

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

IN THE MATTER OF APPLICATION
OF C.K. DISPOSAL, LLC, FOR PERMIT
TO CONSTRUCT AND OPERATE A
COMMERCIAL SURFACE WASTE
MANAGEMENT FACILITY, PERMIT
NO. NM1-61

CASE NO. 15617

SUBPOENA DUCES TECUM ¹

- FOR APPEARANCE OF PERSON FOR SPECIAL MEETING AND PUBLIC HEARING
 TO PRODUCE DOCUMENTS OR OBJECTS
 FOR INSPECTION OF PREMISES OF A PARTY²

TO: Elizabeth Bisbey-Kuehn
Minor Source Manager
Air Quality Bureau
New Mexico Environment Department
525 Camino del los Marquez, Suite 1
Santa Fe, New Mexico 87505

YOU ARE HEREBY COMMANDED APPEAR as follows:

Place: Oil Conservation Commission
Porter Hall, Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Date: Wednesday, February 8 - 10, 2017 TIME: 9:00 a.m.

testify at Public Hearing

A check in the amount of \$95 witness.

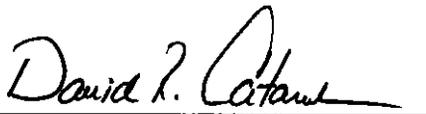
YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

please produce the documents identified on Exhibit A hereto.

IF YOU DO NOT COMPLY WITH THIS SUBPOENA you may be held in contempt of court and punished by fine or imprisonment.

Note: Please contact Jill Medford at (505) 768-7358 for the specific day and time you will be needed to appear.

Date: 1/20/17


Oil Conservation Director or Authorized Representative

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY⁴

I certify that on the _____ day of _____, 201__, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$ _____.

Deputy Sheriff

RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE⁴

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the _____ day of _____, 201__, in _____ County, I served this subpoena on _____ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$ _____.

Person making service

SUBSCRIBED AND SWORN to before me on _____, 201__.

My commission expires:

Notary Public

THIS SUBPOENA issued by or at request of:
Henry M. Bohnhoff
Rodey, Dickason, Sloan, Akin & Robb, P.A.
Post Office Box 1888
Albuquerque, New Mexico 87103
Telephone: 505-766-7545

CERTIFICATE OF SERVICE BY ATTORNEY⁴

CERTIFICATE OF SERVICE:

We hereby certify that a copy of the foregoing pleading was e-mailed on

_____ to the following:

Michael L. Woodward
Wes McGuffey
Hance Scarborough, LLP
400 W. 5th Street, Suite 950
Austin, Texas 78701
Telephone: (512) 479-8888
mwoodward@hslawmail.com
wmcguffey@hslawmail.com
Attorneys for C.K. Disposal

David K. Brooks
Oil Conservation Division
1220 South St. Francis Dr.
Santa Fe, NM 87505
Telephone: (505)476-3440
DavidK.Brooks@state.nm.us
Attorney for Oil Conservation Division

_____ Henry M. Bohnhoff

TO BE PRINTED ON EACH SUBPOENA

1. If a person's attendance is commanded, one full day's per diem must be tendered with the subpoena.
2. If a person is ordered to produce books, documents, or tangible things in the person's possession for a hearing or trial, the person, unless ordered to personally appear, may have a custodian of the books, documents or tangible things to the hearing or trial produce them for trial. If a party is ordered to permit the inspection of the party's premises before trial, the party need not appear in person at the time of the inspection.
3. The judge or clerk may issue a pro se party a subpoena duces tecum ordering the production of books, documents or tangible things for trial only if the subpoena is completed prior to issuance by the court. See Rules 2-502 and 3-502 NMRA.
4. A copy of the subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (1) fails to allow reasonable time for compliance;
- (2) requires a person who is not a party or an officer of a party to travel outside the county in which the person resides or is employed or regularly transacts business in person, except as provided below, such a person may in order to attend a hearing or trial be commanded to travel from any place within the county in which the hearing or trial is held, or
- (3) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (4) subjects a person to undue burden.

If a subpoena

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

DUTIES IN RESPONDING TO SUBPOENA

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[Approved, effective May 1, 2002; as amended, effective January 20, 2005.]

COMPILER'S ANNOTATIONS

Effective dates.— Pursuant to a court order dated March 22, 2002, this form is effective May 1, 2002.

The 2004 amendment, effective January 20, 2005, substituted "statutory" for "\$75.00" and deleted "as provided by law" following "mileage" under the headings "RETURN FOR COMPLETION BY SHERIFF OR DEPUTY" and "RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE."

Statutory witness fee.— Section 38-6-4 NMSA 1978 provides for the payment of witness fees at the rate set forth in the Per Diem and Mileage Act for "nonsalaried public officers". Section 10-8-4 NMSA 1978 of the Per Diem and Mileage Act provides for per diem and mileage for nonsalaried public officers in the amount of \$95.00 for each meeting attended.