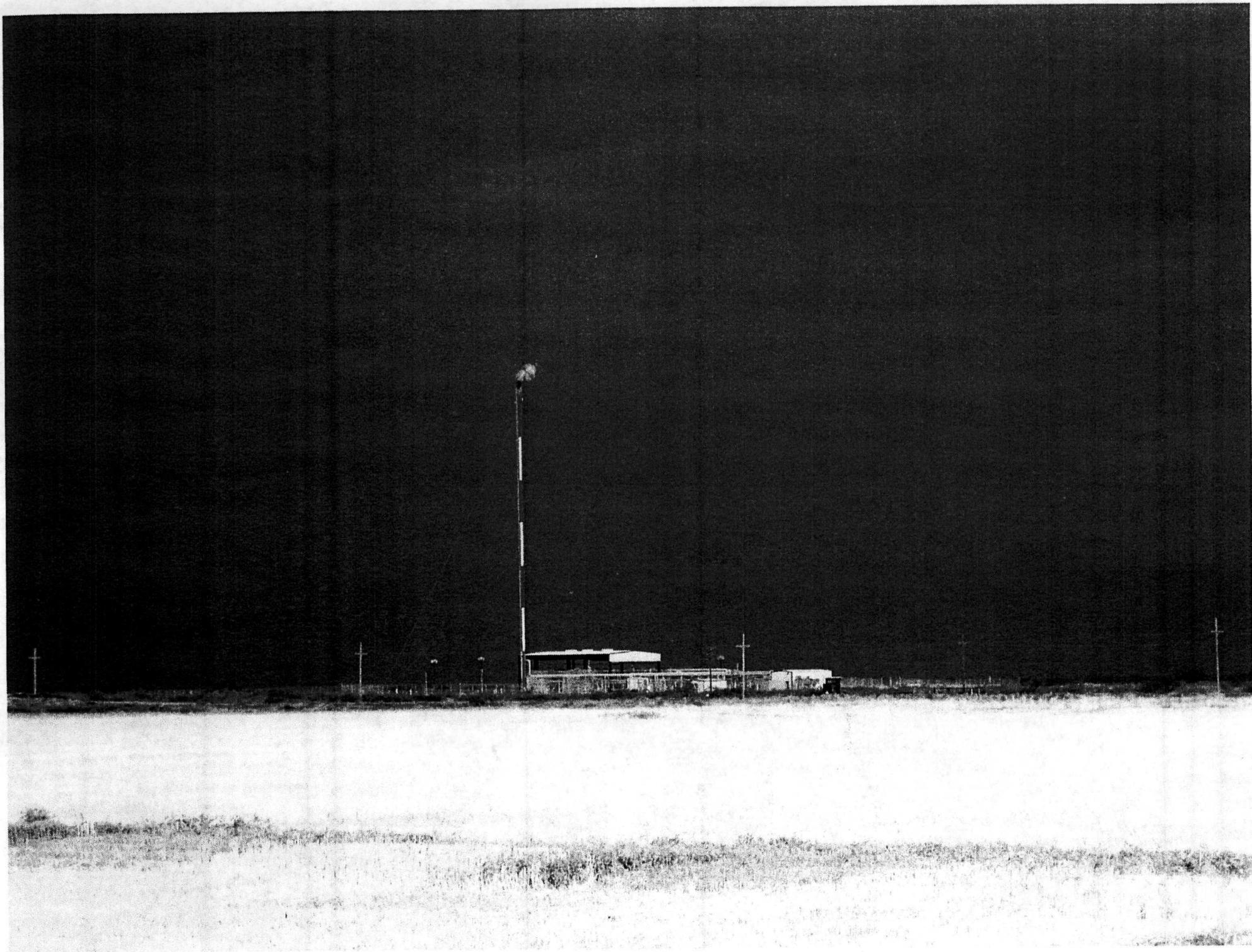
Cheryl Bada, Esq.
New Mexico Oil Conservation Commission
1220 S. St. Francis Drive
Santa Fe, NM 87504



RICHARD L. ALVIDREZ
THOMAS J. BUNTING

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Davidson, Florene, EMNRD

From: Toni M. Harris [tharris@mstLAW.com]
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Attachments: Additional Exhibit.pdf

Ms. Davidson,

Please accept for filing in the above-referenced matter the attached photograph as a third exhibit to be attached to The Smiths' Pre-Hearing Statement which was previously emailed to you today for filing in this matter.

Thank you for your assistance in this regard.

Toni M. Harris
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