

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

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

**CASE NO. 15617
ORDER NO. R-14254-B**

ORDER OF THE COMMISSION

BY THE COMMISSION:

This matter came on for hearing on January 9, 2017, in Eunice, New Mexico and on February 8, 9, and 10, 2017, in Santa Fe, New Mexico, before the Oil Conservation Commission (Commission).

NOW, on this 4th day of April, 2017, the Commission, having considered the public comments, testimony, and the record,

FINDS THAT:

1. On November 6, 2015, CK Disposal, LLC (Applicant) submitted a draft application to the Oil Conservation Division (Division) for a permit to construct and operate a commercial surface waste management facility in Lea County, New Mexico pursuant to 19.15.36 NMAC.
2. The proposed facility is located .05 miles south of State Highway 234, approximately 4.16 miles southeast of Eunice, New Mexico.
3. The proposed facility will consist of a 141.5-acre landfill area and a 51.7-acre liquid processing area.
4. On May 1, 2016, the Applicant formally submitted its application for review.
5. On May 4, 2016, the Division declared the application administratively complete.
6. On October 13, 2016, the Division issued its tentative decision to grant the permit with conditions pursuant to 19.15.36.9(D) NMAC.

7. On October 25, 2016, Applicant published notice of the Division's tentative decision pursuant to 19.15.36.9(E) NMAC, and on October 26, 2016, Applicant mailed notice by certified mail to the parties requesting notification of applications generally, or of the particular application including persons who had filed comments on the application during the initial public comment period, pursuant to 19.15.36.9(E)(2) NMAC.

8. On November 22, 2016, Louisiana Energy Services, LLC, d/b/a URENCO USA (LES), which operates a uranium enrichment facility to the north of Applicant's proposed commercial surface waste management facility, filed a request for hearing pursuant to 19.15.36.10(A) NMAC. In addition, several legislators requested that the Commission schedule a hearing.

9. Pursuant to 19.15.36.10(A)(2) NMAC, the Division Director may schedule a hearing if he determines that there is significant public interest in the application. The Division Director found that there is significant public interest in CK Disposal, LLC's application.

10. Pursuant to NMSA 1978, Section 70-2-6(B) and 19.15.4.20(B) NMAC, a hearing may be held before the Commission if the Division Director, in his discretion, determines that the Commission shall hear the matter. The Division Director determined that the Commission should hear this matter.

11. On December 13, 2016, the Division Director issued an order scheduling the hearing to be held in Eunice, New Mexico beginning on January 9, 2017.

12. On December 16, 2016, the Division published notice of the hearing in the Hobbs News-Sun. The Division also posted notice on its website.

13. On December 21, 2016, LES filed a motion requesting the hearing be continued.

14. On December 28, 2016, the Applicant filed a response to the motion for continuance.

15. On December 29, 2016, LES filed a reply in support of its motion for continuance.

16. On January 3, 2017, the Commission issued an order scheduling the hearing beginning on January 9, 2017 in Eunice, New Mexico to accept public comments and scheduling the technical testimony beginning on February 8, 2017 in Santa Fe, New Mexico.

17. On January 9, 2017, in Eunice, New Mexico, the Commission accepted public comments regarding CK Disposal, LLC's application.

18. The public has voiced concerns regarding hydrogen sulfide gas emissions, impacts to economic development, truck traffic, and the tracking of liquid and solid waste from the facility onto public roadways.

19. On February 8, 9, and 10, 2017, in Santa Fe, the Applicant presented technical evidence and testimony in support of the application, and LES presented technical testimony and evidence in opposition to the application. The Commission also accepted statements at the hearing from Senator Carroll H. Leavell, Senator Gay G. Kernan, and Representative David M. Gallegos, all who expressed opposition to the application.

20. 19.15.36.12(A)(1) provides that:

The division may issue an permit for a new surface waste management facility or major modification upon finding that an acceptable application has been filed, that the conditions of 19.15.36.9 NMAC and 19.15.36.11 NMAC have been met and that the surface waste management facility or modification can be constructed and operated in compliance with applicable statutes and rules and without endangering fresh water, public health, safety or the environment.

21. The application meets or exceeds the geologic and siting requirements in 19.15.36 NMAC.

a. There is no ground water within 100 feet below the lowest elevation where oil field waste will be placed.

b. The proposed facility is not located: (1) within 200 feet of a watercourse, lakebed, sinkhole, or playa lake; (2) within an existing wellhead protection area or 100-year floodplain; (3) within, or within 500 feet of, a wetland; (4) within the area overlying a subsurface mine; (5) within 500 feet from the nearest permanent residence, school, hospital, institution, or church in existence at the time of initial application; (6) within an unstable area; and (7) the proposed facility does not exceed 500 acres.

22. The proposed facility is located above the Chinle formation, which is a low permeability type of sediment and a barrier to downward migration to ground water.

23. The proposed location is uniquely situated so the Rattlesnake Ridge, a sub-surface geologic feature, allows the Ogallala Formation, which overlies the Chinle Formation, to be structurally high so the Ogallala Formation is not saturated.

24. Because there is not a zone of saturation for a considerable depth beneath the proposed location, Applicant proposed to use vadose zone monitoring for the

proposed facility. Such monitoring is more protective than direct ground water monitoring.

25. The vadose zone monitoring plan is sufficient to protect all fresh water formations including the deep underlying fresh water formations and the fresh water in the Ogallala aquifer, which is located approximately one-half mile west of the facility's proposed location.

26. The geologic characteristics of the proposed location and the proposed vadose zone monitoring and sampling plan are protective of fresh water resources.

27. The landfill design meets or exceeds the requirements in 19.15.36 NMAC.

a. The liner design consists of a dual liner system with leak detection and leachate collection consisting of six inches of recompacted soil to provide a stable base for the liner system, a geosynthetic clay liner, a 60-mil HDPE liner, a geonet on the floor, and a geocomposite on the side slopes to act as a leak detection layer, and an additional 60-mil HDPE liner.

b. The final cover design meets the requirements of 19.15.36 NMAC, and includes a six-inch daily and six-inch intermediate cover placed on top of the waste, which is overlaid with a 60-mil HDPE liner, then a 200-mil geocomposite, and then three feet of soil on top to act as a protective infiltration and vegetation layer for the cap.

c. The drainage design meets the requirements of 19.15.36 NMAC, as it will control run-on from a 25-year storm event, will prevent run-off from the active portion of the landfill, and will prevent any discharge of contaminated water.

28. Applicant proposed utilizing a daily cover, which will provide odor control and reduce the potential for moisture or other non-waste to contact the disposed waste.

29. The evaporation pond design complies with 19.15.36 NMAC.

a. Applicant demonstrated an acceptable engineering design plan, including operating and maintenance procedures, a closure plan, and a hydrologic report sufficient to evaluate the actual and potential effects on soil, surface water, and ground water.

b. The application contains designs standards that will protect fresh water, public health, and the environment.

c. The application contains operating standards that will protect fresh water, public health, and the environment.

30. The landfill engineering design is state-of-the art.
31. The closure and post-closure plan complies with 19.15.36 NMAC.
32. The Site Operating Plan provides site management and site operation procedures that comply with 19.15.36 NMAC, including information about hours of operation, personnel, training, equipment, site access, noise control, odor control, landfill waste characteristics, waste acceptance criteria and procedures, liquid processing, as well as an H₂S Management Plan, and a Contingency Plan.
 - a. Applicant will require a form C-133, authorization to move liquid waste, prior to receiving oil field waste from a transporter.
 - b. Applicant will use the paint filter test to ensure oil field waste containing free liquids are not placed in the landfill.
 - c. Applicant will accept only exempt or non-hazardous waste.
 - d. Applicant will require a form C-138 to confirm that the oil field wastes accepted are generated from oil and gas exploration production operations, are exempt waste, and are not mixed with non-exempt waste or is non-hazardous.
 - e. Applicant will test incoming trucks for H₂S concentrations. If H₂S concentrations exceed 10 parts per million, Applicant will treat the waste until the H₂S concentration is one part per million or less.
33. 19.15.11 NMAC provides that if the hydrogen sulfide concentration in a facility is less than 100 parts per million, the operator is not required to take further actions pursuant to 19.15.11 NMAC. Applicant's H₂S plan provides for notification of the Division at 10 parts per million.
34. Applicant will treat wastewater received at the site to remove the oil from the water prior to placement into the evaporation ponds.
35. Applicant will conduct daily inspections of the ponds for the presence of either oil or birds. Applicant will immediately remove any oil found on the ponds.
36. The Commission finds that Applicant provided an adequate alternate plan to monitor migratory bird protection, and consequently, qualifies for exception from netting the ponds as provided in 19.15.36.13(I) NMAC.
37. Based upon the nature of the waste material and the lack of internal moisture, the production of landfill gas should be negligible. Thus, no landfill gas control system is required.

38. Applicant stated that it will post the proper financial assurance to guarantee closure and post closure care of the proposed facility.

39. Applicant's engineer, Mr. Ybarra, testified to the closure and post closure care cost estimates calculated at \$1,149,142 and \$1,162,770.

40. The proposed facility will provide needed modern disposal operations for oil and gas waste.

The Commission concludes as follows:

1. The Commission has jurisdiction over this matter pursuant to NMSA 1978, Section 70-2-6 and 70-2-12.

2. Notice required by 19.15.36 NMAC and 19.15.4 NMAC was provided.

3. The Applicant has demonstrated that the proposed facility can be constructed and operated without endangering fresh water, public health, safety, or the environment and in compliance with the applicable statutes and rules, which are the Oil and Gas Act and its implementing rules including 19.15.36 NMAC and 19.15.11 NMAC.

4. CK Disposal, LLC's application meets the requirements of 19.15.36 NMAC and 19.15.11 NMAC and should therefore be approved.

5. The public and LES have raised valid concerns regarding hydrogen sulfide gas emissions, truck traffic, and the tracking of liquid and solid waste from the facility onto public roadways. Consequently, the following additional conditions should be required.

a. Applicant shall provide a more comprehensive H₂S monitoring plan that includes monitoring at each of the facility's property boundaries. A plan detailing this monitoring plan shall be submitted to the Division prior to commencement of operations. Also, Applicant will be required to submit the monitoring results to the Division monthly for the first two years of operation, and quarterly thereafter.

b. Applicant shall manage the facility in such a manner that all truck traffic disposing waste at the facility is accommodated on-site, and off-site traffic entering the facility complies with New Mexico Department of Transportation requirements.

c. Applicant shall manage the facility in such a manner that all solid and liquid waste is confined to the site and not allowed to contaminate any public roadway by vehicles leaving the facility.

d. Applicant shall not operate the facility until all required local, state and federal permits are obtained, including any permits that the New Mexico Environment Department, United States Environmental Protection Agency, or New Mexico Department of Transportation may require.

e. Applicant shall, prior to commencing operations, summarize to the Division its efforts to obtain additional local, state, or federal permits that may be required. This shall include copies of permits obtained, correspondence with these agencies, and any other information that will demonstrate that Applicant has obtained necessary permits from other jurisdictional agencies.

6. The proposed facility can be constructed and operated in compliance with the applicable statutes and rules, which are the Oil and Gas Act and its implementing rules including 19.15.36 NMAC, without endangering fresh water, public health, safety, or the environment with conditions provided in the Division's October 13, 2016 tentative decision and the Commission's additional conditions.

IT IS THEREFORE ORDERED THAT:

1. CK Disposal, LLC's application for a permit to operate a commercial surface waste management facility is granted with conditions as provided in the Division's October 13, 2016 tentative decision along with the following additional conditions:

a. Applicant shall provide a more comprehensive H₂S monitoring plan that includes monitoring at each of the facility's property boundaries. A plan detailing this monitoring plan shall be submitted to the Division prior to commencement of operations. Also, Applicant will be required to submit the monitoring results to the Division monthly for the first two years of operation, and quarterly thereafter.

b. Applicant shall manage the facility in such a manner that all truck traffic disposing waste at the facility is accommodated on-site, and off-site traffic entering the facility complies with New Mexico Department of Transportation requirements.

c. Applicant shall manage the facility in such a manner that all solid and liquid waste is confined to the site and not allowed to contaminate any public roadway by vehicles leaving the facility.

d. Applicant shall not operate the facility until all required local, state, and federal permits are obtained, including any permits that the New Mexico Environment Department, United States Environmental Protection Agency, or New Mexico Department of Transportation may require.

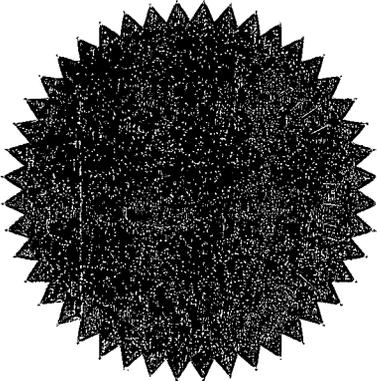
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2. The Division shall issue a final permit that incorporates the conditions in its October 13, 2016 tentative approval and the conditions contained in Ordering Paragraph 1 above. The Division shall not issue the final permit until Applicant provides financial assurance in a form acceptable to the Division for the facility's estimated closure and post-closure costs as stated in the Division October 13, 2016 tentative approval.

3. Jurisdiction over this case is retained for the entry of such further orders as the Commission may deem necessary.

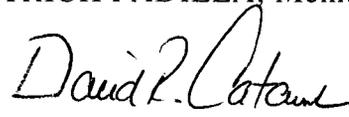
DONE at Santa Fe, New Mexico, on the day and year designated above.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION




ROBERT BALCH, Member


PATRICK PADILLA, Member


DAVID R. CATANACH, Chair

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