

RECEIVED  
STATE OF NEW MEXICO  
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION  
DEC 28 A 11: 36

CASE NO. 15617

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

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DEC 28 A 11: 36

**APPLICANT'S RESPONSE TO PROTESTANT URENCO'S MOTION FOR CONTINUANCE**

COMES NOW, CK Disposal, LLC ("Applicant"), and files this Response to URENCO's ("URENCO" or "LES") Motion for Continuance of the hearing on the referenced Application of CK Disposal, LLC currently set for January 9-11, 2017.

**I. INTRODUCTION AND SUMMARY**

Applicant generally accepts URENCO's description of the background of this matter in the Motion for Continuance, but disputes the characterization that the matter has "progressed without any apparent or claimed urgency" thus no party will be prejudiced by the requested delay. Applicant has invested hundreds of thousands of dollars preparing the application that is the subject of this proceeding, and at substantial cost has worked through the administrative and technical review of the application in as diligent a manner as possible. Delay of the hearing on this matter would delay the ultimate decision on whether to approve the application and grant the permit, thus would further delay the prospect of obtaining any return on capital invested into the project. Simply put, time is money, and delay would cause prejudice to the Applicant by requiring Applicant to expend additional money than has already been expended on the project, while simultaneously delaying the Applicant's potential to obtain a return on its investment.

Applicant objects to any unnecessary delay in the evidentiary hearing and decision whether to approve the subject application. URENCO admits in its Motion for Continuance that it has been aware of this application since before June of 2016, when it filed extensive technical comments objecting to the proposed facility. URENCO also received notice of the Oil Conservation Division's ("OCD") tentative decision to approve the application in October, 2016, and subsequently filed a request for hearing. Thus, URENCO cannot claim surprise that an evidentiary hearing is now scheduled.

## **II. RESPONSE**

Notice of hearing has been properly issued by the Oil Conservation Commission ("OCC"). Proper web posting, proper mailed notice, and proper newspaper published notice has occurred per 19.15.4.9(B) NMAC. URENCO admits in its Motion for Continuance that the hearing notice was published online on December 20, 2016, and that newspaper notice was published in a Hobbs newspaper on December 16, 2016. URENCO's argument that it did not *receive* the mailed notice by December 20, 2016 ignores the general "mailbox rule" that deposit of an item in the mail constitutes delivery completion, and also ignores the fact that URENCO received notices online and through the newspaper.

URENCO's additional claims that Applicant is required to mail or publish duplicative notices of hearing are also in error, because no further notice is required beyond the notice of application and notice of hearing discussed above. *See* 19.15.4.12(E) NMAC ("In the case of an administrative application where the required notice was sent and a timely protest was made, the division shall notify the applicant and the protesting party in writing that the case has been set for hearing and the hearing's date, time and place. No further notice is required.") This matter involves an administrative application in which the required notice was sent and a timely protest was made.

The division has notified the applicant and protestants in writing that a hearing has been set for a certain date, time and place. Therefore, no further notice is required under the express terms of 19.15.4.12(E) NMAC, and URENCO's claim that 19.15.4.12(B) NMAC requires additional notice is in error.

Accordingly, sufficient notice has been issued to convene the subject hearing on January 9, 2016 in Eunice. However, as suggested below, Applicant is agreeable to a one-month continuance in order to facilitate holding the hearing on the merits in Santa Fe, rather than Eunice.

### **III. SUGGESTED PATH FORWARD**

Applicant is agreeable to a continuance of one month or less if the evidentiary hearing is moved to Santa Fe. Accordingly, Applicant respectfully suggests OCC issue new notice of public hearing and convene the public hearing in Santa Fe on or before February 6. A hearing in Santa Fe rather than in Eunice, will provide a more convenient forum for the parties involved in the evidentiary hearing, most notably for the members of the OCC and the staff of the OCD who have their principal offices in Santa Fe.

Applicant respectfully concurs with the URENCO's Motion for Continuance on the condition that the hearing be rescheduled to begin no later than February 6, 2016 in Santa Fe. Alternatively, should the OCC determine that it is not in favor of holding the hearing in Santa Fe prior to February 6, 2016, Applicant respectfully requests that Protestant URENCO's Motion for Continuance be denied outright.

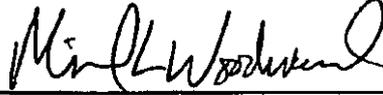
### **IV. CONCLUSION**

Sufficient notice has occurred to convene the public hearing on Case No. 15617, Application of CK Disposal, LLC for a Commercial Surface Waste Management Facility Permit in Lea County, New Mexico. In an effort to accommodate the parties, Applicant respectfully

agrees to a one-month continuance on the condition that the public hearing be convened in Santa Fe, New Mexico no later than February 6, 2016. Alternatively, Applicant would request that Protestant URENCO's Motion for Continuance be denied.

Respectfully submitted,

**HANCE SCARBOROUGH, LLP**



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**CERTIFICATE OF SERVICE**

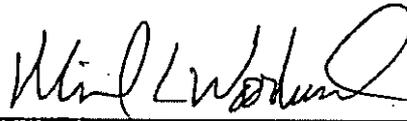
I hereby certify that the above pleading was served on the following parties by electronic mail on December 28, 2016.

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