

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

2011-11

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 APPLICATION FOR  
REHEARING**

COMES NOW CK Disposal LLC ( Applicant ) and files this Response to LOUISIANA ENERGY SERVICES LLC d/b/a URENCO s ( 'URENCO or 'LES ) Application for Rehearing for the referenced Application of CK Disposal LLC, which was approved with certain conditions by the Oil Conservation Commission's Order No R 14254 B issued on April 4 2017 ( Order )

**I Introduction and Summary URENCO's Application for Rehearing does not demonstrate that rehearing is appropriate**

URENCO chooses to read the applicable regulations differently than the Commission has interpreted those regulations differently than the attorney for the Oil Conservation Division ( OCD ) reads them and differently than Applicant reads them In the same breath that it offers alternative readings of the applicable regulations URENCO argues that the applicable regulations can only be read one way – that the plain language is clear Unfortunately for URENCO they are promoting a different interpretation of the Commission s regulations than the Commission itself The Commission explained its reading of various parts of the regulations in the hearing and the Commission s readings are both reasonable and afforded deference

Apart from its creative and incorrect regulatory interpretations URENCO was unable to

show any way that the subject Part 36 Application did not meet the applicable regulatory and statutory requirements. Accordingly, there is no reason to rehear any portion of this case. URENCO's continuing attempts to draw the Commission beyond the boundaries of its jurisdiction and expertise are no justification for rehearing. These arguments were already properly denied, and the arguments and information that URENCO presents fail to demonstrate that Part 36 requirements are not met.

URENCO's complaints of due process are far fetched considering URENCO fully participated in the process to the highest degree possible under the law. URENCO filed comments, appeared at the public meeting, caused a three day contested case hearing, filed a motion to stay the Commission's Order, and now files its Application for Rehearing. URENCO has been afforded more process than it is due, and has repeatedly failed to make any showing that the proposed facility does not meet the permitting standards. URENCO complains that it cannot participate in air permitting, traffic safety permitting, and other matters to the extent it desires, but its complaints are misdirected and premature. URENCO must raise those concerns with each respective agency that oversees each permitting activity, in the unlikely event URENCO does not receive due process. With respect to the Commission, the simple determinative feature of this case is that the proposed state of the art disposal facility exceeds the permitting requirements of Part 36.

**II Rehearing is not appropriate because the proposed facility meets the permitting requirements and URENCO failed to raise facts demonstrating otherwise**

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. The Commission

determined that the permitting requirements were met and an order granting the permit was appropriately issued

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 demonstrated in its application and at hearing 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 The Commission s lengthy Order in this matter recites forty detailed findings of

fact and appropriate conclusions of law (with the addition of certain conditions) and these recitations explain that the permit standard is met or exceeded URENCO's Application for Rehearing makes numerous tortured attempts to nitpick at the Commission's Order but URENCO utterly fails in one vital respect URENCO fails to demonstrate that the Part 36 permitting standard has not been met A rehearing would be a waste of resources because just like at the first hearing URENCO is unable to prove that permitting requirements were not met

**III Rehearing is not appropriate because URENCO's Application for Rehearing merely reiterates the same arguments it has repeatedly urged and lost**

URENCO's Application for Rehearing 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 In its Application for Rehearing URENCO continues its attempts to draw the Commission into permitting matters of other agencies URENCO also continues to assert unsupported and misplaced allegations that it has not received due process, after submitting comments on the subject Application unilaterally causing an extensive 3 day hearing on the subject Application, and continuing its involvement in every step of the process, including the process of requesting a rehearing

**A URENCO's requests for relief on matters outside of Commission's jurisdiction were already properly denied**

At the hearing URENCO was allowed to present a large amount of testimony and evidence on matters that relate to permitting at other agencies that URENCO alleged would impact public health safety and the environment The matters under the purview of other agencies' permitting and review schemes include air permitting (including VOC's and H<sub>2</sub>S) traffic safety issues and alleged easement issues with the State Land Office At the hearing over the objection of the Applicant URENCO was allowed to present evidence on these matters

to the extent the Commission determined they related to the specific and general requirements of Part 36. The Commission appropriately excluded irrelevant evidence that related to the other agencies' permitting processes and did not bear on Part 36 permitting requirements.

URENCO continues to repeat its request that all other agency permits be obtained prior to obtaining a Part 36 permit, disregarding the reality that there is a sequential manner in which applicable permits are obtained for all waste disposal facilities that require multiple permits. Here, a prudent facility operator gains a Part 36 permit and then gains all other required permit authorities. This is a basic aspect of waste disposal facility permitting and was repeatedly explained at the hearing. URENCO's repetitious argument does not warrant a rehearing.

**B URENCO's allegations about air emissions, traffic safety, and easement issues before the State Land Office were insufficient to demonstrate that the permit standard was not met.**

In its Application for Rehearing, URENCO repeats allegations that air emissions and truck traffic would cause danger to the environment or public health safety. URENCO already presented these allegations at the hearing and they were not persuasive. In its Application for Rehearing, as it did in hearing, URENCO utilizes overly sensitive H<sub>2</sub>S concentration standards to allege danger. Indeed, URENCO was not even able to concretely prove that the minute potential increase in H<sub>2</sub>S would cause harm to its allegedly hypersensitive equipment. Similarly, URENCO's allegations regarding VOCs were based on overly sensitive concentration standards, and URENCO could not concretely prove that these emissions would cause harm. Regardless, all necessary air permitting proceedings will occur before New Mexico Environment Department, which is the proper agency with the requisite expertise to oversee air permitting matters.

URENCO also repeats allegations relating to easement issues before the State Land Office. As discussed in the hearing, URENCO is already participating in those proceedings at

the State Land Office Any claims of potential trespass are not only hypothetical and unwarranted they are brought in the wrong forum A district court not OCC would have jurisdiction over such claims Disregarding the fact that URENCO's arguments are misdirected they still fail to demonstrate that Part 36 permitting requirements were not met

**IV URENCO's claims that it has been denied due process in any manner are absurd**

URENCO claims it has been denied due process in a number of ways but its claims are baseless URENCO has fully participated in every part of the public comment and hearing process URENCO filed written comments on the subject Application URENCO appeared and presented further oral comments through counsel at the public hearing in Eunice on the subject Application URENCO requested and unilaterally caused a contested case hearing to be held on the subject Application fully participating in an extensive 3 day hearing on the subject Application cross examining all of Applicant's witnesses and putting on an extensive protestant case rivaling or exceeding the time taken for the Applicant's case URENCO's claims related to the Part 36 permitting standards were all heard and ultimately URENCO's claims failed

Following the extensive 3 day hearing the Commission correctly found that the proposed facility meets the applicable standard for permitting under Part 36 URENCO inexplicably complains that some of the conditions in the Order itself constitute violations of its due process, while at the same time taking advantage of the proper process to complain of conditions in the Order an application for rehearing This argument is incorrect and self defeating The Application for Rehearing is URENCO's opportunity to complain about the Commission's ruling Because that process is available and URENCO has availed itself of that process its due process argument is both meritless and is ludicrous

Similarly URENCO's complaint that it will not be afforded due process in additional permitting proceedings for this facility at other agencies is misdirected and premature

Permitting processes concerning traffic safety air emissions and easements issues with the State Land Office are all proper before other agencies URENCO can participate in those processes to the extent allowed by law and if URENCO is not satisfied with those processes they can challenge each process and claim they were denied due process if and when the issue becomes ripe It is inappropriate to attempt to challenge other agencies processes before the OCC and it is premature to attempt to allege any permitting process fails to afford due process prior to seeking participation in that process Accordingly URENCO s due process claims are absurd and provide no justification for a rehearing

## **V CONCLUSION**

URENCO's Application for Rehearing is yet another recitation of its arguments at hearing Those arguments were and are largely outside of the purview of Part 36 permitting and to the extent they relate to Part 36 permitting issues they were extensively heard and are insufficient to demonstrate any failure to meet applicable statutory and regulatory requirements for a Part 36 permit Considering its failure to show any real injury or deprivation caused by the proposed facility URENCO has been afforded far more process than it is due It has participated in every aspect of this case to an enormous degree and continues to do so Due process does not require that URENCO prevail in this case and URENCO's Application for Rehearing fails to justify rehearing The permitting requirements have been met, and the Commission s Order is both adequate and correct

Respectfully submitted

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**CERTIFICATE OF SERVICE**

I hereby certify that the above pleading was served on the following parties by electronic mail on May 4 2017

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