

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT



IN THE MATTER OF: )  
THE APPLICATION OF S&R )  
SEPTIC FOR THE RENEWAL OF )  
A SEPTIC DISPOSAL FACILITY, )  
DISCHARGE PERMIT, DP-465 )

GWB 19-28 (P)

**REPLY TO RESPONSE TO MOTION**  
**FOR EXTENSION OF HEARING**

Comes now the Applicant and for its reply states as follows:

1. Most of the assertions in the response regarding the timing of the hearing have nothing to do with the Applicant's actions and cannot be attributed to the Applicant. The only possible delay that could be attributed to the Applicant is the 30 day extension of the comment period that was provided to them. However there was no argument that a short extension adversely impacted the schedule.
2. The notice of docketing in this case was filed on August 7, 2019. The notice of docketing had no indication when the hearing would take place. The first notice the Applicant had when the hearing would take place is when they received the Scheduling Order on August 26, 2019. That Scheduling Order was entered without consultation with the parties. No extension of any of the deadlines of that scheduling order has been requested by any party. This is the first request for any modification of that Scheduling Order by the Applicant.
3. The Applicant has a long standing permit with septic management operations that are critical to the Taos area. In three prior permits, including their closure plans, no deep borings were required either for operations or closure. The inclusion of requirement for deep borings as an operational requirement in the draft permit are

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N.M.E.D.

unprecedented and constitute a complete change of position by NMED. The site conditions have not changed during the three permits. The application to the cells has been altered to rotate the application to the cells more frequently and have less ponding. One of the Protestants visited the site and anticipated seeing a five to six feet deep lagoon. None of the cells are lagoons. The cells are operated using a primary treatment method of evaporation. In reviewing the requirements of the borings there are extensive requirements for both physical and chemical sampling. The physical sampling is extraordinarily expensive. This type of sampling has not been previously been required on the site. The sampling protocol for the borings also includes sampling at five foot intervals.

4. There are three extremely questionable aspects of the draft permit
  1. the number and depth of the borings and their purpose and why they differ from the three prior permits
  2. the requirements for physical sampling
  3. the requirement for sampling at five foot intervals
5. It is not credible for NMED to state that they are requiring deep monitor wells with extensive wells (excessive) sampling requirements and then to state that a boring performed by the Applicant would not be useful for this hearing. There is simply no technical merit to that statement. In fact EA Engineering recommended the boring in order to provide data that could be used to correlate with previous data, nearby drill logs, and previous analysis of possible infiltration rates. Further, an initial review of other similar permits appears to indicate they do not include anywhere near the excessive draft permit borings and sample

regime under similar circumstances with similar waste stream and similar depths to groundwater.

6. Applicants consult on all prior permits and ongoing operations was Dr. William Mansker who died unexpectedly on January 13, 2019. Applicants located EA as a replacement consultant mid-August 2019 EA has been attempting to come up to speed. Dr. Mansker's files have not been available. After reviewing limited data EA recommended a boring in late August. Local drillers were contacted and recently confirmed they were unavailable. EA identified EnviroDrilling this week and the soonest they can do a boring is October 10 - 11, 2019. No other driller with earlier availability was located. EnviroDrilling is under a tentative contract pending decision on this motion.
7. Allowing the Applicant one request to modify the Scheduling Order is in the interest of due process for the Applicant. An extension is discretionary with the hearing officer. The purpose of a hearing is not to penalize any party and limit their preparation which is what NMED proposes. The Applicant has an arrangement with EnviroDrilling to perform the drilling on October 10 and 11, 2019. (Exhibit 1) The data will be available by the end of November and a revised deadline for the Notice of Intent could be early November. Thus delaying the hearing 30 days or slightly longer will be adequate to allow the Applicant to prepare its case, to have data to rebut NMED's change of position after 20 years of oversight on this site and to see if field data correlates with prior modeling data and analysis. With respect to the notice issues any revision in the hearing of this nature whether it be for illness or other unavailability would encounter the same

issues. These types of issues arise from time to time in evidentiary hearing matters that require coordination of parties, witnesses, counsel as well as timely accumulation of data.

For all of the above reasons the Applicant requests that its motion for extension be granted. Applicant does not object to a decision based on written submittals.

Respectfully submitted,

DOMENICI LAW FIRM, P.C.

/s/ Pete V. Domenici, Jr.

Pete V. Domenici, Jr., Esq.

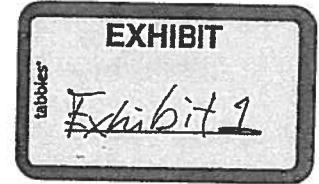
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Yes, October 10-11 would be better for us.



**From:** Mary Lujan <[mary.l@enviro-drill.com](mailto:mary.l@enviro-drill.com)>  
**Sent:** Tuesday, September 10, 2019 2:46 PM  
**To:** Marley, Robert <[rmarley@eaest.com](mailto:rmarley@eaest.com)>  
**Subject:** RE: Taos Proposal 370

Currently, my first 2-day opening is October 28 – 29<sup>th</sup>. I am working with a client to see if I can move his project by one day. If so, October 10-11<sup>th</sup> would open up. Let me know if you want to schedule.

Respectfully,

Mary Lujan  
Process Administrator

(505) 857-9876  
8305 Washington Place, NE • Albuquerque NM 87113



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**From:** Marley, Robert [<mailto:rmarley@eaest.com>]  
**Sent:** Tuesday, September 10, 2019 9:51 AM  
**To:** Mary Lujan <[mary.l@enviro-drill.com](mailto:mary.l@enviro-drill.com)>  
**Subject:** RE: Taos Proposal 370

Hi Mary – our client would like to move forward with EDI to get this work done. When is the earliest your rig and crew can mobilize to the site?

Thanks, Bob

**From:** Mary Lujan <[mary.l@enviro-drill.com](mailto:mary.l@enviro-drill.com)>  
**Sent:** Thursday, September 5, 2019 1:39 PM  
**To:** Marley, Robert <[rmarley@eaest.com](mailto:rmarley@eaest.com)>  
**Subject:** Taos Proposal 370

Hello Robert,

Attached is the quote you requested. Let me know if I can do anything else.

Respectfully,

Mary Lujan  
Process Administrator

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