

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, L.L.P.

RECEIVED

A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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2009 APR 20 PM 12 38

April 16, 2009

Via email and U.S. Mail

Mr. Mark E. Fesmire

Director

New Mexico Oil Conservation Division

New Mexico Energy, Minerals and Natural Resources Dept.

1220 S. St. Francis Drive

Santa Fe, New Mexico 87505

Re: Proposed Discharge Permit, Los Lobos Geothermal, LLC,  
Lightning Dock Geothermal No.1, Animas, New Mexico

Dear Mr. Fesmire:

We are writing to you at the behest of Americulture, Inc. Americulture consulted us because they were concerned that certain aspects of the conduct of the Oil Conservation Division with regard to the Los Lobos Renewable Power, L.L.C. - Lightning Dock Geothermal No. 1 (HI-01) Discharge Permit are in violation of Title 20, Chapter 6, Part 2 of the New Mexico Administrative Code (NMAC). After reviewing the facts we share Americulture's concern and want to bring these violations to your attention so that you may take corrective action.

Section 20.6.2.3108 k NMAC requires that "Following the public notice of the proposed approval or disapproval of an application for a discharge permit, modification or renewal, and prior to a final decision by the secretary, there shall be a period of at least 30 days during which written comments may be submitted to the department and/or a public hearing may be requested in writing. The 30-day comment period shall begin on the date of publication of notice in the newspaper."

Section 20.6.2.3109 (NMAC) states that the administrative record shall consist of (among other things) the proposed approval or disapproval of an application for a discharge permit.

With regard to the above-referenced discharge permit, OCD did not provide Americulture with the discharge permit it proposes be approved until April 10, 2009 which is 3 days after the public hearing on the application and one day after OCD proposed that the record be closed. OCD has yet to post the proposed discharge permit on its web site for the public to see. The scheme of holding a hearing first and then, after the hearing, revealing the permit which is the subject of the hearing is clearly in violation of the NMAC, as well as violating basic due process.

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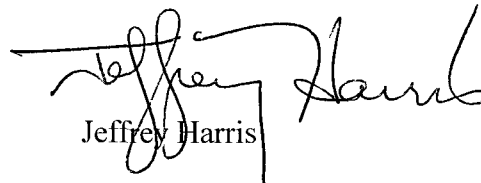
A prior version of the April 10, 2009 proposed permit was provided to Americulture on April 3, 2009. It was not provided to the public at all. Even if OCD were to take the position that the April 10, 2009 draft merely corrected errors in the April 3, 2009 permit, OCD still has not provided the public, and Americulture in particular, with 30 days to comment on such proposed permit. This too is a violation of the NMAC. While the 30 day comment period is supposed to run from the date of public notice, which in this case was March 6, 2009, OCD did not provide the proposed permit along with the March 6, 2009 notice. Rather, the permit that was on the OCD web site on the date of March 6, 2009 was an obsolete prior draft that bears almost no resemblance to what OCD promulgated to Americulture on April 3, 2009 and April 10, 2009. OCD counsel informed Americulture that the reason for the failure to provide a copy of the proposed permit was that OCD had a pressing emergency elsewhere in the state. While emergencies do arise, this is hardly a legal justification for failing to do what the law requires. In fact, OCD could have effectively dealt with this situation by delaying issuing the notice of hearing until OCD was in a position to promulgate the proposed permit. For reasons best known to OCD, this path was not taken and instead OCD chose to violate the law and regulations under which it is required to operate.

The NMAC contemplates and requires a procedure where (1) the public is given notice of the permit that is to be approved not some other permit, (2) the public be given thirty days to comment on the permit under consideration and not some other permit and, that (3) if a public hearing be held, it be held to consider the permit to be approved. A permit that is drafted after the hearing concludes does not comply with the law of New Mexico or the NMAC. What occurred here deprived Americulture and the public at large with the rights granted pursuant to the NMAC. Are have been advised that you are aware of these facts as you were present at the hearing on April 7, 2009.

We believe that you should re-notice the public while posting the actual discharge permit for which approval is sought and then hold a public hearing on the discharge permit that is actually up for approval and not some prior draft.

Your prompt attention to this request will be greatly appreciated.

Very truly yours,



Jeffrey Harris

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cc: (via email only)

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