

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

July 19 11

CASE NO 15617

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

APPLICANT'S RESPONSE TO PROTESTANT URENCO'S MOTION TO STAY

COMES NOW CK Disposal LLC (Applicant) and files this Response to URENCO s (URENCO or LES) Motion to Stay (Motion) the Oil Conservation Commission s Order No R 14254 B issued on April 4 2017 (Order) that granted permit authority to CK Disposal LLC with certain conditions

I BECAUSE PART 36 PERMITTING REQUIREMENTS ARE MET, A STAY CANNOT BE GRANTED AND IS NOT APPROPRIATE

A permit has already been issued over URENCO s spurious objections It was already found 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 (and without gross negative consequences to URENCO the only protestant at the hearing) URENCO s Motion employs the same arguments it presented at the hearing Like the arguments at hearing it seeks to draw the Commission beyond the bounds of its regulatory authority To provide such relief is not only unjustified by the law but it would be detrimental to the future issuance of Part 36 permits in New Mexico Applicants and the industry need to have certainty in the permitting requirements It is important to know what the requirements are to gain a Part 36 permit Those requirements are specifically enumerated in Part 36 Without this certainty gaining OCD

permits for much needed state of the art surface waste disposal facilities under Part 36 would be a nebulous moving target. Gaining Part 36 authorizations would be onerous at best and potentially impossible. Granting URENCO's Motion would only discourage potential applicants from investing the resources to seek a permit for these much needed facilities. This cannot be the state of the law.

Based on the Application and the evidence presented at hearing the Applicant demonstrated compliance with all Part 36 requirements. In fact the Applicant demonstrated that the proposed facility exceeds those requirements. Protestant URENCO did not prove otherwise and failed to present any evidence that Part 36 requirements were not met. It was just a lot of noise. The Commission determined that the permitting requirements were met and an order granting the permit was appropriately issued.

The permit issuance standard is important. Considering the standard displays the fallacy of URENCO's Motion. The Part 36 standard for permit issuance is found in New Mexico Administrative Code (NMAC) 19.15.36.12 A(1). The section states in full

A. Granting of permit. (1) The division may issue a permit for an 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.

Accordingly, it is appropriate to issue a Part 36 permit when (1) an acceptable application has been filed, (2) notice requirements have been met, (3) financial assurance requirements have been met, and (4) the facility can be constructed and operated in compliance with applicable statutes and rules without endangering fresh water, public health, safety or the environment. In this case, each of these prerequisites has been satisfied.

Applicant CK Disposal LLC has demonstrated that it meets the Part 36 requirements for issuance of a surface waste management facility permit. The proposed location has ideal geology that ensures groundwater protection, the state of the art design meets and exceeds the Part 36 design requirements, and the operator is committed to responsible operations using best management practices. The Applicant has met applicable notice and financial security requirements. The facility can be constructed and operated in compliance with applicable statutes and rules without endangering fresh water, public health, or the environment. In accordance with the applicable regulations, the Commission approved the application of CK Disposal LLC for a Surface Waste Management Permit because the permitting standard has been met. With the permit standard met, it is impossible for URENCO to prove through its Motion that a stay is required to protect the environment, public health, or affected persons. The hearing already occurred, and URENCO lost.

II URENCO'S REQUEST FOR A STAY IS ABSURD AND MISCHARACTERIZES THE STANDARDS FOR ISSUANCE OF A STAY

URENCO's request for a stay ignores the permitting issuance standard utilized at the hearing that it lost, but additionally, URENCO's Motion to stay is self-defeating. URENCO's Motion is predicated on arguments that it already presented at hearing. Those arguments were fully heard to the extent of the Commission's jurisdiction, and the correct decision to issue the permit has subsequently been made. URENCO's arguments do not meet any of the criteria for issuance of a stay of the Order – it is not even close. As URENCO concedes in its Motion, a stay must be necessary.¹ Here, a stay is not necessary to protect public health or the environment, to prevent waste, or to prevent gross negative consequences to an affected party. On the contrary, it is completely unnecessary to stay the Order, and therefore the law does not support a stay.

¹ See URENCO's Motion to Stay at 1 (citing 19-15-4-23(B) NMAC)

A A stay is not necessary to protect public health or the environment

First URENCO failed to demonstrate that a stay is necessary to protect public health or the environment. URENCO argues that a stay is necessary to protect public health and the environment because other agencies have various permitting responsibilities that relate to the subject oil and gas waste management facility. Each of these arguments is self-defeating because the permitting authorities and procedures of other agencies act to ensure that public health and/or the environment are protected from the effects of activities regulated by each respective agency to the extent required by law. The applicable law requires CK Disposal to obtain each necessary permit prior to construction and operation. Moreover, the applicable permits are required prior to operation as a condition of the Commission's Order. URENCO unsuccessfully urged variations of this argument throughout the hearing in this matter and it was not effective. Here, the argument is even less effective because there will be no public health or environmental concerns before the facility begins to accept waste. Moreover, the evidence in the record of the three-day hearing conducted on this matter overwhelmingly shows there will be no public health or environmental concerns after the facility begins to accept waste.

URENCO also argues for a stay on the basis that a more comprehensive H₂S monitoring plan is to be submitted prior to operation. Here too, there is no basis to conclude a stay is necessary to prevent harm to the environment. First, URENCO failed to prove any harm to public health or the environment based on the minuscule maximum possible quantities of H₂S emissions that were modeled in the application and discussed at hearing. At hearing, URENCO alleged that the minuscule increase could harm its equipment. This harm is speculative at best, but the Commission has required a permit condition for more comprehensive H₂S monitoring that is beyond any regulatory requirements and highly protective against potential releases.

Finally URENCO argues that its concerns justify a stay of the permit authority throughout any lengthy rehearing and appeals process. URENCO attempts to support this argument with a general claim that there are public health, safety, environmental protection, and due process issues with the Order. This argument is largely baseless and provides no specific reason that a stay is necessary to protect the environment or public health. Regardless of the argument advanced by URENCO requesting a stay for environmental or health protection, it could not prevail because there are no existing imminent or long term environmental or public health threats presented by this state of the art and highly protectively designed facility. Indeed, no such concerns could even conceivably arise prior to actual operation of the facility.

B A stay is not necessary to prevent waste of oil and gas resources

Second, URENCO failed to demonstrate that a stay is necessary to prevent waste. The regulation allows a stay, if necessary to prevent waste, is referring to waste of oil and gas resources, but URENCO argues that a stay should be granted to avoid a *potential* waste of money resources by interested parties in potential legal actions. This argument ignores the waste of money resources that would be required of the Applicant if a stay were granted, but more importantly, it erroneously ignores that prevention of waste is referring to waste of oil and gas resources, which the Commission is charged with preventing. Without citing any legal authority, URENCO also argues that the Commission should avoid the appearance of 'prejudgment' but fails to acknowledge that an extensive 3 day hearing was already held in which URENCO's concerns about permitting by other agencies and H₂S were addressed and found to be insufficient to prevent issuance of the permit under controlling Part 36 regulations. Regardless of URENCO's flawed arguments, there could not be a waste of oil and gas resources from the issuance of the permit, the construction, or the operation of the facility. Rather, operation of the

facility will have the opposite effect providing needed disposal services to the oil and gas industry. Thus URENCO's arguments fail to demonstrate the points they attempt to make, and fail to demonstrate that a stay is necessary to prevent waste of oil and gas resources.

C A stay is not necessary to prevent gross negative consequences to an affected party

Third, URENCO failed to demonstrate that a stay is necessary to prevent gross negative consequences to an affected party. URENCO argues that it needs a stay to allow a determination by another agency regarding an alleged property issue under the jurisdiction of the State Land Office. Like URENCO's other arguments, this was raised at hearing and found to be insufficient to prevent issuance of the permit. Instead, this issue is only proper before the State Land Office or a district court. Because legal processes exist that URENCO can avail itself of (and has) relating to this issue, URENCO cannot effectively argue that the permit will cause gross consequences to an affected party or that a stay is necessary to prevent such consequences. Indeed, only adjudication of URENCO's alleged complaints before the proper forum could potentially prevent any alleged trespass to URENCO. Here again, URENCO fails to make the required showing.

D A stay would be highly prejudicial to Applicant and would discourage Part 36 applications

The only party that would be highly prejudiced and deprived of due process in the event of a stay is the Applicant. A stay would be highly prejudicial to Applicant because it has already spent extensive time and monetary resources developing a compliant application and has spent even more resources going through the hearing process that was caused by URENCO. Applicant has conclusively demonstrated compliance with Part 36 requirements for its permit, and the Commission has accordingly ordered that a permit be granted. Because a stay must be necessary

to protect public health the environment prevent waste or prevent gross negative consequences to an affected party granting a stay cannot be legally supported by the applicable regulations To strip such authority through an unjustified stay would be highly prejudicial and a deprivation of Applicant s due process Moreover granting URENCO s Motion would discourage future potential applicants from investing the resources to seek a permit for these much needed facilities This would prejudice the industry To recover oil and gas resources the industry needs disposal in sufficient quantities that is environmentally protective it needs state of the art facilities

III CONCLUSION

URENCO s motion to stay is merely a reiteration of its arguments at hearing Those arguments were sparsely supported and insufficient to prevent the permit issuance at that time and they do not justify the emergency relief that the regulatory stay provisions are intended to enable When viewed through the lens of the regulatory requirement that a stay must be necessary URENCO s requested relief cannot be justified Instead URENCO may use the appropriate existing legal processes to bring its claims like all other hearing participants Applicant respectfully requests that URENCO s Motion be promptly and wholly denied

Respectfully submitted

HANCE SCARBOROUGH, LLP

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