

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

LOUISIANA ENERGY SERVICES, LLC'S RESPONSE TO
CK DISPOSAL, LLC'S MOTION TO QUASH SUBPOENA OF JOE CARRILLO

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CK Disposal, LLC's ("CK's"), Motion to Quash Subpoena of Joe Carrillo ("Motion") is baseless and should be denied. CK contends that Carrillo's testimony is irrelevant, burdensome and biased. To the contrary, his testimony will be directly relevant to facts that CK must prove to meet its burden of proof. LES is entitled under the OCC's rules to solicit and present the testimony.

A. CK's Motion Would Be Premature At Best.

At this point, CK has no idea what testimony LES will elicit from Mr. Carrillo. No pre-filed testimony has been ordered by the Oil Conservation Commission ("OCC"). No other disclosure of non-expert testimony is required, see 19.15.4.13.B.1 NMAC (pre-hearing statement requirements), and none has been provided by any of the parties. CK is simply speculating about Mr. Carrillo's testimony.

The obvious initial consideration in determining whether testimony should be excluded on grounds of relevance is what testimony the witness will give. Only then can a determination of relevance be made. *See* NMRA 11-401 (evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in

determining the action); *see also* 19.15.4.17.A NMAC (OCC may use rules of evidence as guidance in conducting adjudicatory hearings). Thus, CK cannot possibly argue relevance until it knows what Mr. Carrillo will testify about. Similarly the OCC cannot possibly evaluate relevance (much less weigh that relevance against countervailing considerations of prejudice, confusion or delay, *see* NMRA Rule 11-403) until it hears the direct examination.

B. Mr. Carrillo's Testimony Will Be Relevant. CK's Claims of Bias and Undue Burden Are Frivolous.

CK claims that the witness "has no connection to the subject application, or to the agency's review of that application," (Mot. at 1), but even if true that would be beside the point. Before the OCD can approve CK's application and grant a permit for its proposed oil field waste disposal facility, the OCC must find that the facility "can be constructed and operated in compliance with applicable statutes and rules and without endangering fresh water, public health, safety or the environment." 19.15.36.12.A.1 NMAC (emphasis added). Mr. Carrillo is the manager of Sundance Services, Inc.'s oilfield waste disposal facility, the Parabo Disposal Facility, near CK's proposed facility. He will testify, on the basis of first-hand, on-the-ground knowledge, regarding public health, traffic safety and environmental issues that arise in connection with operation of such a facility.¹ Thus, the focus of his testimony is on issues that clearly are germane to the findings that the OCD must make according to its own regulation before it can issue a permit for the proposed facility. Because CK does not know what Mr. Carrillo will testify about, it has no basis for making the claim, but in any event it is simply untrue that LES "has failed to raise issues relating to this witness that have a bearing on whether the subject application meets regulatory requirements." (Mot at 2.) And, because his testimony

¹ CK's stated concern that Mr. Carrillo will testify about the pending oil field waste disposal facility filed by a Sundance Services, Inc. affiliate, is unsupported. If the issue arises during LES' direct examination, it will be only tangentially.

relates directly to findings the OCD is obligated to make in order to issue a permit, it does not matter that Mr. Carrillo was not part of the OCD's review of the application.

CK also claims that Mr. Carrillo is biased, because he works for one of its competitors. CK's counsel is free to explore Mr. Carrillo's credibility on cross-examination, but as a basis for excluding testimony, at least in this jurisdiction, the point is silly. LES assumes that CK is not proposing that any of its principals, employees or contractors are similarly barred from testifying because they are biased. Bias may be a basis for impeaching a witness, but not for barring him from testifying. CK offers no authority to the contrary.

CK claims that the subpoena should be quashed because it is burdensome to the witness. (Mot. at 3.) CK's expression of concern for the welfare of its competitor's management is suspect, but in any event CK does not have standing to object to a third party witness subpoena on grounds of burden to the witness. (The witness himself has not complained of burden.) Moreover, there is no undue burden: the witness will be compensated for mileage and per diem as required by court rules. *See* NMRA Rule 1-045.

C. **LES Is Entitled to Use the OCC's Subpoena Authority and to a Full Opportunity to Present Its Case.**

The OCC subpoena authority is set forth in OCD regulations and LES is entitled to use it. 19.15.4.16.A NMAC states: "The director or the director's authorized representative shall issue a subpoena for attendance at a hearing upon a party's written request." Furthermore, "[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 and thus, given compliance by

LES, do not diminish LES' right to a full opportunity to utilize the OCC's subpoena power, to present its case.)

CK claims that the subpoena should be quashed because it is unduly burdensome to CK and the hearing would be more "efficient" without Mr. Carrillo's testimony. (See Mot. at 2-3.) CK presumably will not like any of the evidence that LES will present at next week's hearing and views all of it as burdensome, but that consideration has never been recognized as a basis for barring, whether in a judicial or an administrative adjudicatory hearing, an opposing party's from presenting its case. CK certainly does not offer any legal authority for its efficiency argument. LES is entitled to a full opportunity to present its case. CK's motion to bar Mr. Carrillo from testifying should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE:

We hereby certify that a copy of the foregoing pleading was e-mailed on February 2, 2017, to the following:

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