

08/20

**STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION**

**WQCC-15-05 (CO)**

**IN THE MATTER OF Enterprise Products Operating, LLC,  
a Texas limited liability company.**

**ENTERPRISE PRODUCTS OPERATING LLC'S REPLY IN SUPPORT OF  
MOTION TO CONDUCT ADDITIONAL DISCOVERY**

Respondent, Enterprise Products Operating, LLC ("Enterprise"), submits this Reply in support of its Motion to Conduct Additional Discovery ("Motion") (filed Aug. 7, 2015). The Oil Conservation Division's ("OCD") Response to Enterprise Products Operating LLC's Motion to Conduct Additional Discovery ("Response") in one breath opposes any additional discovery, and in the next breath, suggests that both Enterprise and OCD be permitted to serve interrogatories and conduct depositions (a suggestion not opposed by Enterprise). OCD's opposition to the proposed discovery is untethered from the rules of the Water Quality Control Commission ("WQCC") and general New Mexico law encouraging the full exposition of facts before liability is imposed, especially in a case such as this where the proposed penalty far outweighs any harm, and does not object to the specific discovery requested. The Motion should be granted in full.

**I. The Discovery Requested in the Motion Should Be Granted.**

The Motion should be granted in full to allow Enterprise to defend against the numerous charges and excessive fine contained in the Administrative Compliance Order ("ACO"). Significantly, with minimal exception, OCD does not object to any of the specific discovery requested by Enterprise. Enterprise set forth detailed reasons as to why it requested to take the depositions of one or two employees of OCD and at least eight depositions of non-OCD employees, and to serve interrogatories on OCD. OCD's response, however, is that Enterprise must take advantage of all available discovery—that is, serves requests for admission on

OCD<sup>1</sup>—before it can request additional discovery, and that Enterprise has not made sufficient showing for the Motion to be granted. OCD is wrong in both respects.

OCD submits that Enterprise cannot know if it needs additional discovery until it serves on OCD requests for admission. Response at 2, 3. This seems to be nothing more than a delay tactic: Enterprise has requested the opportunity to take the deposition of a number of people who are not employed or otherwise under the control of OCD, including employees and representatives of contractors and trucking companies and investigators employed by the New Mexico Environment Department, and serving requests for admission on OCD would provide no information that Enterprise seeks to obtain from the identified proposed deponents.

Enterprise's Motion sets forth the information needed for the Hearing Officer to make the determinations needed to grant the Motion as required in Rule 20.1.3119(I)(1). OCD has failed to demonstrate that the requested discovery will not unreasonably delay the proceeding, that the information is not otherwise reasonably obtainable, and that there is a substantial reason to believe that the information sought will be admissible at hearing or will be likely to lead to discovery of admissible evidence. Rather, OCD attempts to impose an unduly stringent burden on Enterprise, Response at 2, although later in the Response OCD requests the Hearing Officer grant it "discretion" to conduct any discovery it deems fit, *id.* at 5. OCD's suggestion, that it be granted "discretion" to conduct discovery, Response at 6, should be rejected as it is contrary to WQCC Rule 20.1.3.19(I)(1). An open-ended grant of permission to conduct discovery as deemed necessary by the discretion of one party is contrary to this rule and should be denied.

The only specifically identified proposed deponent to whom OCD objects is Keith Herrmann. Response at 2-3. As set forth in the Motion, Motion at 5, 8 §10, Enterprise identified

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<sup>1</sup> On September 4, 2015, OCD served on Enterprise 139 requests for admission, some of which requested Enterprise to make admissions to facts already admitted in Enterprise's Answer.

Mr. Herrmann (or Glenn VonGonten) as a deponent on the subject of the calculation of the penalty proposed to be imposed on Enterprise because OCD has identified Mr. Herrmann as the individual responsible for preparation of the penalty calculations. The Response, however, attempts to impute improper motives—without any evidence (as none exists)—to Enterprise’s good faith discovery requests. Response at 3.

OCD has not specifically objected to any other of the requested discovery, and thus it should be assumed that OCD does not object to the same. The Motion should be granted in full.

**II. Enterprise Would Agree to an Order Granting Reasonable Discovery to Both Parties.**

Although the Response disputes the grounds for the Motion and opposes the same, the Response sets forth an alternative of permitting OCD to conduct additional discovery if the Motion is granted allowing Enterprise to serve interrogatories and conduct depositions. Response at 4. Counsel for Enterprise suggested to counsel for OCD that the parties agree on the number of interrogatories and depositions that could be taken by each party, but counsel for OCD rejected such suggestion, noting “to be clear, we oppose any additional discovery in this matter.”

Enterprise opposes OCD’s request that all depositions take place in either Santa Fe or Lea Counties. Enterprise notes that the New Mexico Rules of Civil Procedure may provide “guidance” that the depositions of non-party deponents should be taken where they are located. *See* Rule 1-045(B)(3).

OCD suggested that the Hearing Officer hold a hearing to determine the limits of the discovery. *Id.* Enterprise does not disagree that if it is allowed to conduct additional discovery, OCD should be allowed similar additional discovery. The Hearing Officer, however, need not delay ruling on Enterprise’s Motion until OCD has had the opportunity to draft its own discovery

motion, and can issue an order permitting within certain limits discovery for both parties, as suggested by OCD. *See* Response at 4.

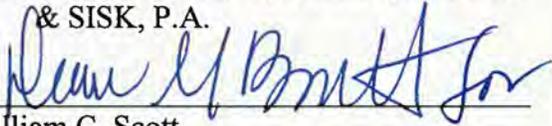
Finally, Enterprise requests that discovery in this matter be governed by the New Mexico Rules of Civil Procedure, to the extent they are not inconsistent with the WQCC Rules or any order by the Hearing Officer or the WQCC. OCD's continued objection to any reference to the Rules of Civil Procedure, *see* Response at 5, is unreasonable and ignores that WQCC Rule 20.1.3.8 provides that the WQCC may look to the Rules of Civil Procedure "for guidance." The Rules of Civil Procedure, and cases interpreting the rules, provide the parties as well as the Hearing Officer with guidance and a framework for timely adjudication of this matter.

### **III. Conclusion.**

For the reasons set forth herein, the Hearing Officer should enter an order approving of the Agreement of the parties, and the Motion should be granted to allow Enterprise all the discovery it has requested.

Respectfully submitted this 8<sup>th</sup> day of September, 2015.

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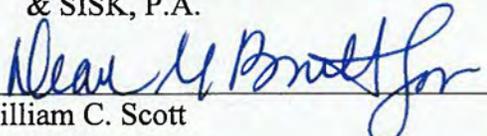
**CERTIFICATE OF SERVICE**

I certify that on the 8<sup>th</sup> day of September, 2015, service of the original foregoing Motion to Conduct Additional Discovery was made, via electronic mail and first class mail, to:

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