

Cobrain, Dave, NMENV

From: Joni Arends <jarends@nuclearactive.org>
Sent: Thursday, January 19, 2017 8:21 AM
To: Cobrain, Dave, NMENV
Subject: Triassic Park: CCNS Requests for Ext of Time and Public Hrg

January 19, 2017

Mr. Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Re: CCNS Request for an Extension of Time and Request for a Public Hearing about the draft renewal permit for the Triassic Park Hazardous Waste Facility

Dear Mr. Cobrain:

The Environmental Protection Agency (EPA) states that meaningful participation by affected communities requires that recipients provide critical information prior to the issuance of permits and to do so in a manner that is accessible. *EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Program (Recipient Guidance)*, 81 Fed. Reg. 14,213-15 (March 21, 2006). Unfortunately, this is still not the case for the Triassic Park Hazardous Waste permit renewal process. As a result, Concerned Citizens for Nuclear Safety (CCNS) requests an extension of time to submit informed public comments until 60 days following the New Mexico Environment Department (NMED) and the Permittees take the following corrective actions to provide the public with a complete application, vital documents in the online Record and the Index, translation of specific documents into Spanish, and hosting a public meeting in Roswell, New Mexico:

1. The online Record has not been updated since November 2016 and many comments are not entered including over 100 comments received through Communities for Environmental Justice's petition. All comments and other documents must be entered into the Record and the Index in a timely manner which should be in days following submittal, not months. The comment period is only days from expiring and comments have not been entered for the public to have access to and to read.
2. The Index of the online Record still has almost 200 mistakes, as documented by Citizens for Alternatives to Radioactive Dumping (CARD), in it making it difficult or impossible to use. The NMED has been advised about this multiple times over a period of many months and has still not taken corrective action. Once corrected, the Index should be translated into Spanish and printed copies of both the English and Spanish versions must be placed in the Roswell Public Library
3. Many documents are missing from the Record including, but not limited to the documents listed below. Those listed should be included in both English and Spanish and printed copies of both must

be placed in the Roswell Public Library

- Exposure information as required by 40 C.F.R. § 270.10(j) and adopted by the N.M. Admin. Code 20.4.1.900, including information about potential releases from normal operations, accidental releases, and transportation-related releases; all potential pathways of human exposure including those from facility trucking during normal operations; and the potential magnitude and nature of human exposure. To CCNS's knowledge, this information is not in the online record.

- A transcript of the original hearing and pre- and post-hearing documents, including those submitted during the hearing. Most of the discussion of important aspects of the project occurred through testimony and document submittals at the original hearing, including discussion of the liner, the leachate collection system, the groundwater monitoring variance, the vadose zone monitoring system, and the inadequacy of financial assurance. To CCNS's knowledge, these issues are not fully addressed in documents currently in the record. Critical items to be included in the record from this hearing include:

- Hydrologist George Rice's testimony about the problems with NMED's vadose zone monitoring system;

- Patrick Corser's testimony about landfill liners;

- Paul Robinson's testimony on the inadequacy of NMED's financial assurance requirements;

- CARD's attempt during the hearing to question the landfill designer on his previous landfill that leaked early and badly (CARD was denied this request);

- CARD exhibits on the designer's previous record; and

- CURE Exhibit 5: Landfill Leak by Dr. Dennis Williams.

Documents required by federal and state law providing information about the potential impacts of the facility – such as information about reasonably foreseeable potential releases from normal operations and from accidents and information about pathways of human exposure, such as the effects of facility transportation, pursuant to 40 CFR § 270.10(j) – are vital and trigger NMED's obligation to provide translations, either translations of the documents as a whole or summaries containing vital information, in accordance with EPA, *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 69 Fed. Reg. 35,602, 35,609-10 (June 25, 2004) (discussion of vital documents). Similarly, allegations raised in CARD's complaint to Office of Civil Rights (OCR) under Title VI of the Civil Rights Act are also vital information and should be translated. *See Id.* at 25,610 (analogous documents, such as petitions for enforcement of local environmental health rules, may be considered vital).

4. The following documents are in the online record in English only, but should be available in Spanish as well:

- "2012-09-24 Draft Technical Review Comments." These technical review comments (such as these

and the item below) are important to translate, because they are often the only documents that contain NMED's concerns about the project, and are usually written in non-technical language.

- "2013-08-18 Draft Technical Review Comments"
- "2002-04-10 Monitoring Well Details & Locations"
- "2002-04-08 Triassic Park financial Assurance cost comparisons." In addition to providing information about the adequacy of the facility's financial assurances, this document includes a list of equipment and activities that may lead to impacts.
- Documents in the record discussing Land Disposal Restrictions (LDR);
- "1999-02-04 Briefing on Permit." This is the "Radioactive Memo" noted in the Dec. 21 email. To clarify a point from that email, this document suggests that the facility would be accepting any kind of mixed waste, including transuranic and low-level radioactive waste in addition to high-level radioactive waste.
- "2013-02-05 Disapproval Part A & Part B Permit Renewal." This is the "Procedures Document" referenced in the Dec. 21 email, discussing soil cover and leachate spraying.

As noted above, key documents remain missing from the record - including documents required by EPA and NMED regulations. NMED must include these documents in the record and translate the record index and relevant record documents. Once these documents and their translations are available online and in paper copy at the local Roswell Public Library, an additional 60 days must be added to the comment period, and another public information meeting held with proper notice and adequate notice (e.g., radio notice, putting up flyers etc.) in Roswell.

5. CCNS also believes that the current application may still be incomplete if required information on potential releases from normal operations and accidents at the facility (including contamination by heavy metals- and PCB-contaminated particulates spread by the local high winds and tornados); facility transportation-related accidental releases and transportation related human exposure from normal transportation; and specifically the effects of the above on potentially affected low-income Spanish speaking communities within range (even if 30 or more miles from the facility) or along transportation routes; is not currently included in the application.

CCNS appreciates the efforts of NMED and the Permittees to provide the above-referenced materials to the public. We renew our request for an extension of time for 60-days following NMED completing the corrective actions needed. A public meeting must be held in Roswell following the completion of the corrective actions.

Because the issues raised in the first public hearing on important environmental justice, civil rights, and technical issues that have yet to be resolved, CCNS requests a public hearing on the Triassic Park draft renewal hazardous waste permit.

Please contact me with any questions or comments.

Sincerely,

Joni Arends, Executive Director
Concerned Citizens for Nuclear Safety
P. O. Box 31147
Santa Fe, NM 87594-1147
505 986-1973

Pete V. Domenici, Jr.
pdomenici@domicilaw.com

Lorraine Hollingsworth
lhollingsworth@domicilaw.com

Jeanne Cameron Washburn
jwashburn@domicilaw.com

Reed Easterwood
reasterwood@domicilaw.com

DOMENICI LAW FIRM, P.C.
ATTORNEYS AT LAW
320 Gold Avenue SW, Suite 1000
Albuquerque, New Mexico 87102-3228

(505) 883-6250 Telephone
(505) 884-3424 Facsimile

January 20, 2017

Dave Cobrain, Program Manager
Hazardous Waste Bureau – NMED
2905 Rodeo Park Drive East, Building 1
Santa Fe, N.M. 87505-6303
via email: dave.cobrain@state.nm.us

RE: Triassic Park Draft Permit Public Comments

Dear Mr. Cobrain:

The following comments on the Triassic Park Draft Permit are hereby submitted on behalf of Gandy Marley, Inc.

1. Permit language: 3.7.2 Monitoring Requirements. "...the VZSW sump daily for presence of organic vapors..."

Comment: GMI requests organic vapor monitoring frequency of the VZSW sump be allowed to occur twice weekly on non-consecutive days.

2. Permit language: Section 4 Modifications to the Closure Plan, 1.8 Amendment of Plan. "The post-closure care plan amendments shall be submitted to NMED no later than 60 days after the owner or operator determines that the non-permitted management unit must undergo post closure care."

Comment: GMI requests this deadline be 120 days in order to properly review and amend the Closure plan.

3. Permit language: 4.6.3 Evaluation Schedule. "The Permittee shall perform the evaluations specified in Permit Condition 4.6.1, within 30 days after completion of sampling, in accordance with 40 CFR § 264.98(f)(2). The 30-day evaluation period includes the time required to perform laboratory analysis. The Permittee may petition the NMED in writing for an extension to the 30-day evaluation period. The reasons for extending the 30-day evaluation period shall be presented in the petition. The NMED will approve or disapprove the extension petition in writing within 15 calendar days of receipt of the petition."

Comment (Exhibit 2 at 160/ln18 to 161/ln2): Given the time required for laboratory analysis (typically 2 to 3 weeks) and the time required for NMED approval or disapproval of the


extension petition (15 calendar days or 2 weeks), the permittee will not have sufficient time to perform an evaluation without having to file an extension. Please clarify that the petition can be filed at any time during the evaluation period.

4. Permit language: 4.6.1.a Release Determination. "The Permittee shall determine whether a VZMS release has occurred, as required by 40 CFR § 264.98(f), by evaluating monitoring data for three criteria: 1) a significant change in non-leachate indicator parameter chemical concentrations, 2) the detection of any leachate indicator parameters, and 3) the detection of any organic compound that has potential to exist in a vapor phase within the regulated unit."

Comment: The text of 40 CFR § 264.98(f) indicates that "The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the permit...". The language that "the detection of any detection of leachate indicator parameters" or "any organic compound that has potential to exist in the vapor phase" (emphasis added) is not consistent with the requirements of 40 CFR § 264.98.

Thank you for your consideration of these comments.

Sincerely,



Lorraine Hollingsworth

Cc: Gandy Marley, Inc. via email
Gundar Peterson via email

Cobrain, Dave, NMENV

From: Noel Marquez <marquezarts@yahoo.com>
Sent: Tuesday, January 17, 2017 8:12 PM
To: Cobrain, Dave, NMENV

Mr. Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Re: Communities for Environmental Justice Request for a formal Hearing, an extension of time, more documents translated into Spanish and another information meeting with inclusive notice to our communities and related publicity.

Meaningful participation by affected communities requires that recipients provide critical information prior to the issuance of permits and to do so in a manner that is accessible. (*EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental permitting program (Recipient Guidance)*, 81 Fed. Reg. 14,213-15 (March 21, 2006). Unfortunately, this is still not the case for the Triassic Park Hazardous Waste permit renewal process.

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 - A transcript of the original hearing and documents submitted at the hearing. Most of the discussion of important aspects of the project occurred through testimony and document submittals at the original hearing, including discussion of the liner, the leachate collection system, the groundwater monitoring variance, the vadose zone monitoring system, and the inadequacy of financial assurance. To CARDS' knowledge, these issues are not fully addressed in documents currently in the record. Critical items to be included in the record



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Documents required by federal and state law providing information about the potential impacts of the facility — such as information about reasonably foreseeable potential releases from normal operations and from accidents and information about pathways of human exposure, such as the effects of facility transportation, pursuant to 40 CFR § 270.10(j) — should be considered vital and trigger NMED’s obligation to provide translations, either translations of the documents as a whole or summaries containing vital information, in accordance with EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 35,602, 35,609-10 (June 25, 2004) (discussion of vital documents). Similarly, allegations raised in CARD’s complaint to OCR under Title VI of the Civil Rights Act are also vital information and should be translated. *See id.* at 25,610 (analogous documents, such as petitions for enforcement of local environmental health rules, may be considered vital).

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Members of Communities for Environmental Justice originate from Eunice, Lake Arthur, Roswell, Artesia, Alamogordo and Carlsbad. We feel under served by our state government which fails to protect and inform our local communities about the continuing trend to designate our area of the state as a toxic waste dumping ground resulting in not only a desecration but a devaluation of our lands. Most importantly our future generations are not being taken into account because of the haste to benefit a powerful corporate group and not the people of the state of New Mexico. Efforts to provide necessary information to the public has always been and continues to be woefully inadequate and it is completely unacceptable in a democracy to exclude our over-burdened communities, those most at risk, from the consent process and participation in a public discussion of yet another toxic dump.

Sincerely,

Noel V. Marquez
Communities for Environmental Justice
PO Box 564
Artesia, New Mexico 88211-0564

January 17, 2017

Cobrain, Dave, NMENV

From: Deborah Reade <reade@nets.com>
Sent: Monday, January 16, 2017 2:58 PM
To: Cobrain, Dave, NMENV
Subject: Comments on the Triassic Park permit renewal

Mr. Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Re: CARD's Additional Public Comments on the draft renewal permit for the Triassic Park Hazardous Waste Facility

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Although it will take some time and expense to provide all these necessary documents, NMED has already spent literally *years* of time and probably hundreds of thousands of dollars helping the applicants get their renewal application to this point. Efforts to provide necessary information to the public has always been and continues to be woefully inadequate and it is completely unacceptable to throw the public, including the Spanish speaking public, crumbs of effort and expect us to be content.

Sincerely,
Deborah Reade
Research Director CARD
202 Harvard SE
Albuquerque NM 87106

January 16, 2017

TO: DAVID COBRAN HWB NMED

FROM: Victor Blair

DATE: 11/1/2016

RE: TRIASSIC PARK

MESSAGE: PLEASE ENTER INTO
THE ADMINISTRATIVE RECORD
OF TRIASSIC PARK WASTE DUMP
AS A COMMENT

To: David Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico, 87505-6303

November 1, 2016

Dear Mr. Cobrain,

Hello. My name is Victor Blair. I used to live in an area impacted by Triassic Park; I still have many friends and loved ones who live in the area. I just learned about the current permitting process, and I'd like to make some comments and make some requests. Please enter this correspondence into the Administrative Record for the Triassic Park waste dump as a comment.

I'd like to request that you indefinitely suspend the current permitting process until the problems with the Administrative Record can be fixed. The Administrative Record is a shambles and it appears to have been maliciously and willfully tampered with. Indeed, as Deborah Reade has documented, certain documents in the Record have disappeared and reappeared on multiple occasions.

The Administrative Record, former Triassic Park program director Steve Pullen (now in another capacity with the New Mexico Environment Department), the applicants, and their former lobbyist now convicted (of participating in a public corruption scam) felon all have their memories of my involvement in the public participation process of a decade and a half ago. I shudder to consider the reflections of the aforementioned – other than the Record - would make upon mention of me.

The Administrative Record is not the place for a proliferation of pugilistic prose. As such, be it duly noted that, upon my recent, leisurely and cursory inspection of the Administrative Record in October, 2016 I have discovered a number of troubling items. The Administrative Record for Triassic Park has been tampered with. Numerous documents are missing. I shall be forwarding a physical copy of a sworn affidavit attesting to these issues directly. You may also expect copies of the same affidavit with a note of explanation to be sent to other interested parties.

With the notable problems of public corruption in the news as a backdrop, it appears as if this kind of abuse is Standard Operating Procedure with any government position.

Enabled, encouraged, led and protected by state officials tasked with safeguarding the environment and people of the great State of New Mexico, the applicants lied to the public about their intent to turn their project into a nuclear waste dump. The applicants (and their state employed helpers) cheated the public out of the opportunity to learn the true nature of the project. The applicants, with those same taxpayer funded partners, also stole from the public the chance to have input into the true nature and intent of the project.

Therefore, any reasonable individual cannot help but conclude that the applicants, and their state employee collaborators, are lying, cheating, thieving, sons of women who could never be proud of such actions, believing naively that no mother would ever raise her offspring to aspire to such acts.

Despite holding a position in state government that may have a prerequisite disposition towards disingenuous behavior, I am granting you unearned deference and integrity because I do not know you, Mr. Cobrain. I truly hope that you don't engage the process with same moral turpitude as was on display here [https://hwbdocuments.env.nm.gov/Triassic%20Park%20Disposal%20Facility/2001-04-16 Agreeing to Arrange Public Meeting.pdf](https://hwbdocuments.env.nm.gov/Triassic%20Park%20Disposal%20Facility/2001-04-16%20Agreeing%20to%20Arrange%20Public%20Meeting.pdf)

In paragraph number 1, Mr. Pullen tells the applicant that it is ok to violate federal and state laws. He thoughtfully takes time to note which statutes he is authorizing the applicants to ignore and violate.

I ask you, not rhetorically, how is that acceptable? Is that acceptable behavior for you? Is that acceptable behavior for state employees afforded the public trust?

The New Mexico Environment Department has spent years helping GMI to get to this point. NMED has, according to the Record, extended deadlines many times for the applicant. With the negative impacts of another nuclear waste dump casting a foreboding shadow over New Mexico's coming generations, please honor this request to fix the myriad problems with the Administrative Record before going forward with the process. Also, lastly please honor this request to conduct an open and transparent public participation process with the applicants' true intent to open a privately owned nuclear waste dump in New Mexico.

Very truly yours,

A handwritten signature in black ink, appearing to read "Victor Blair". The signature is written in a cursive, somewhat stylized script.

Victor Blair

AFFIDAVIT

State of North Carolina, County of Caldwell.

My name is Victor Blair. I am 57 years old and my address is 5815 Petra Mill Rd. Granite Falls, North Carolina.

I hereby state that the following information is true, to the best of my knowledge. I also confirm that the information contained in this affidavit is both accurate and complete, and relevant information has not been omitted.

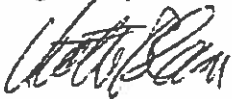
1. I attended an information meeting held in the cafeteria of the Hagerman NM public school system on October 25, 2001. This meeting was set up specifically to receive public comment on the proposed Triassic Park waste dump from community members who were not able to be adequately informed about the permit before the public hearing began.
2. After the main part of the public hearing for the Triassic Park waste dump was over and just days previous to discovery of an internal New Mexico Environment Department memo referring to a future potential permit modification for receiving nuclear waste by the applicants for the Triassic Park waste dump, the applicants testified under oath that no discussion of the applicant's intent to dispose of radioactive waste had ever taken place.
3. Just days before the discovery of that internal memo, the applicant's lobbyist –later convicted of participating in public corruption scam – and the NMED testified that the applicant had no intention of disposing of radioactive waste at the proposed site.
4. Steve Pullen, along with the applicants, had long denied GMI's intent to include nuclear waste.
5. However, Steve Pullen's hand-written initials are next to his name on the so-called "radioactive memo", clearly demonstrating his years old knowledge of GMI's intent to dispose of nuclear waste at the proposed site.
6. This memo, downloaded and printed from the NMED website, is attached as Exhibit A.
7. Before the October 25, 2001 meeting in the Hagerman (NM) School District hosted by Mr. Pullen, I made 100 copies of the memo and brought them to the meeting.
8. Before the meeting was called to order by Mr. Pullen, I gave a copy of the memo to each individual in attendance. I also quickly told each individual about the

relationship between the memo, Mr. Pullen, and the sworn testimony of the applicants just days before.

9. The stated purpose of the meeting was to collect written public comment. There were a few dozen people in attendance. I recall specifically that Paul Bloechl, vice-president (at the time) of the Fambrough Mutual Domestic Water Users Association was in attendance.
10. Also in attendance were Jaime Chavez of Albuquerque and Frank Sanchez of Roswell. The three of us stood in the back of the crowd, waiting to document the reaction of Mr. Pullen when he realized that his disingenuous statements about his knowledge of the applicants' intent to dispose of radioactive waste had been exposed.
11. Catherine Montano from Las Vegas, NM was also in attendance. From a position to the left of where I was standing, she filmed the meeting.
12. Spanish translation service employees were in attendance as well. They operated to my right and were seated. It appeared as if only one family needed their services.
13. All the attendees were asked to make written comments to be entered into the Administrative Record. Someone produced a stapler, and it appeared to me as if each of the dozens of written comments from the dozens of meeting attendees had the "nuke memo" attached.
14. Steve Pullen circulated an attendance sheet for entry into the Administrative Record. It appeared as if everyone signed it.
15. **The attendance sheet for the October 25, 2001 meeting is missing from the Record. Each of the written comments with the "Radioactive Memo" attached to it is missing from the Record.**
16. I witnessed Mr. Chavez, Mr. Sanchez, Mr. Bloechl and Ms. Montano all use the "Nuke Memo" in their comments turned in at the meeting.
17. I personally wrote a snarky note detailing the Environment Department's deviation into disingenuous diatribe with regard to the issue of the applicants' intent to dispose of radioactive waste at Triassic Park and the Environment Department's knowledge of this fact. I attached the memo to my comments and handed them in during the meeting.
18. Steve Pullen was caught lying in front of the dozens of attendees for the October 25, 2001 meeting. He said that he had never seen any such memo, and that he had never initialed any such memo. Mr. Paul Bloechl then provided Mr. Pullen with his comments and with the "nuke memo" attached. Mr. Pullen realized that his lie had been exposed in writing and in front of dozens of witnesses. He immediately looked towards me with an angry scowl, correctly figuring me for the source of his exposure.

19. There were two batches of written comments collected from the evening. All of the written comments that were produced and collected from the evening are missing. It appeared to me that all of them had the "nuke memo" attached and made reference to the Environment Department's deceit. The second batch of comments from that evening were hand delivered with a note attached. The note was dated and it had listed each individual's name who contributed a written comment.
20. An individual unknown to me, but connected to Jimi Gadzia, delivered dozens of additional letters to the October 25, 2001 in question. Each of these letters (about 80) spoke against the permitting of Triassic Park.
21. The Administrative Record attributes these 80 or so comments to a meeting on October 15, 2001. The "October 15, 2001 meeting" entry into the Administrative Record is clearly marked at the top that these comments were hand delivered to NMED on October 25, 2001.
22. In 2007 when I reviewed the Record I found one copy of the "radioactive memo" among the 80 or so hand delivered comments. All the comments with the internal memo attached to the individual comments were already missing from the Record at that time. However, there was a single copy (no doubt a copy that I made prior to the meeting and handed out to all of the attendees) of the "radioactive memo" that appeared, mixed with the hand delivered comments from that evening. That single copy, which should have been entered into the Record from that evening, has now disappeared from the Record.
23. There is also the problem of a missing business plan. In a letter to Steve Pullen dated September 21, 2001, I ask Mr. Pullen for the business plan from the applicants. The point was that no business man would attempt to open a hazardous waste dump because no return on investment could be made. A nuclear waste dump, on the other hand, could be very lucrative. Mr. Pullen made reference to a business plan, and an update for it. But the business plan never materialized, perhaps because it was linked to the mysterious disappearing and reappearing "nuke memo".

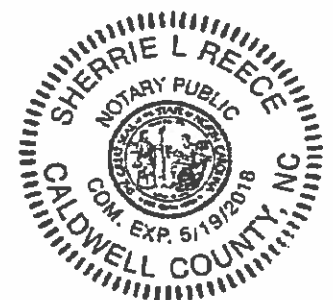
Signed by



Victor Blair

This document was signed before me by Victor Blair on November 1, 2016.

notary public: Sherrie L Reece
Commission expires: 5/19/2018



To: Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

Triassic Park Draft Permit Public Comment

I request an additional extension of the comment period for at least 60 days to begin when the below mentioned problems are corrected and requests fulfilled.

Although NMED has responded well to some of the requests in previous comments, there are serious problems remaining and I believe outreach and provision of information to the public is still totally inadequate.

1. With less than a week before the information meeting and only a few weeks before the end of the comment period, NMED has only provided the most minimal information in hardcopy in a library or libraries near the site. It appears that notices about the comment period extension and possibly about the information meeting on October 22nd have been posted at the locations which were sent me (and which do include the Artesia Public Library). However, it also seems that hardcopy of the English and Spanish Fact Sheets have not been given to the libraries, but instead are only in the Field Office in Roswell. That office is a fair distance from the site and is not open evenings and weekends so hardcopy of the Fact Sheets have never been available for any working person. In addition, the notices do not appear even to let people know that a Spanish or English Fact sheet is available there. Why NMED would physically go to all these locations with the notices and not include the Fact Sheets or even information as to their local availability is really impossible to understand. NMED is supposed to be pro-active in involving the public, including the Spanish-speaking public. Refusing over and over again to make even this small amount of hard-copy easily available is not pro-active.

2. But even if NMED *had* put the Fact Sheets in libraries and other places where people gather, this still would be completely inadequate. I have queried people living near the site who confirm again that many people are not comfortable researching this technically complex permit online. They may not know how to use a computer at all or if they do, just use Word and email. There needs to be hardcopy of the Record including the Fact Sheets, draft permit, the last permit and associated documents, held at a library close to the site that is open evenings and weekends. And people need to be informed that the materials are there.

It is unfortunate that NMED appears to be completely out of touch with those who would be most affected by the site and live closest to the site. These are the people whom it is NMED's mission to protect. If NMED had looked into the makeup of people at the site, they would have seen that this is a poor, rural, heavily Spanish-speaking area; that internet is expensive and unreliable in rural New Mexico and that people of the above-described demographic are less likely to be computer-literate than people of higher incomes and education living in cities. Even people not meeting that demographic who are educated and financially comfortable, but living in this area have said they are not comfortable doing online research but would probably look

at hardcopy documents that were easily accessible. Rural southeastern New Mexico is not a paperless environment.

This is born out by recent studies. In *13% of Americans don't use the internet. Who are they?* by Monica Anderson and Andrew Perrin (<http://www.pewresearch.org/fact-tank/2016/09/07/some-americans-dont-use-the-internet-who-are-they/>) 41% of seniors never go online, about 33% of adults with less than a high school education do not use the internet and adults from households earning less than \$30,000 a year are about eight times more likely than affluent adults not to use the internet. Finally rural Americans are about twice as likely as those in cities never to use the internet.

And though lack of access is a serious problem for rural, low income folks and people of color, even more serious is a lack of skills to be able to use the internet. It does no good to have online access in a library or community center if you don't have the skills necessary to do the online research. This is described in *Digital Readiness: Nearly one-third of Americans lack the skills to use next-generation "internet of things" applications* by John B Horrigan, PhD. (http://jbhorrigan.weebly.com/uploads/3/0/8/0/30809311/digital_readiness.horrigan.june2014.pdf) Even among folks who actually have broadband or a smartphone, 18% have low levels of digital readiness, meaning they can only do the most minimal things with their devices and exhibit low levels of internet use. In general, Americans with low levels of digital skills tend to be older, less educated and have lower incomes than those with moderate or high levels of digital skills. They are three times more likely to be over 65 and three times more likely to be poor. And they are two thirds more likely not to have a college degree than those with high skills. This study specifically looked at low-skilled people's use of searching for information online and use of state and federal websites, finding that they engaged in online activities at a fraction of the rate of others.

A Santa Fe New Mexican article *Who's not online—and why* by Brian Fung (10/22/15) described a study by the Pew Research Center that found that 32% of non-internet users said the internet was "...too hard to use;" and that low internet use was greatest among the poor and the elderly "...along with rural Americans and racial minorities." And that "[a]lthough blacks and Hispanics have significantly increased their rates of internet usages since 2005, they still lag behind other groups—and what's worse, according to Pew, their progress has stalled." (Native Americans seem to fare the worst of all as 63 percent of those on tribal lands lack basic broadband, compared to only 8% of urban Americans.)

Multiple other studies could be cited saying more or less the same thing. What is clear to me is that by insisting on a paperless environment for virtually all information about the Triassic Park permit, NMED appears to be discriminating against elders, the poor, rural people near the site and Hispanics.

I should also note that though NMED states in all their notice documents that the Record is available at its office for review, this is not the case now and never has been, as the printed Record is in complete disarray, unstapled, and stored in boxes—unless NMED expects to show people coming to them to see hardcopy, a computer terminal, that is. I do not consider sending them to the copy of the Record that is on NMED's website to be making the Record available for "review."

3. And using NMED's online Record is very difficult. It is *extremely* user un-friendly even for moderately- or highly-skilled online users. I have been doing online research for years but have problems finding information in the Record every time I look at it. However, I am more experienced in image research and, like many elders, am still much more comfortable with hardcopy for text. Nevertheless, there are many problems with the online Record which I have pointed out before and which have not been corrected in months.

Because the Record states that not all entries are available online, I went to check what was available and what wasn't. This became a very difficult and time-consuming task as there are almost 200 (!) entries that are out of order between the Administrative Record and the Administrative Record Index. (Both are titled as indexes but I will refer to the index with the links as the *Record* and the other as the *Index*, as you do on the site).

Generally the Index subject entries are more descriptive than the Record titles, but not always, so it is necessary to open two separate windows and go back and forth or to print out what is tiny type to see what the documents are actually about. Sometimes subject lines and titles give no information at all as they are just a series of numbers or letters. These may mean something to NMED personnel, but nothing at all to the public. Sometimes documents are incorrectly titled as with the *Concerned Citizen Document Log* which is entered on the correct date, but which should be dated 10-25-2001 in the title as well. Instead, it is dated 10-15-01 in the title which is confusing as that was not the date of the meeting. When documents are attached within other documents, that is not indicated so it is impossible to find those documents or even know they exist without opening hundreds of documents and scanning through them completely.

Some documents are clearly missing and they may not be the only ones. The Secretary's Final Order from the original hearing is not listed anywhere, nor are CARD's comments on the Hearing Officer's Report. The 7/5/3 Revised Permit Application (rev2) is listed, but there is no link. All of the written comments with the so-called "Radioactive Memo" attached that were given to NMED at the end of the original permit hearing are gone. (See CARD's *Triassic Park-Amended Complaint2.pdf* which is attached separately and is part of these comments). And of course, the transcript of the first hearing is not available at all.

None of my comments are entered either. These includes my comments of 7/5/16, 7/6/16 and 7/29/16. The 7/29/16 comment was acknowledged in an email to me but the 7/5/16 and the 7/6/16 comments were not. In fact, it appeared that the 7/5/16 comment was not understood to be a comment by NMED. Thus I sent the 7/6/16 clarifying comment. There was no acknowledgement of either of those two comments and none of the three has been entered in the Record or Index more than three months later. (I note that I first described the incompleteness of the Record in my unacknowledged and un-entered comment of 7/5/16.) There may be other comments and documents missing.

Finally, nothing has been added to the Record since August 12th—more than two months ago. Yet much has happened since then.

Posted notices of the information meeting are not entered to show the public that this has been done, what was posted and where; local radio announcements for this as well as for the Spanish and English Fact sheets and for the extension of the comment period are not posted

either before or after the 12th. How would any member of the general public even know that the Fact Sheets are available in your Roswell office? Without entering the text stating that, copies of the radio announcements and newspaper publications or even affidavits of publication of this information there is no information in the Record or the Index letting people know this. Though I appreciate the emails that I have received informing me of this information, I am only one member of the public whereas it is NMED's duty to inform *all* the public.

The online Record is clearly confusing and incomplete.

4. There is still no index and description of information in the confidential file anywhere for the public to see. Because NMED incorrectly filed the "Radioactive Memo" in the confidential file during the first hearing, it is critical that the public know what is in the file to see if there are other documents filed there incorrectly. We do not need to know the content of each document, but we do need to know what they are and NMED's justification for keeping each document from the public. NMED needs to add a descriptive index of documents in the confidential file to the Record.

5. Finally, NMED has stated that "...we do have limits on our resources and therefore may not be able to fully satisfy all of your comments..." and "We will look into the additional radio station reading the Public Notices. The radio spots are expensive, so we're working with EPA to help fund these additional spots." In the end, it appears that NMED did not do actual ads, but only public service announcements, which I believe are free. And NMED really cannot plead poverty to refuse to solve the problems I have described above as you have recently received an \$854,000 grant from EPA for, among other things, "RCRA permitting" and "providing program information."

However, even if NMED had not received this grant, not having enough money left to run the public process in a way that actually informs the public and even *encourages* the public to participate is no excuse. You cannot spend all your money and time helping the Applicants, literally for years, and then say there's nothing left for the public process—or only enough left to run what I see as a sham permit process where the public has no easy access to information. If you cannot run the public portion of the permit process adequately, you need to stop the process until you can.

Therefore, I again request that you solve the above-described problems and extend the comment period for another 60 days ***starting only after the problems have been fixed.***

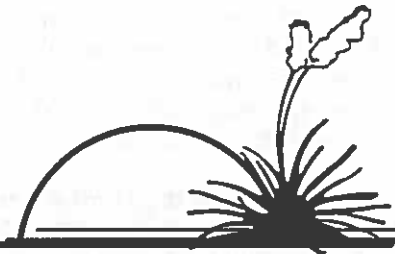
Sincerely,

Deborah Reade
117 Duran Street
Santa Fe NM 87501
505-986-9284
10-15-16

CARD

Citizens For Alternatives To Radioactive Dumping

202 Harvard SE, Albuquerque, New Mexico 87106
(505) 242-5511 • contactus@cardnm.org



www.cardnm.org

October 16, 2016

Mr. Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Re: CARD's Public Comments on the draft renewal permit for the Triassic Park Hazardous Waste Facility

1. CARD appreciates NMED's decision to extend the comment period for 90 days, to do "enhanced" notification for local people and for local Spanish speakers, to provide a Fact Sheet in Spanish, and to provide at least one information meeting in the local area. However, there are still some problems that are outstanding.

• ***We request that the language on requirements to comment and to request a public hearing be revised in any Notices, the English Fact Sheet and the Spanish Fact Sheet, to comply fully with applicable regulations, which mandate only a broad-based request for comment or a hearing. These documents need to be re-issued, along with any newspaper and radio announcements that contained the language. The comment period needs to be extended again so commenters who may have been discouraged from commenting because of said language will have an opportunity to comment.*** The current documents include the following statement:

Written comments must be based on the information available for review and include, to the extent practicable, all referenced factual materials. Documents in the administrative record need not be re-submitted if expressly referenced by the commenter. Requests for a Public Hearing shall provide: (1) a clear and concise factual statement of the nature and scope of the interest of the person requesting the hearing; (2) the name and address of all persons whom the requester represents; (3) a statement of any objections to the draft permit; and (4) a statement of the issues which the commenter proposes to raise for consideration at the hearing.

This additional language, beyond the clear requirements of the applicable regulations, has a chilling effect on the public at large as well as a particular disparate impact on first generation Mexican immigrants and/or monolingual Spanish speaking persons of Mexican descent, who object to the permit, want to comment, or want to request a hearing. In fact, under the regulations (20.4.1.901), an individual or group need only provide "...a timely written notice of opposition to the draft permit and a request for a public hearing..." The regulations also state that "No ruling shall be made on permit issuance or denial without an opportunity for a public hearing..."

RCRA states that "Public participation....should be provided for, encouraged, and assisted by the Administrator and the States." [7004 (b)(1)] For NMED to require the public to

provide documents and reference factual materials makes public participation extremely difficult and discourages members of the public from commenting at all. For NMED to require the names and addresses of all CARD's membership is an invasion of privacy. These requirements are intimidating and the opposite of providing for, encouraging and assisting public participation.

• ***The Record and the Draft Permit are still incomplete. We request that all missing documents and an index of the Confidential File records be included in the Record and be made available to the public.*** Documents are missing from the Record including some documents from the original permit hearing (which are still pertinent to the draft permit renewal) and an index of documents in the Confidential File. During the first hearing, at least one document was inappropriately secreted in the *confidential file*. An index of all documents in that file is necessary to see if additional documents have been inappropriately placed there.

The Spanish Fact Sheet from the original hearing appears to be missing as is CARD's *Comments on the Hearing Officer's Report*. There appears to be no formal approval of Revision 2 of the Application and no link to the actual document. There appear to be problems with the draft permit itself. Attachment O2 is actually O1. Attachment K of the new permit is "reserved." This was an important attachment in the original permit as it is a list of all the hazardous items that can be accepted and needs to be included to make the Draft Permit complete. Does this list exist elsewhere? There are multiple cover sheets that refer to other documents during the original permit process that don't appear to be in the Record. The transcript of the original hearing is missing. The Secretary's Final Order from the original hearing is not listed anywhere. All of the written comments with the so-called "Radioactive Memo" attached that were given to NMED at the end of the original permit hearing on 10-25-01 are gone. Comments that were sent in as long as three months ago are not entered into the Record or Index.

Finally, nothing has been added to the Record since August 12th—more than two months ago. Yet much has happened since then. There may be more documents missing than those listed as it is very hard to negotiate through the online Record.

• ***We request that NMED make the Notification, the Fact Sheet, the draft permit, the Record and all supporting documents available in hard copy near the site in a library or other location that is open evenings and weekends as well as during business hours.*** There are no documents of any kind near the site, so access to documents and information is difficult or impossible for the public that would be most affected by the dump. Many local people are poor, (21% of people in Chaves County live below the poverty line), don't have access to the internet or are computer illiterate. Providing documents only online is inadequate.

NMED's approach to the permit assumes that everyone knows how to access online documents and is comfortable working in a paperless environment. This is not the situation with many segments of the population and certainly not with the potentially affected communities near the site. NMED is making it impossible for these members of the public to participate fully in the permitting process.

As was pointed out in the past by phone, email and in other comments to NMED, poor people and people in rural areas also do not have easy access to the internet. There have been articles written in the *New Mexican* about the high cost of and problems involved with connecting rural areas to the internet. Hard copies of all documents need to be put in

the Artesia or other nearby Public Library as they were eventually during the original permit comment period.

Mr. Cobrain said it is just as easy for folks to access the documents on the library computer as it is to read hard copy documents, but this is not the case. Some local residents are computer illiterate; others know how to use email, but are not at all comfortable doing research. The demographics near the site are those of folks who are most likely to have low internet skills. It is ridiculous to expect people to study how to use a computer and the internet before they can access documents.

In fact, the online Record is very difficult to use even for those with moderate or high online skills in addition to being incomplete. Titles are minimal and often not representative of the titled document. Some documents are included within other documents, but this is not reflected in the title. Descriptions and titles are sometimes incorrect and there are a large number of discrepancies between the Record and the Index.

Mr. Cobrain also said there was a problem leaving documents at the library as people would take sections of the documents away. However, this was not a problem during the original permit hearing and there is no reason to expect this to be a problem now. Certainly, this is no excuse for not having even the Fact Sheets available in hardcopy as they are not that long and could easily be reprinted by the library if they should disappear. It is hard for CARD to understand why NMED would take notifications to the library or libraries and not drop off the Fact Sheets at the same time. Though the Fact Sheets are now available in the NMED Roswell office, that office is only open during business hours. It also appears that no one has been notified except for one CARD member that even this very minimal information is there. Having only the Fact Sheets available in libraries near the site, however, would also be inadequate.

• ***We request that hardcopy of the Record be made readable and that it be available both at the Santa Fe office and at a location near the site.*** Although the Public Notice says that a copy of the Administrative Record may be reviewed at their Santa Fe office, in fact, hardcopy of the Record is boxed up as loose pages and is not in readable form. It is unclear if there is even any way to know where among the boxes a particular document is. Everything is still in storage in another part of the building from the Library and it is obviously a hardship for the Librarian to unbox everything and bring it over. Though the Record may be technically available, it is not usable because pages are mixed together loose as they were not stapled back together after scanning. Many people would much prefer to view hardcopy documents than documents online either because they don't know how to use computers, don't know how to research online, or are just more comfortable with paper. This is particularly true for seniors. The problems with the online Record exacerbate this difficulty.

Certainly, it would be possible to re-staple the paper Record that exists now for minimal cost, add the permit and other new documents and get that to the Artesia Library. Then we could continue to discuss whether additional documents should be printed in hard copy for the Santa Fe Office.

• ***Again, we appreciate NMED's decision to provide a public meeting in October.*** However, the meeting should not be run the way the infamous Hagerman meeting was run during the original permit process. At that time, although a presentation was promised in Spanish with a question and answer period afterwards, the interpreter was only available for the Q & A portion and the presentation was in English. How can people ask questions

when they can't understand the presentation? Either there need to be at least two information meetings, one in English and one completely in Spanish, or there needs to be interpretation of the presentation as it is going on—a more cumbersome procedure. Also, the interpreter must be familiar enough with the technical nature of the presentation to be able to provide an adequate translation.

2. We request a public hearing on this draft permit. A permit was issued for this facility more than 10 years ago. Since then, situations have changed and more is known now than was known before. In particular, social and environmental justice concerns were never addressed, though they are required to be addressed now. There is increased trucking in the area, including WIPP trucking (WIPP is planning to resume shipping in December). The WIPP release has added to contamination in the area. Negative health effects from the oil and gas industry are now known to be even more severe than we realized before. Therefore, impacts on the local population have changed significantly as well. These are only a few of the things, pertinent to the permit, that have changed over the last 15 years.
Objections to the permit and issues to be raised

- We object to the lack of investigation of possible disparate impacts from the Triassic Park (TP) facility on potentially affected low income, limited education, and/or Spanish-speaking community members of Mexican descent. NMED has done no such study. (Transcript of the Hearing and associated hearing documents submitted by Citizens for Alternatives to Radioactive Dumping-CARD during the original hearing process; Colonias Development Council v Rhino Environmental Services, Inc.) We will raise this issue at the hearing.

- NMED has used as an excuse that there would be no effects off site at all, but has used a gas (VOC) to represent all possible releases even though the applicant's own expert stated that heavy metal particulates would be a significant portion of possible releases. There will also be PCB contaminated soil. We object to accepting this study as representative of all releases. We will raise this issue at the hearing and intend to provide expert testimony to prove that you cannot use a gas to be representative of a solid to determine effects off-site. (Transcript of the Hearing and associated hearing documents submitted by Citizens for Alternatives to Radioactive Dumping-CARD during the original hearing process) Further, the focus by NMED on effects off-site entirely ignores the disparate impacts of a waste site, per se, on communities of color in general, and in particular on communities of Mexican national or Mexican heritage communities living in border areas of the Southwest.

- We object to NMED's refusal to allow testimony on environmental justice issues during the first hearing and intend to raise this issue and provide such testimony this time. In fact, the situation has gotten worse and there is new information on this subject including, but not limited to, the release from WIPP and new information about increased health problems from oil and gas activities. Numerous other toxic, hazardous and radioactive facilities and dumps are in the area. Effects from this fall disproportionately on low income people of color who live near the dump. (Transcript of the Hearing and associated hearing documents submitted by CARD during the original hearing process; CARD's Title VI complaint about the original hearing and Colonias Development Council v Rhino Environmental Services, Inc.; New Mexico Threats Map and link to Oil & Gas Site map and text at www.SacredTrustNM.org.)

- We object to ignoring the social impacts of yet another waste dump in the southeastern New Mexico area. There is a perception that the facility area is a "national sacrifice area" and is just good for dumping. Adding additional dumps increases the social stigma and bad

reputation of the area. Whether contamination actually exists or not, the belief that it does exist contributes to social and economic decline. (*Colonias Development Council v Rhino Environmental Services, Inc.*) We will raise this issue at the hearing.

- Transportation and shipping has increased significantly since the original hearing including hazardous and radioactive shipping. During the original hearing, the applicants greatly underestimated effects from facility transportation on the public and on the environmental justice public in particular. In fact, applicants misinformed the public during information meetings and testimony at that time about these effects. We object to the lack of adequate analysis of the effects from trucking on the public and on the "environmental justice" public in particular. We will raise this issue at the hearing. (Title VI Complaint; information meetings; original permit)

- It appears that the current proposed facility was designed by more than one person/firm but that much of it was based on the original design. The original designer had previously designed a site that leaked early and had major problems. However, we were not allowed to cross-examine the designer during the original permit hearing on this or question their qualifications. Therefore, we object to any part of the original design being used unless the applicants can show that the problems with this designer's history have been taken care of. We will raise this issue at the hearing as we have no confidence in the original design. (Transcript of the Hearing —unfortunately, though this should be in the Record, it is currently unavailable to the public.)

- We object to using 5 year old data for closure and post-closure costs for financial assurance. Costs will be updated later, but using outdated figures at this time makes it appear that costs will be much lower than they actually will be. We request that this be corrected. (Draft Permit Attachment P1)

- We also want to hear testimony from both NMED and applicants on the long-term intentions for the facility. During the first hearing, both denied under oath that there was any discussion of modifying the permit to include radioactive materials. These statements were later shown to be false. This time we request that both applicants and NMED be more candid in their description of long-term intent for this facility. Applicants have a long history of wanting the facility to accept radioactive materials. We object to the permit if the long-term intention is to be a mixed waste facility. We will raise this issue at the hearing. (Transcript of the Hearing; 1999-02-04 Briefing on Permit.pdf)

General Comment

There is a pattern emerging in the last few years of NMED saying they can't provide what people need to participate in the permitting process because they don't have the money for it. Despite NMED's written statements that they are in "partnership" with some of the companies they are supposed to be regulating, NMED has obligations not only to the applicants but also to the public. They cannot charge inadequate fees from the applicants, spend all their money and time helping the applicants with the application process and then say they have little left for public participation.

NMED has regulatory and legal obligations to adequately notify and inform the public, to further public participation and to consider public comments, including comments on social or environmental justice issues. NMED has a regulatory obligation to provide for, encouraged and assist public participation. They must charge adequate fees to fulfill these obligations and we request that they start adequately charging applicants.

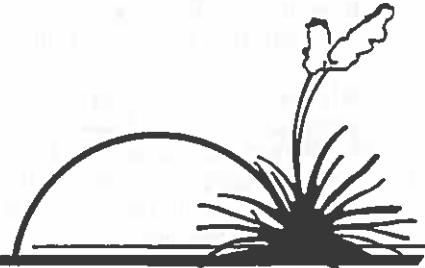
If NMED doesn't have adequate funds to run the permitting process in a way in which all members of the public can inform themselves, comment and participate fully in the public participation portion of the process, NMED should simply admit that they cannot proceed with permitting the facility.

Sincerely,
Janet Greenwald for CARD

CARD

Citizens For Alternatives To Radioactive Dumping

202 Harvard SE, Albuquerque, New Mexico 87106
(505) 266-2663 • contactus@cardnm.org



www.cardnm.org

Karen D. Higginbotham, Director
EPA Office of Civil Rights (Mail Code 1201A)
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-1000

November 20, 2007

Re: EPA File No. 09R-02-R6

Dear Ms. Higginbotham:

We are writing to you to amend our original complaint because of new information that we received several months ago. Unfortunately, we don't actually expect that you will act on this amendment because of EPA's history of ignoring virtually all complaints that are not dismissed outright. (We noticed, when writing this amendment that our last correspondence to you—our response to the New Mexico Environment Department's (NMED) response to your inquiry—was dated almost exactly 2 years ago.) However, we are writing to you so that there will be a record of some of the continuing problems we are having with NMED.

Some months ago we found out that much of the public comment that was submitted during a post-hearing meeting in Hagerman, New Mexico was missing from the Record. This meeting was set up specifically to receive written public comment from local folks in this highly Hispanic area who were not able to make it to the hearing itself.

During the hearing process we had received information from a "whistleblower" that NMED had been having meetings with the applicants on the subject of eventually turning the *Triassic Park* hazardous waste facility into a mixed waste facility. When queried about this, NMED denied ever having discussed this issue with the applicants. However, we found an NMED memo that clearly stated that NMED and the applicants had discussed this possibility on at least one occasion. At the time of the hearing there was clearly no market for a purely hazardous waste facility and, indeed, the applicants have never actually built their permitted facility. However, our fears have been fulfilled as the now-permittees are currently trying to turn the so-called *Triassic Park* facility into a reprocessing facility for high-level radioactive mixed waste.

Because of these recent plans we went to review the *Triassic Park* file at NMED to find a copy of the above mentioned memo describing the applicants' desire eventually to receive radioactive waste as well as hazardous waste at the facility. Though the hearing officer had ruled that this memo should be kept in the Administrative Record and therefore in the public file, NMED had removed it to the confidential file and would not let the public view it. We knew that many people at the Hagerman meeting had attached this memo to their written comments—including Victor Blair who went to review the Administrative Record with this writer and whose letter is attached here. We were sure we would find copies of the memo in the written public comments that were submitted to NMED during that meeting.

However, the hearing clerk told us that the records of this particular meeting were lost. After we insisted on finding these records they were actually found rather quickly. However, all but one of the letters with this memo attached were missing.

It is unclear if the hearing officer ever saw these written comments. Did NMED simply lose these specific comments? Other letters that did not have the memo attached were still in the Record. Were these comments removed after they were handed to NMED's representative? If so, who removed them and when? There were no records in the file of who attended the meeting, nor a list of comments received--though it is standard NMED practice to list all written comments in the Record.

Clearly, NMED has not given these written comments the care that they deserve. We wish that the EPA would investigate whether these comments were lost simply through incompetence or if a more sinister, intentional removal of these comments has occurred.

Years after we filed our complaint with you we continue to have problems with NMED in the area of discrimination against people of color and low income. CARD is currently involved in a lawsuit with NMED because of their continuing insistence that there is no place in the permitting process to look at whether or not discrimination is occurring as a result of their decisions.

We urge you to do actual investigations and to start dealing with the numerous complaints that you have received from individuals and groups who are being sickened and are dying because of the disparate impacts they are receiving from the hazardous facilities that you are allowing to be built. We urge you to advise NMED *now* to include a process to deal with potential and actual discrimination in their permitting process. We urge you to do the job you are mandated to do and to stop the discrimination that is occurring in New Mexico and other states.

Sincerely,

Deborah Reade
Citizens for Alternatives to Radioactive Dumping

Attachment

Cobrain, Dave, NMENV

From: Frank McKinnon <mckinnon7654321@gmail.com>
Sent: Saturday, October 29, 2016 10:23 AM
To: Cobrain, Dave, NMENV
Subject: Ref: Triassic Park Draft Permit Public Comments
Attachments: Public Comment for Triassic Park October 29, 2016.pdf

Dave Cobrain,
Program Manager Hazardous Waste Bureau - New Mexico Environment Department 2905 Rodeo Park Drive
East, Building 1 Santa Fe, NM 87505-6303 Ref: Triassic Park Draft Permit Public Comments
Email: dave.cobrain@state.nm.us

Dear Dave Cobrain:

I am not willing to sacrifice my health, safety, and home for the people that would profit from the Triassic Park Permit. I live in Roswell, and I work in Dexter. I have been in every state in the United States, and can tell you, without a doubt, that the area - which would be destroyed by you allowing the Triassic Park waste dump to be built and to operate with this permit - is one of the most beautiful areas in the United States.

The New Mexico Environment Department has at least one topographical map which shows how the elevation of the ground between the Triassic Park site and the Pecos River causes there to be, significantly, high potential for the rainwater run-off from the Triassic Park site to flow above and below ground into the Pecos River via the Long Arroyo, which would contaminate much of the land and water between Dexter and Hagerman, would harm many people that live in this area, would harm wildlife in this area, and would harm many people that consume the agricultural products from this area.

The main purpose of the Triassic Park permit is to allow the owners of the Triassic Park site to receive and store highly radioactive waste from about 104 nuclear power plants which are in the United States.

You know, as well as I do, that transporting highly radioactive waste from all of the nuclear power plants in the United States to the Triassic Park site would cause, significantly, high risks of contaminating land and water along the roadways used for transport, and of harming wildlife and many people that live near these roadways.

You know, as well as I do, that having the highly radioactive waste from all of the nuclear power plants in the United States stored at the Triassic Park site would cause property values in Chaves County to significantly decrease and never recover.

You know, as well as I do, that storing non-radioactive, toxic substances at the Triassic Park site would cause, significantly, high potential of contaminating land and water, harming much wildlife, and harming many people.

Since you know that allowing the Triassic Park waste dump to be built and used, as the permit would allow, would be allowing much contamination of water and land, allowing much harm to wildlife and people, and would decrease the value of much property, you have very serious duty to protect the land and water from being contaminated, to protect the wildlife and people that would be harmed, and to protect property that would be ruined.

Would knowing all that I have written here to be factual, and allowing it to happen be criminal?

Please find a PDF copy of this document attached.

Respectfully,
Frank McKinnon
2501 Gaye Drive
88201
8199

Roswell, New Mexico
(575) 420-
mckinnon7654321@gmail.com

Dave Cobrain, Program Manager
Hazardous Waste Bureau - New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303
Ref: Triassic Park Draft Permit Public Comments
Email: dave.cobrain@state.nm.us

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Respectfully,

Frank McKinnon
2501 Gaye Drive
Roswell, New Mexico 88201
(575) 420-8199
mckinnon7654321@gmail.com

Cobrain, Dave, NMENV

From: Edubina Beany Rubio Morales <edubina@hotmail.com>
Sent: Friday, October 28, 2016 4:56 PM
To: Cobrain, Dave, NMENV
Subject: Draft Hazardous Waste Permit For Triassic Park Waste Disposal Facility, EPA ID#: NM0001002484

Dear Mr. Cobrain:

I became aware of this issue, only after the meeting was held in Roswell with very little participation. The meeting was obviously not advertised much. Apparently by the lack of participation, no one else was aware of any meeting. I just wanted to tell you that I am not willing to sacrifice my home, health and environment for the people that would profit from the Triassic Park Permit. We have lived here in this area all of our lives, and we cannot have other states coming and dumping their waste in our communities. Many individuals in this area, do not read the local newspaper, and therefore, you have to publicize any future meetings by other means.

Why is the waste disposal not being built closer to where the waste is coming from? Why should New Mexico be a dumping ground for all of this hazardous waste? The WIPP site was supposed to be safe, and they are no longer transporting to the site, because it has been leaking for years now. This place is too close to our water, and New Mexico is already in danger of losing so much more.

Please consider our comments, and notify us of any further meetings you plan on having.

Sincerely,

Edubina Rubio Morales
"Beany"
(Home)
355 East Anasazi Road
Dexter, NM 88230
(575)317-2809

(Business)
Farmers Insurance Group of Companies
113 W 3rd
Roswell, NM 88201
(575)625-1564 Phone
(575)623-7529 Fax

Cobrain, Dave, NMENV

From: Deborah Reade <reade@nets.com>
Sent: Tuesday, July 05, 2016 3:50 PM
To: Cobrain, Dave, NMENV
Subject: Comment on the Triassic Park Record and other items
Attachments: TP-Title VI Complaint.pdf

Dear Dave,

I have made a foray into the online Triassic Park record but I was unhappy to see that the Record appears to be incomplete. You said that both the Public Record and the Administrative Record including the portion from the original hearing were included online. In fact, it appears that only the Public Record is there. It is unclear where the Record from the first hearing actually is. There were many documents introduced during that hearing that are important and pertinent to the renewal and folks need to have easy access to those as well.

In addition, only the acknowledgement of receipt of our Administrative Complaint by EPA and your response are in the Record. The complaint itself (which was also sent to you) does not appear to be in the Record. I have attached a copy here, although it does not have all the accompanying attachments.

Finally, you said on the phone that you had put notification in both Spanish and English in local newspapers and on local radio stations. In the Fact sheet, however, only newspapers are mentioned. There is also no entry in the record about any of these notifications. Documentation of when, how often and in what languages and in what medium notification was made should be in the Record along with the actual text in each language that was used. This was published in the Record for the original permit but I see nothing now even though notification was finished some weeks ago.

Please correct the Record so these documents are all included and let me know when this has been completed. If you aren't able to make these corrections, please discuss that with me. Some of these items might already be in the Record, but it is difficult, without opening a multitude of documents, to find things as titles are obscure and aren't necessarily descriptive of what the document is.

Also when the Administrative Record from the hearing is added, please keep it as a separate section as otherwise it would be mixed in by date and would be very confusing.

I continue to point out that there is a great need for a Spanish Fact sheet and for all documents in hard copy near the site. You said folks could just as easily access the online version of the Record at the Library in Roswell as look at a hard copy document there. In fact, when you are dealing with very poor people, as you are in the Triassic Park area, they may not have computers at all and therefore be computer illiterate. That makes it virtually impossible for such people to access records that are only online. You said you were concerned that people would take copies of the Record away from the library. However, there were no such problems reported during the first hearing so that isn't really a potential problem.

You also mentioned that you didn't plan to have any information meetings until the end of or after the comment period was over. I point out again that there are many folks in the area still who are illiterate and also some who are illiterate and don't speak English. These people need an oral presentation in both English and Spanish so they understand what is being planned for them by folks in Santa Fe and can comment if they wish.

After the Record has been corrected, the Spanish fact sheet is available and hardcopy of the Record and the Draft permit are available near the site, the comment period needs to be extended for another 60 days so people have enough time to understand the situation and prepare adequate presentations and comments.

And please include this email in the Record. It is a comment, though a preliminary one.

Sincerely,
Deborah Reade

Deborah Reade
117 Duran Street
Santa Fe, NM 87501-1817
Phone/Fax 505-986-9284
reade@nets.com

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

| | | |
|---|---|------------------|
| Citizens for Alternatives to Radioactive Dumping; |) | |
| Conservative Use of Resources and the |) | |
| Environment; Water Information Network, |) | COMPLAINT UNDER |
| Magil Duran; and Noel Marquez |) | TITLE VI OF THE |
| |) | CIVIL RIGHTS ACT |
| COMPLAINANTS |) | |
| |) | |

INTRODUCTION

Citizens for Alternatives to Radioactive Dumping ("CARD"), Conservative Use of Resources and the Environment ("CURE"), Water Information Network ("WIN"), Magil Duran and Noel Marquez (collectively "Complainants"), through their undersigned representative, file this administrative complaint with the Office of Civil Rights of the United States Environmental Protection Agency ("EPA") for an investigation into violations of Title VI of the Civil Rights Act of 1964 by the New Mexico Environment Department ("NMED") with regard to its handling of the application of Gandy-Marley, Inc. ("GMI") for a treatment, storage and disposal ("TSD") facility permit to construct and operate a hazardous waste TSD facility approximately 40 miles east of Roswell, New Mexico. NMED's actions or omissions complained of have had the effect, if not the purpose, of discriminating against the Complainants based on their race, color or national origin.

NMED is located at: New Mexico Environment Department, Office of the Secretary, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502-6110. NMED is a "recipient" of "Federal financial assistance" and "EPA assistance" as defined by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d to 2000d-7, and 40 CFR §7.25.

Complainants are so-called "minority" members or have minority membership in their organizations, many of whom live, work and recreate in the general area of the proposed GMI facility (AKA "Triassic Park facility"). CARD and CURE were parties in the hearing for the facility; they, along with WIN, as groups, many of their members as individuals, and others of Complainants have actively

opposed GMI's TSD facility since at least the latest revision of the application was accepted for permitting by NMED. Complainants therefore petition for an investigation as Complainants who have opposed this facility during the permitting process and who have suffered the effects of NMED's discrimination.

BACKGROUND

New Mexico is the only state where no single racial group is in the majority. It does, however, have a significant percentage of minority residents. It is one of the poorest states in the nation, ranking number 48 in per capita personal income for every year from 1995 through 1999.¹ The percentage of persons of Hispanic or Mexican origin at or below poverty level is more than twice that of the United States population as a whole (27.8% compared to 13.1%).² In New Mexico, Hispanics and Mexicans are twice as likely as Non-Hispanic Whites (25% vs. 12%) to lack healthcare coverage and those living in poverty are much more likely never to have received cancer-screening exams or early and continuous prenatal care.³

Chaves County, where the Triassic Park facility is located, has high percentages of people living in poverty—23.1% for all ages and 32.4% for children below 18 according to the *Chaves County 2002 County Health Profile*. The low income population of the County has also been designated as a *Shortage Area* by the New Mexico Department of Health because of limited access to healthcare.⁴ Most of the minority population in that area is made up of Hispanics or Latinos of Mexican origin. This population is often concentrated in communities or in residential neighborhoods within towns that have a larger non-Hispanic White population. Looking more closely at just 6 towns potentially affected by the Triassic Park facility with high percentages of Hispanics or Mexicans, it can be seen that towns with high minority populations also have high percentages of youth (5-17 year olds) living in poverty:

| | % people of color | % youth in poverty County | |
|--------------------|--------------------------|----------------------------------|-------------------|
| Dexter | 72.6% | 35.7% | Chaves |
| Lake Arthur | 71.1% | 61.0% | Chaves |
| Hagerman | 64.1% | 36.7% | Chaves |
| Lovington | 56.7% | 25.6% | Lea |
| Roswell | 49.1% | 28.4% | Chaves |
| Artesia | 48.3% | 25.9% | Eddy ⁵ |

Air quality in Chaves County is among the worst in the state (measuring volatile organic compounds ("VOCs"), carbon monoxide, nitrogen dioxide, sulfur dioxide and particulate matter less than 10 microns) and New Mexico already has the highest level of airborne particulate matter in the nation.⁶ Bad air results from a combination of natural dust, aerosol vapors and other pollutants from the

extensive oil and gas industry, and from industrial and waste disposal activities in the area. Topsoil in parts of the County is known to contain high levels of lead and arsenic.

From 1995 through 1997, rates of hospitalizations for diseases of the respiratory system in Chaves County were some of the highest in New Mexico—way above the State rate.⁷ One of the most frequently reported categories in the *New Mexico Children's Chronic Conditions Registry* ("CCCR") is respiratory conditions—especially asthma—and numbers in Chaves County are particularly high compared to most surrounding counties.

According to hospital inpatient discharge data for ambulatory care sensitive conditions from 1995 through 1997, Health District 4 (which includes Chaves County) had the highest rate of these hospitalizations in the State for all top chronic and infectious diseases in every age category except infections diseases in ages 65 and over⁸. Chaves County itself had the fourth highest cancer incidence rate in the State and the highest cancer mortality rate in the state during 1970-1996.⁹

The New Mexico Department of Health ("NMDH") website states that Hispanics in New Mexico are more likely (35%) than Non-Hispanic Whites (26%) to be overweight and more than twice as likely (7%) than Non-Hispanic Whites (3%) to have received a diagnosis of diabetes. The NMDH *Border Health and Environmental Survey* (April 2000) reported that in 6 border Counties, Hispanic households were more likely (11%) to have had a family member diagnosed with asthma than non-Hispanic households (7%). Although Chaves County was not included in the survey, it borders this block of 6 counties. Hispanic and Mexican residents near the Triassic Park facility testified during the permit hearing about their numerous health problems—including asthma and bronchitis. One woman could hardly speak because her bronchitis was so bad she had to use a respirator.

Birth defects are the leading causes of infant mortality in New Mexico and national estimates placed New Mexico fourth highest in the US for infant mortality due to birth defects in 2001.¹⁰ Children with birth defects have a higher prevalence of developmental disabilities than children without birth defects. Not surprisingly, in 1996, two other most frequently reported chronic conditions in the CCCR included developmental delays and birth defects. Chaves County had higher numbers of children diagnosed with congenital anomalies than any of the surrounding counties¹¹ in 1995 through 1999 and had the 2nd highest rate of congenital anomalies in the state.¹² It also had the highest rate of neural tube defects and the second highest rate of both isolated cleft palate and cleft lip with or without cleft palate in the state according to the *1999 New Mexico Selected Health Statistics Annual Report*. The Report goes on to state that while vitamin usage is associated with preventing congenital malformations, Spanish-speaking pregnant women were less likely to use vitamins. The infant mortality rate in Chaves County was 9.2/1,000 live births compared to 6.5 for New Mexico as a whole—giving it the 3rd highest infant mortality rate in the State.

The New Mexico Department of Public Health's website lists air pollution from power plants and oil refineries; disposal and recycling of solid waste and disposal of hazardous materials; drinking water contamination due to unintentional radioactive or chemical discharges; as well as equity and justice in

the distribution of environmental health resources and risks as some of the environmental health issues that are significant for New Mexicans. These all apply to the residents of Chaves County. Studies have shown a statistically significant correlation between living near a landfill and upper respiratory disorders,¹³ skin rashes,¹⁴ fatigue and headaches,¹⁵ cancer¹⁶ and birth defects. The 1998 EUROHAZCON Study showed a 33% increase in risk of non-chromosomal anomalies near hazardous waste landfill sites, including a significantly raised odds ratio for neural-tube defects.¹⁷ Although most of these studies showed a correlation with living quite close to a landfill, perhaps a lesser but still significant effect could be shown on the Hispanic communities nearest to the Triassic Park facility—especially on particularly sensitive subpopulations of Hispanic asthmatics, children and fetuses. The 2002 EUROHAZCON Study showed a higher risk of chromosomal anomalies in people living close to hazardous landfill sites, and risk did not decline consistently with increasing distance from sites.¹⁸ Frequent winds are very high in the area (40-60 mph) and testimony was given during the permit hearing that the oil refinery in Artesia could be smelled in Hagerman (about 40 miles away). Clearly some kinds of pollutants are able to travel long distances in this area. Hispanic residents also work in the dairy, cattle and ranching industries which surround the facility.

Hispanic and Mexican residents in this area are already subjected to numerous pollutants from sources other than the Triassic Park facility. Nearby facilities and development include a mixed-waste treatment, storage and disposal facility at Andrews, Texas; a 'special wastes' landfill at Eunice, New Mexico; landfills, transfer stations and processing facilities (sometimes for hazardous and special wastes) throughout the area; petroleum land-farms adjacent to the site and numerous other landfarms throughout the area; a petroleum refinery at Artesia, New Mexico; a mixed-waste treatment, storage and disposal facility near Carlsbad, New Mexico (the Waste Isolation Pilot Plant ["WIPP"]); as well as extensive oil and gas development throughout southeastern New Mexico/west Texas.

All of these sources have associated transportation which also contributes a chronic effect on human health in the area. All of the towns listed above except Lovington lie on or near the transportation route to WIPP. Since the WIPP transportation containers are allowed to emit up to 10 mrem per hour of penetrating radiation at 2 meters during travel, Hispanic and Mexican residents who travel this route or go to gas stations and convenience stores on this route could also be repeatedly exposed to low levels of radiation.

There is also a Superfund site in downtown Roswell where chlorinated solvents (primarily PCE) have contaminated an aquifer—at 5000 times the Clean Water Act limit in places. At least 15 downgradient domestic wells have shown evidence of PCE contamination. Upon information and belief there is also ground water contamination from TCE and other chemicals at the former Walker Air Force Base south of Roswell proper. In fact the area near the Triassic Park facility as well as the larger area of southeastern New Mexico/west Texas appears to be, as one member of the public commented, "...singled out as a dumping ground for the rest of the world." (AR 01-193) Another member of the public said that, "Companies like these [GMI] target areas where communities have low education

levels, are economically depressed, and have high levels of minorities." (AR 01-130). Attachment A is a map showing only some of the waste dumps and other polluting facilities that have been proposed for or sited near Triassic Park and the larger southeastern New Mexico/west Texas area..

TIMELINESS

The Secretary's *Final Order* (Attachment E) permitting the Triassic Park facility is dated March 18, 2002. Therefore this complaint is timely for discriminatory siting.

Originally, Complainants were going to allege that the last discriminatory act involving public participation was NMED's act of not posting the Spanish revision of the Triassic Park Fact Sheet on their website for months after it was created, while having an English Fact Sheet posted. CARD noted in their *Response to the Hearing Officer's Report and Proposed Findings of Fact and Conclusions of Law* that the August 2001 Spanish revision of the Fact Sheet (as well as the latest English version of the Fact Sheet) had not been posted as late as December 2001. At that time the latest on-line Fact Sheet was dated 6/15/01 and was the English supplemental Fact Sheet. CARD did not revisit this page of NMED's website until late July 2002 when CARD noted that both English and Spanish versions were present. Consequently, CARD wrote to NMED's webmaster the morning of August 1, 2002 asking when the Spanish Fact Sheet had finally been posted on the site, in order to determine the last date it was **not** present as the date of the last discriminatory act. Within hours of this request, NMED removed both Fact Sheets from the site. (See Attachment B for e-mail correspondence and a copy of the web page showing that it was modified on August 1, 2002. The modification was the removal of both Fact Sheets.) A little more than a week later on August 9, 2002 NMED replied that they couldn't pinpoint the date the Spanish Fact Sheet was posted. The next day CARD asked why the Fact Sheets had been removed from the site the day of CARD's request for information. As of this writing, CARD has received no reply.

In fact, there can be no reason for their removal on the day of CARD's request other than to hamper Complainants' efforts to file this complaint. CARD has made no secret of their intention to file a Title VI complaint with EPA. Fact sheets (including the original Fact Sheet and a Supplemental Fact Sheet) for the only other hazardous waste storage and disposal facility permitted by NMED (WIPP) are still on-line today, years after that facility was permitted. Even though a facility is permitted, the Fact Sheets still contain useful information. This is especially true of the Spanish Fact Sheet since it is the only written information about the facility provided in Spanish by either GMI or NMED.

Before the Fact Sheets were removed from the site, it should have been a simple matter for NMED's webmaster to look up the date of the Spanish Fact Sheet's posting. Now it would be much more difficult to determine this date. However, the point is moot since Complainants' are alleging that the last in a long line of discriminatory acts is NMED's removal of these Fact Sheets on August 1, 2002. This complaint is therefore timely for discrimination in the public participation process.

DISCRIMINATORY SITING

I. NMED VIOLATED TITLE VI BY CHOOSING THE SITE OF THE GMI FACILITY AND/OR BY USING CRITERIA OR METHODS OF ADMINISTERING ITS PROGRAM WHICH HAVE THE EFFECT OF SUBJECTING RESIDENTS OF HISPANIC AND MEXICAN DESCENT TO DISCRIMINATION ON THE GROUNDS OF RACE, COLOR OR NATIONAL ORIGIN.

EPA's Title VI regulations at 40 CFR §7.35(c) forbid a recipient of Federal funding from choosing a site or location of a facility that has the purpose or effect of subjecting individuals to discrimination on the grounds of race, color or national origin. 40 CFR §7.35(b) forbids a recipient of Federal funds from using criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color or national origin.

Through its permitting of the GMI facility, NMED has violated 40 CFR §§7.35(b) and (c) as it is a recipient of Federal funds whose actions, criteria or methods have had the purpose or effect of subjecting Complainants and their Hispanic and Mexican members to discrimination because of their race, color or national origin. NMED has violated Title VI because on March 18, 2002 it issued GMI's permit for the construction and operation of a hazardous waste storage, treatment and/or disposal facility (TSDF) near Roswell, New Mexico at a location that could disparately impact surrounding residents of Hispanic and Mexican descent—especially Hispanic and Mexican youth and Hispanic and Mexican residents suffering from asthma or other respiratory diseases. These populations are already overburdened with the effects from facilities which generate, transport, treat, store, release or dispose of pollution; suffer from ill health and poverty to a greater degree than equivalent non-Hispanic White populations and have less access than non-Hispanic White populations to health care and other factors (such as vitamins, good nutrition, etc.) which could mitigate negative effects from GMI's facility.

A. NMED HAS NOT ADDRESSED THE EFFECT OF ITS PERMITTING DECISION ON THE HISPANIC AND MEXICAN COMMUNITIES NEAREST THE GMI FACILITY, INCLUDING COMMUNITIES WHICH INCLUDE COMPLAINANTS.

During the Permit Comment Period for GMI's facility, NMED received almost 800 cards and letters indicating that the GMI facility could cause "...negative environmental justice impacts on the local population..." (AR 01-117). One letter from the Fambrough Water Cooperative near Hagerman, New Mexico stated that "...the vast majority of people we serve are poor and Hispanic with very little formal education. Most of these people do not utilize English as their primary language..." and requested a disparate impact study be done when it asked for "...funds for an investigation into possible environmental justice issues." (Attachment G).

At the permit hearing CARD sought to present testimony on the potential adverse, disparate environmental justice issues associated with the siting of the GMI facility and request that a disparate impact study of the facility be done before the facility was permitted. GMI challenged CARD's testimony on grounds of relevancy, arguing that CARD's testimony was not relevant to the proceeding

since only state requirements were relevant to permit proceedings and not federal requirements. GMI also argued that even EPA guidance documents referring to Title VI or environmental justice issues were also irrelevant.

The Hearing Officer accepted GMI's arguments, excluding CARD's testimony and documents, and ruling that environmental justice and Title VI issues were not relevant to the proceeding. Evidently, NMED and the Hearing Officer had not read EPS's *Draft Recipient Guidance* where it states under *Title VI Approaches* that:

"[y] may elect to adopt a comprehensive approach that integrates all of the Title VI activities described below into your existing permitting process. EPA expects that such comprehensive approaches will offer recipients the greatest likelihood of adequately addressing Title VI concerns, thereby minimizing the likelihood of complaints."

NMED's Hearing Officer professed an inability to reconcile state law under which hazardous waste permits are issued with CARD's demands for compliance with Title VI and corresponding EPA regulations even though this reconciliation is mandated by statute. (If, indeed, state law governing the granting of permits is inconsistent with or fails to follow Federal law with respect to Title VI, then the state law must be changed or NMED could be subjected to de-funding.)

CURE argued that Title VI and environmental justice issues were relevant to the permitting process under both the New Mexico Hazardous Waste Act and Article XX of the New Mexico Constitution. However the Hearing Officer avoided any examination of the statute or Article XX.

CARD pointed out in its *Response to the Hearing Officer's Report and Proposed Findings of Fact and Conclusions of Law* that the New Mexico Hazardous Waste Act at NMAC 20.4.1.900 (incorporating 40 CFR §270.10(k)) would allow the proper disparate impact analysis to be done, citing EPA General Counsel Gary S. Guzy's December 1, 2000 memo¹⁹ which describes how the "omnibus" authority laid out in RCRA section 3005(c)(3) could be used to address cumulative risks due to exposures from pollution sources in addition to the applicant facility, unique exposure pathways and sensitive populations (e.g., children with high levels of lead in their blood and individuals with poor diets); that section 3005(3) provides authority to consider environmental justice issues in establishing priorities for facilities; that section 3019 provides authority to increase requirements for applicants for land disposal permits to provide exposure information; and that section 3004(0)(7) provides authority to issue location standards as necessary to protect human health and the environment. This was, however, to no avail.

Despite her assertions to the contrary, the Hearing Officer appeared to realize that NMED did have some responsibility to comply with Title VI requirements when she went on to suggest that the Department had, in fact complied with the Act. Without a shred of evidence in the Record, the Hearing Officer concluded in her *Report* that "On the question of whether a certain community is being subjected to disproportionate impact, it appears that the Bureau gave some consideration to the matter..." This

conclusion was based totally on one obscure statement offered by NMED in their *Findings of Fact and Conclusions of Law* after the hearing was concluded where the Department simply said that it "...does not believe the Triassic Park facility is located in an area that raises environmental justice issues."

In his *Final Order* permitting the GMI facility, the Secretary concurred that current permitting regulations do not provide for an analysis of potential disproportionate impacts from a facility. He then went on, however, to "perform" such an "analysis" using virtually no scientific data, coming to the conclusion that there would be no disparate effect on Hispanic and Mexican populations from the facility.

Analyzing for disparate effects from the Triassic Park facility is not a simple matter since Hispanic and Mexican communities (as well as non-Hispanic White communities) are relatively distant from the facility (more than 20 miles). However, neither GMI nor NMED ever looked at all the different hazardous wastes or constituents that could be released from the facility (including particulate releases which GMI's own scientists stated would probably be one of the greatest sources of airborne releases from the facility); never analyzed releases from associated transportation to or from the facility even though such transportation is significant and goes right by and in some cases through Hispanic and Mexican communities; ignored all but one potential exposure pathway (airborne VOC releases); ignored the cumulative effects from pollution sources other than the proposed facility; and ignored the current state of health of surrounding Hispanic and Mexican populations.

Because modeling showed that VOC releases 3 miles from the facility were below EPA's levels of concern, NMED concluded that all releases of all kinds would have no effect on communities 20-40 miles away. This, however, ignores EPA's *Draft Revised Investigations Guidance* which states under *Adverse Impact Decision* that:

"Compliance with environmental laws does not constitute per se compliance with Title VI...EPA recognizes that most permits control pollution rather than prevent it altogether. Also, there may be instances in which environmental laws do not...take into account impacts on some subpopulations which may be disproportionately present in an affected population. For example, there may be evidence of adverse impacts on some subpopulations (e.g., asthmatics) and that subpopulation may be disproportionately composed of persons of a particular race, color, or national origin...Air quality that adheres to such [ambient air quality] standards is presumptively protective of public health in the general population ...However, if the investigation produces evidence that significant adverse impacts may occur, this presumption of no adverse impact may be overcome."

Since neither NMED nor GMI did any adverse impact investigation, they never discovered whether or not such sensitive subpopulations (e.g. Hispanic or Mexican asthmatics) could be negatively affected by the levels of pollution that could reach them from the facility or its associated transportation.

B. NMED HAS SHOWN A PATTERN OF DISCRIMINATION THROUGHOUT ITS PERMITTING PROGRAM OF IGNORING ITS TITLE VI RESPONSIBILITIES WHICH HAS

HAD THE EFFECT OF DISCRIMINATING AGAINST COMPLAINANTS AND OTHER PERSONS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

NMED has established a pattern and/or practice of criteria or methods of administering its programs which have had the effect, if not the intent, of subjecting individuals to discrimination due to their race, color or national origin. Specifically, NMED has chosen to ignore its Title VI responsibilities in all of its permitting decisions in the State of New Mexico.

In her Report, with absolutely no evidence in the Record demonstrating either GMI's or NMED's compliance with Title VI, the Hearing Officer set forth her belief that NMED "...embraces the concepts embodied in Title VI and its implementing regulations..." She further stated that "In my experience NMED is fully committed to the principles of environmental protection and civil rights and does not discriminate based on race, color, national origin or other protected status." (*emphasis added*) However, it is not Complainants' experience that NMED is committed to the principles of environmental protection and civil rights.

Although EPA's *Recipient Guidance* and *Investigations Guidance* are only guidance documents and only suggest possible ways for agencies to assure that their programs do not discriminate, it is telling that NMED has adopted virtually none of the suggestions in either document, has no approach to assure compliance with Title VI or EPA's implementing regulations, appears to have no knowledge of the history of any Agency efforts to comply with these requirements, has trained only a small number of people in any aspect of Title VI or environmental justice (and almost all are no longer working for NMED), has no formal policy regarding environmental justice or Title VI, frequently permits facilities in areas with high concentrations of minorities without ever having required or performed a single scientific investigation into possible disparate impacts, considers environmental justice and Title VI issues irrelevant in permitting, and has actively opposed incorporating Title VI requirements into its permitting process. NMED has shown only the most minimal understanding that they have any obligation to be sure that their activities are not discriminatory.

In the *Final Order* permitting GMI's facility the Secretary denied that there were any Title VI related problems with the permitting process while at the same time admitting that improvements were called for. He then directed that changes be made in the Department's procedural regulations and amendments be proposed to the Environmental Improvement Board and the Water Quality Control Commission which included several elements. Most of these elements involved public participation. However, element *d* stated that these changes should include:

"A consideration of affected populations and other permitted facilities **within three miles of the facility in question**, based on readily obtainable information, sufficient to ascertain whether an adverse, discriminatory and disparate impact is likely to be found by the Environmental Protection Agency (EPA) under EPA's Interim Guidance For Investigating Title VI Administrative Complaints Challenging State Environmental Permits. This consideration must be made with an eye to the resources available in the Department to make such a consideration, and should not be carried out in a way that requires the revisiting of the siting

regulations in each case, or assumes authority beyond that granted to the agency in the applicable statute." (*Emphasis added*)

Although this paragraph grudgingly admits that there should be some consideration of Title VI issues, its primary purpose is to limit the scope of any disparate impact investigation and therefore discriminates against Complainants and other persons due to their race, color or national origin. These limitations also appear to be directly opposed to guidance described in the same EPA document named in paragraph *d*.

Under *Identify and Characterize Affected Population*, EPA's *Investigations Guidance* states that:

"The impacts from permitted entities and other sources are not always distributed in a predictable and uniform manner. therefore, the predicted degree of potential impacts could be associated with a possible receptor population in several ways...An area of adverse impacts may be irregularly shaped due to environmental factors or other conditions such as wind direction, stream direction, or topography. Likewise, depending upon the location of a plume or pathway of impact, the affected population may or may not include those people with residences in closest proximity to a source."

Limiting consideration of affected populations only to those within 3 miles of a proposed facility is arbitrary and capricious. Such regulations, if passed, would eliminate Complainants and thousands of other potentially affected minorities even from consideration whether they were actually impacted by a facility or not. There are many examples of contamination in New Mexico which have affected minority populations farther than three miles from the source. (*e.g.* contamination from Los Alamos National Laboratory (LANL) which has accumulated at Cochiti Dam by Cochiti Pueblo, and contamination from the last LANL fire which spread for many miles across Native American and Hispanic communities. In fact, so much of the smoke from that fire rose to a high altitude and was carried across several states that it is possible that the bulk of the contamination was carried for hundreds of miles out of state.) The Secretary is well aware of these; therefore, this paragraph *d* does not represent a good-faith effort on NMED's part to address their discriminatory actions.

The Secretary also appears to be limiting consideration of the *Universe of Facilities* only to those permitted by NMED that fall within the three mile limit. This, again, is arbitrary and capricious. The *Investigations Guidance* clearly states under *Determine Universe of Sources* that an assessment may need to evaluate:

"...the cumulative impacts of pollution from a broad universe of regulated and permitted sources...as well as regulated but usually unpermitted sources...and unregulated sources."

Even background sources can be considered if appropriate. There is also no limitation on location of these sources if they are "relevant" sources of stressors. Clearly, EPA recognizes the reality that an emissions source does not cease to affect people simply because it is unpermitted, not a facility or more than 3 miles from the facility under consideration.

Stating that a disparate impact study should only be based on "...readily obtainable information..." and that it shouldn't cost too much, also appears to limit such a study unreasonably. Again, under *Analyses or Studies*, the *Investigations Guidance* says that:

"...a relevant adverse impact analysis or a disparity analysis would, at a minimum, generally conform to accepted scientific approaches."

Adequate data to perform such an analysis in a scientific manner may or may not be "readily obtainable." Since NMED's Solid Waste Bureau has said they don't expect to be able to accurately map their facility locations for years because of inadequate resources (see below), one shudders to think what a disparate impact analysis would look like under the same resource limitations. Certainly, at Triassic Park, distance to Hispanic and Mexican receptors was never accurately determined. NMED does not appear to realize that it has the authority under RCRA's *Omnibus* provision to require the applicant to provide the data—even to do the study if the applicant can do it in an unbiased manner. Nor does NMED appear to realize that they could bill the applicant if the Department has to do the study itself.

Finally, the Secretary says in the *Order* that:

"...state permitting laws do not contemplate a consideration of disparate impact as part of the permitting process, and...state law does not provide such a ground for denial of a permit application..."

How then, in NMED's opinion, could any consideration of affected populations not assume authority beyond that granted the agency by statute?

C. NMED HAS SHOWN A PATTERN OR PRACTICE OF BIAS, HOSTILITY AND INTIMIDATION IN FAVOR OF INDUSTRY AND AGAINST NEW MEXICANS, INCLUDING HISPANIC AND MEXICAN NEW MEXICANS, WHO ATTEMPT TO ENSURE THAT TITLE VI AND ENVIRONMENTAL JUSTICE CONCERNS ARE INCORPORATED INTO NMED'S PERMITTING PROGRAM. THIS PATTERN OR PRACTICE OF BIAS, HOSTILITY AND INTIMIDATION HAS HAD THE EFFECT OF DISCRIMINATING AGAINST HISPANIC AND MEXICAN NEW MEXICANS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

This pattern of bias and hostility and intimidation has had the effect of creating a disparate impact and discriminating against Hispanic and Mexican members of Complainants as well as other Hispanics and Mexicans and other minority populations in the state because of their race, color or national origin. Specific incidents of discrimination include, but are not limited to the following:

1. NMED HAS DEMONSTRATED BIAS IN FAVOR OF INDUSTRY AND AGAINST THE PUBLIC, INCLUDING COMPLAINANTS IN REGULATING NEW MEXICO DEPARTMENT OF ENERGY (DOE) FACILITIES

In their *Letter of Intent Meeting Environmental Responsibilities At New Mexico DOE Facilities*, NMED has stated that they are committed to:

"[c]ontinue the established **partnership** between DOE, its contractors, and regulators for LANL [Los Alamos National Laboratory] and SNL [Sandia National Laboratory]..." (*emphasis added*)

NMED does not appear to realize that it is inappropriate for a regulator to be in partnership with the industry it is regulating and that their mission is not to be in business with industry, but to protect human health and the environment.

2. NMED HAS DEMONSTRATED BIAS, HOSTILITY AND INTIMIDATION IN ADMINISTERING THE WASTE ISOLATION PILOT PLANT PERMIT APPLICATION, DISCRIMINATING AGAINST HISPANIC AND MEXICAN PARTICIPANTS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

During the WIPP mixed waste facility hearing the Hearing Officer also stated that environmental justice concerns were not part of the permitting procedure. Although the Hearing Officer allowed some parties to testify and cross examine witnesses **at length** on issues truly unrelated to the permit (e.g. tritium gas and radioactive waste transportation) he would not allow CARD to ask even one single question of NMED's witness regarding if environmental justice concerns were addressed in any way by NMED.

3. NMED HAS DEMONSTRATED BIAS, HOSTILITY AND INTIMIDATION IN ADMINISTERING THE RHINO (CHAPARRAL) FACILITY PERMIT APPLICATION, DISCRIMINATING AGAINST HISPANIC AND MEXICAN PARTICIPANTS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

During the Rhino Environmental Services Facility Permit process, the State's application process only allowed questions to be raised on technical aspects of the landfill application. No questions concerning the social or potentially discriminatory impact of Rhino's proposal could be addressed within the mandated application process. More than half of the Chaparral community consists of Latinos of Mexican decent and the poverty rate is over twice the national average. In or close to Chaparral are currently three other landfill facilities, a hazardous waste transfer station, a gravel pit, an electric generation plant, and a soil remediation plant. A health survey by the Chaparral Community Health Council ("CCHC") showed that many respondents had difficulty getting medical care because of cost and more than half had to travel more than 30 minutes when seeking medical attention. Asthma was the most frequently reported (24.3%) health problem in the CCHC survey with chronic bronchitis being third (15.3%). Chaparral is situated in one of the border counties described above where a New Mexico Department of Health survey showed that Latino households are more likely than non-Latino households to have had a family member diagnosed with asthma.

Despite these facts, NMED never discussed the possibility of discriminatory siting or did any disparate impact evaluation or study of the site. In addition, NMED again showed its bias in favor of industry and against Latinos trying to raise Title VI issues when it denied residents the assistance of their sole expert witness by refusing to reschedule the hearing for a time when that witness could appear. This occurred after the hearing had already been rescheduled several times to accommodate Rhino Environmental Services.

4. COMPLAINANTS BELIEVE THAT NMED HAS PERMITTED MORE LANDFILLS AND OTHER SOLID AND HAZARDOUS WASTE FACILITIES IN MINORITY COMMUNITIES, BUT THE DEPARTMENT HAS MADE IT IMPOSSIBLE TO DETERMINE IF THIS IS TRUE. NMED'S NEGLIGENCE IN INACCURATELY DETERMINING FACILITY LOCATIONS DISCRIMINATES AGAINST COMPLAINANTS AND OTHER MINORITIES DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

Complainants researched and listed the latitude/longitude locations given in records for all of NMED's permitted solid waste facilities in an attempt to see if NMED was siting most facilities in minority communities. When Complainants attempted to map these locations however, many (if not most) of these figures were incorrect, often placing the facilities in the wrong county and, in one instance, even in the wrong state. While NMED may be able to drive to a facility that it has permitted, it clearly does not know the legal location of these facilities. NMED's negligence is discriminatory since it hampers minority community members' efforts to determine if waste dumps in their communities are part of a programmatic pattern of discriminatory siting within which it is more likely that facilities with their accompanying burdens will be permitted in minority communities. As part of the relief requested in this complaint, Complainants request that NMED be required to determine accurate legal locations for all of its permitted facilities.

A similar problem arose during the Triassic Park hearing when NMED staff attempted to use GPS equipment to determine the distance between the community of Hagerman and the Triassic Park site. The staff member was unable to operate the equipment and an accurate distance was never determined.

II. THE UNIVERSE OF FACILITIES PRESENTS A CUMULATIVE BURDEN UPON HISPANIC AND MEXICAN COMMUNITIES NEAR GMI'S FACILITY AND REFLECTS A PATTERN OF DISPARATE IMPACT UPON THESE COMMUNITIES. THEREFORE, EPA MUST CONSIDER THE ENTIRE UNIVERSE OF FACILITIES IN ITS ANALYSIS.

Under Title VI and EPA's implementing regulations, programs receiving Federal funds may not be administered in a manner that has the effect of subjecting individuals to discrimination based upon race, color or national origin. To determine the effect of NMED's permitting of the GMI facility, EPA must consider the preexisting burden of potentially affected Hispanic and Mexican communities near the facility and the contribution to compounding of that burden which the GMI facility presents. Not only permitted facilities, but all polluting facilities must be considered. Only by considering the real and complete cumulative burden upon these communities can EPA meet its Title VI obligations to avoid subjecting these communities to discrimination based on race, color or national origin. Any limitation upon this universe of facilities to be considered would fail to provide a true picture of the actual disparate effect of NMED's permitting of the GMI facility.

Many of these facilities and pollution sources are described above and/or shown on the map in Attachment A. (However, this may not be a complete list.) Several of these facilities, including the Triassic Park facility, receive waste from other states, or even from other countries. (e.g. WIPP will

receive about 35,000 shipments of mixed radioactive and hazardous waste over its lifetime from generator sites both within and outside of New Mexico.) Hispanic and Mexican communities near Triassic Park are mostly situated on transportation routes and are already exposed to the risks that accompany the transport of hazardous, toxic and radioactive materials: accidental releases, explosions and fire, and transportation accidents. Thus, these communities already bear disproportionate cumulative burdens of toxic waste importation. NMED's permitting of the GMI facility adds to this burden and therefore has the effect of discriminating against Hispanic and Mexican members of Complainants. (Although there is a WIPP bypass around Roswell going south, there is no bypass going east. Many, if not most, shipments to Triassic Park would have to go directly through Roswell. One "suggested" route for commercial trucking goes right through predominantly Hispanic and Mexican neighborhoods; Hispanic and Mexican neighborhoods are also situated next to Route 285 through Roswell)

III. LOCATING GMI'S FACILITY AT THE PERMITTED SITE WILL ADD TO THE POLLUTION BURDEN OF THE DISPROPORTIONATELY IMPACTED HISPANIC AND MEXICAN COMMUNITIES IN THE AREA.

The area near the GMI facility is an area where members of Complainants live, work and/or recreate. This area is already almost surrounded by hazardous and radioactive waste disposal facilities, landfills, and other polluting facilities; includes natural sources of contamination (heavy metals in the soils); and is subject to contamination from extensive oil and gas development in the area, including a refinery in Artesia which has had multiple releases and oil field waste disposal. Hispanic and Mexican community residents have already disparately suffered the effects of ill health related to these sources including respiratory and other diseases. Siting yet another hazardous TSD facility in the area will only add to this cumulative burden and represents a disproportionate and significant cumulative burden and pattern of disparate impact on these communities.

1. EPA MUST CONSIDER ALL REASONABLY FORESEEABLE POTENTIAL RELEASES FROM BOTH NORMAL OPERATIONS AND ACCIDENTS ASSOCIATED WITH THE GMI'S FACILITY AND/OR WHICH REFLECT A PATTERN OF DISPARATE IMPACT UPON HISPANIC AND MEXICAN COMMUNITIES NEAR THE FACILITY.

GMI did provide limited exposure information concerning operational and accidental releases of VOCs from their facility. However, neither they nor NMED described all reasonably foreseeable potential releases from both normal operations and accidents as is required by the regulations. Nor did they describe all potential pathways of human exposure. These still need to be modeled and assessed. The facility permit allows the facility to accept PCB-contaminated liquids, soils and bulk remediation waste and GMI has admitted that the facility will accept ash from the incineration of hazardous waste. (GMI has also stated that it is its intention to modify the permit to receive larger quantities of PCBs in the future.) However, neither GMI nor NMED provided any comprehensive information on exposures from PCBs and no information at all on exposures from particulate releases of any kind even though

GMI's scientists stated that particulate emissions would probably be one of the greatest sources of air emissions from the proposed facility.

Although the incinerated ash will have to meet Land Disposal Restrictions under 40 NMAC 4.1.800 (incorporating 40 CFR 268), it could still contain quantities of metallic particulates as underlying hazardous constituents when it arrives at the facility. There is no requirement for ash to be in a container on-site. Nor is there any requirement to monitor for any type of air releases at the facility boundary, the landfill, or at the treatment buildings where the ash (and other wastes) would be mixed and treated. Ash and contaminated soils can be disposed of in the landfill without containers and the ash need be only partially solidified. Ash and contaminated soils could be exposed to the local winds during at least part of each working day. Even in a container, contaminated ash could be released in an accident before treatment and spread by these high winds.

NMED's *Final Order* states that at 3 miles from the facility "...the concentration of PCBs would be indistinguishable from background." Although one of GMI's witnesses made this statement during the permit hearing, no modeling was ever done by either GMI or NMED for PCB contamination. In fact, another GMI witness agreed that it was possible to get a PCB exposure pathway contaminating property off the proposed facility site. This same witness also described how extremely low levels of PCBs (the actual studies were done with PPBs) "...in the parts per million, subparts per million...accumulated in cattle and then appeared in the milk of dairy cows." (Tr. pp. 116-117) This is significant since there are over 40 large dairies, a considerable beef-raising industry and numerous crop producing farms in the area. (GMI and NMED also did not include any exposure pathway information about exposure through the food chain for PCBs or any other hazardous material that could be released from the facility.) Hispanic and Mexican community members, including nursing mothers, would be exposed to these same low levels of PCBs as the dairy cows. (In fact many of these Hispanics and Mexicans work on the same dairies, ranches and farms where they are also often subjected to herbicide and pesticide exposure.) GMI's own modeling showed that effects from air releases could actually be greater farther from the site than closer-by, depending on a variety of factors including type of release, terrain meteorology, etc..

Because topsoil in the Hagerman area is known to contain lead and arsenic; construction, transportation and operations at the facility could lead to toxic dust releases if these contaminants are also present on-site. However, no investigation has been done on background levels of these toxic particulates in the soils, nor have their potential releases and impacts on Hispanic and Mexican communities, including sensitive subpopulations, been calculated, even though large, uncovered soil stockpiles will exist on-site during the operational life of the facility.

Although landfill fires are a common occurrence in the waste disposal industry, and although construction debris and other flammable materials will be allowed in the landfill, no exposure information for either acute or chronic releases to the atmosphere from fires at the facility was given.

The actual likelihood of such hazardous waste fires occurring in the landfill and their duration were never calculated, nor were their potential impacts on Hispanic and Mexican communities.

Neither GMI nor NMED considered the effects from any releases into the soil or groundwater. Perhaps this is because they believed that such releases would never occur or would never reach the accessible environment if they do. Nevertheless, not only could contaminants leak from the surface impoundment or from the landfill, but they could also occur from a liquid spill on-site. It would be difficult to calculate effects and travel times for such contamination, however, since GMI never definitively identified the closest aquifer beneath the site and was allowed by NMED not to use conservative parameters when defining travel times. (See CARD's *Findings of Fact and Conclusions of Law* [Attachment C] and *Response to the hearing Officer's Report and Proposed Findings of Fact and Conclusions of Law* [Attachment D])

Neither GMI nor NMED considered the effects from transportation associated with the facility either for accidental or chronic releases, including, but not limited to the effects of releases of hazardous materials through accidents or effects from vehicle emissions, dust and hazardous particulates stirred up by traffic to and from the proposed facility. Again, many of the Hispanic and Mexican communities are on or near transportation routes, these disparate impacts still need to be calculated.

2. EPA MUST CONSIDER THE PRE-EXISTING POOR HEALTH AND POVERTY OF HISPANIC AND MEXICAN COMMUNITIES NEAR TRIASSIC PARK WHEN CALCULATING DISPARATE IMPACTS UPON HISPANIC AND MEXICAN COMMUNITIES NEAR THE FACILITY.

Clearly, as described above, the health of all residents of Chaves County is poorer than that in many other areas in New Mexico. Unfortunately, studies specifically describing the health of Hispanic and Mexican residents nearest to the Triassic Park facility have not been done. Additional information may exist through New Mexico's Department of Health, University of New Mexico, or other organizations. However, Complainants do not have the resources to do this type of research. In fact, gathering this type of information is exactly what CARD wanted NMED and GMI to do. From information described above on the health of Hispanics and Mexicans in New Mexico as a whole and in the near-by border counties, and from testimony at the hearing from Hispanic and Mexican residents who described their personal health problems and those of their families, it is likely that Hispanics and Mexicans near GMI's facility will be found to have higher rates of asthma and other respiratory diseases, cancer and birth defects than non-Hispanic Whites. Because of their high levels of poverty, they will also be less likely to be able to prevent or improve poor health, or to mitigate the effects of exposure from facility releases, with vitamins, a nutritious diet or early and adequate medical care.

Therefore, pollutants from the facility or from its accompanying transportation will affect these populations—especially Hispanic and Mexican subpopulations, including, but not limited to those with respiratory disease, youth and fetuses—more severely and thus in a significant and disparate manner. Environmental standards which may be adequate for a healthy, well-nourished population with access to

adequate preventative and early medical care are not adequate for these populations. The addition of even small amounts of contaminants from the Triassic Park facility to the contaminant "stew" from other sources in the area will add significantly to the pollution burden of these disproportionately impacted, poor and sick Hispanic and Mexican populations.

IV. NMED HAS NO GROUNDS ON WHICH TO JUSTIFY THEIR DISCRIMINATORY IMPACTS IN PERMITTING THE GMI LANDFILL

NMED cannot provide an acceptable justification of their decision to issue GMI's Triassic Park Landfill permit notwithstanding the adverse disparate impact that permitting decision will cause. The GMI permit is not necessary to meet any goal that is legitimate, important or integral to the recipient's institutional mission. Throughout the permitting process GMI claimed that the primary purpose for the landfill was to provide for disposal of New Mexico's hazardous waste so New Mexicans would not continue to be burdened by the extra costs and inconvenience of shipping hazardous waste out of state. In reality, the Triassic Park facility is permitted to receive waste from anywhere in the United States and can even receive waste from other countries if that waste is generated by American-owned companies.

If the primary purpose of this facility were to make hazardous waste disposal more accessible to New Mexicans, NMED would have sited such a facility in a more central location or in an area that does not already have access to hazardous waste disposal. New Mexicans can already dispose their hazardous waste at the Waste Control Specialists ("WCS") site which is only about 50 miles south, directly on the border at Andrews, Texas. This site is even more convenient for some New Mexicans in the south.

There is, in fact, a "shortage" of hazardous waste and even the WCS facility is having difficulty finding enough waste to be profitable—even though they are now the only such facility in the area. There simply is not a need for another hazardous TSD facility in the area.

Likewise there cannot be any economic justification for this facility since it will only employ about 30-35 employees at maximum operations—some of whom may need to come from outside the local area. Costs to repair damage to the city streets of Roswell caused by the increased facility trucking through town could easily off-set much or all of any economic gain from employment. The deleterious health effects on an already weakened population will also far outweigh the small number of jobs created for local people.

DISCRIMINATORY PROCESS

HISTORY

40 CFR §25.3(a) says that "...State...agencies carrying out activities described in §25.2(a) shall provide for, encourage, and assist the participation of the public." (*emphasis added*) yet NMED did virtually none of this. At times they actively blocked public participation by both all members of the public and particularly by Hispanic and Mexican participants.

On 3/15/01 NMED gave Public Notice of the proposed permit for Triassic Park, including a description of the Comment Period, and issued a Fact Sheet. The Public Notice, Draft Permit and Fact Sheet were all issued in English-only versions. The Draft permit and the Fact Sheet were not available after working hours in the facility area until three months later when they were put into the Roswell Public Library. This was a re-issue of the Draft Permit and Fact Sheet after the previous version had been rescinded. At this time Public Notice was given in Spanish, but no Spanish Fact Sheet or any other document in Spanish was made available.

Even then, only part of the Draft Permit was put in the library. Ground-Water Monitoring Waiver documents and site characterization documents were among the missing permit documents that were not available until a month later. Residents of the area had already informed NMED of the difficulties of getting to Roswell from other parts of the potentially affected area. It is about an 80 mile round-trip from Artesia to Roswell, 144 miles round-trip from Tatum, and 210 mile round-trip from Lovington—almost a 4-hour drive. This limited availability of permit documents was compounded by problems with the on-line versions: The Draft Permit and its attachments were not all posted on-line on March 15th or August 27th as noticed; there were continuing compatibility problems with Mac-based systems, and many local residents didn't have on-line access.

These residents continued to complain of document access problems including problems getting on-line, through at least September. They particularly noted that the Roswell Public Library had been closed for 2 weeks, cutting off both hard-copy access and Internet access to the on-line version for many people. As late as 12/17/01 the latest on-line Fact Sheet was dated 6/15/01—leaving off the 8/15/01 English supplemental Fact Sheet and the August 2001 Spanish Fact Sheet. (The only information in Spanish on the facility provided by either NMED or GMI.)

There were also serious problems with accessibility to the Administrative Record in the Department's Santa Fe office. Because of a computer problem, numerous documents had been deleted from the Administrative Record Index during the comment period; some documents that should have been available were being kept from the public in a confidential file; and some documents were missing altogether from the Record. These problems were not straightened out until well after the hearing was complete which made it difficult or impossible for the public to view these documents and therefore to give meaningful comment at the Hearing. One memo (AR 99-086) dated 2/4/99 which was supposed to be removed from the confidential file and returned to public access pursuant to CARD's 11/28/01

motion, was not returned to the Record and added to the Index until 12/14/01 at the end of the period for submittal of *Findings of Fact and Conclusions of Law*—and then only at CARD's insistence.

In addition, at one point in the permit process, NMED refused to release GMI's financial disclosure information to the public. This information is part of the application and therefore public record. Nevertheless, members of the public had to hire a lawyer to obtain these documents.

GMI did provide 6 public meetings in 2001, but these meetings were not provided as a good-faith effort to inform the public about the facility. NMED allowed GMI to use these meetings to misinform the public, encouraged GMI to present the meetings in an ineffective manner and at times even joined GMI in harassing the Spanish-speaking public. In April, 2001 NMED incorrectly instructed GMI that"

"You obviously will not be able to meet the 30-day meeting notice deadline of subsection (d). That would be ok in light of our desire to meet as soon as possible." 9AR 01-040)

This resulted in GMI giving such short notice of these meetings that it was difficult for people to attend. The last meeting, which took place on the first day of the hearing in October, had the longest notice at about 2 weeks, but other meetings were only noticed in the newspaper a week before and in some cases only a few days before the date of the meeting. NMED did request GMI to provide public meeting notices in Spanish in April (which was rather hypocritical since NMED itself was not providing any notice in Spanish at the time), but never followed up on this. No notice was given in Spanish of any of the meetings until the last one.

GMI also used the meetings and the permit process to **misinform** the public about the facility and about some of their intentions for that facility. During the meetings GMI told participants that there would be a maximum of 3-5 trucks entering the facility per hour. Even if only waste trucks are counted, this is only true if a working day is 16 hours long. If all trucks entering the site are counted, this is only true if the work day is 23 hours long. Their estimate of an average of 1-2 trucks per hour is even more misrepresentational since, using data from the draft permit, the work day would have to be 55 hours long to make those figures work—even for waste trucks alone. NMED personnel, including the permit manager, were present when these statements were made, but said nothing about their inaccuracy. Since so much of the trucking could affect Hispanic and Mexican members of the public (see above), this effort to downplay the effects from facility trucking is also part of a pattern of disparate impact on Hispanic and Mexican members of the public including Hispanic and Mexican members of Complainants.

GMI also misrepresented the nature of the waste to be received and treated at the facility during at least one public meeting when they assured a cancer survivor twice that "there will be no carcinogens..." in the surface impoundment or at the facility. They also claimed in early press releases, information newsletters about the facility, during at least one public meeting and under oath at the

hearing itself that the facility would not accept radioactive waste. Meanwhile they were discussing the possibility of turning the proposed facility into a mixed waste dump with NMED. NMED's Triassic Park permit manager also denied under oath having discussions about this with GMI. Yet he had initialed a memo which indicated he had been present at just such discussions. The public was unable to cross-examine him or GMI adequately on this point at the hearing, however, because the memo was that document described above (AR 99-086) which was kept from the public in the confidential file until after the hearing was over.

Other information was also kept from the public until after the hearing was over when GMI did not fully disclose its past history of environmental violations to the public. GMI neglected to include its 5/10/88 OSHA Notice of Violation in disclosure statements until 11/9/01. This was a serious violation concerning death and serious injury to workers. GMI claimed not to understand that OSHA is considered an environmental statute. However, it had been NMED's policy that OSHA is an environmental statute for at least three years before the Triassic Park hearing. GMI was represented both by counsel and by a "government affairs representative" whose job it was to be the contact person between GMI and NMED; GMI should have known about this policy and disclosed this violation before the hearing so they could have been questioned about it by the public.

The fact that documents and information were kept from the general public until after their opportunity to comment and cross-examine witnesses was over did not appear to trouble NMED or the Hearing Officer as she stated in her Report that:

"[t]he public was not denied an opportunity to participate in the process as a result of the record corrections made subsequent to the hearing....Applicant's failure on this point [to include information on OSHA violations] did not diminish the public's ability to participate in the hearing and to explore prior environmental violations."

It is against this generally dismal history of NMED's and GMI's interaction with the public that even more serious violations involving the Spanish-speaking public and Title VI issues must be seen.

I. NMED'S AND GMI'S OBSTRUCTION OF MEANINGFUL PUBLIC PARTICIPATION HAS HAD THE EFFECT OF DISCRIMINATING AGAINST HISPANIC AND MEXICAN COMPLAINANTS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

NMED has administered the GMI permitting process in a manner that obstructed and excluded the public, particularly Hispanic and Mexican members of Complainants, from meaningful public participation. NMED's actions have blocked this segment of the population from having an equal opportunity to participate in the permitting process and from having equal access to information in the process. This has had the effect, if not the purpose, of discriminating against Hispanic and Mexican members of Complainants because of their race, color or national origin.

A. NMED'S AND GMI'S FAILURE TO PROVIDE WRITTEN INFORMATION IN SPANISH AND SPANISH TRANSLATIONS OF ORAL PRESENTATIONS IN A TIMELY MANNER HAS HAD THE EFFECT OF DISCRIMINATING AGAINST HISPANIC AND MEXICAN COMPLAINANTS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

EPA's *Final Rule on Expanded Public Participation* encourages permitting agencies and applicants to:

"...make all reasonable efforts to ensure that all segments of the population have an equal opportunity to participate in the permitting process and have equal access to information in the process. These means may include, but are not limited to, multilingual notices and fact sheets as well as translators, in areas where the affected community contains significant numbers of people who do not speak English as a first language." (emphasis added)

NMED was informed throughout the comment period that much of the potentially affected population was poor, disenfranchised and that many had a limited or no understanding of English. NMED also received at least 20 requests during the comment period for multilingual notices, Fact Sheets or other information about the facility, and translators but these were not provided until late in the process. It was only after repeated requests and legal action that the Department finally supplied even the most basic information in Spanish. Public Notices were issued and published in Spanish after June 15th. However, a Spanish Fact Sheet was only available toward the end of August and was not posted on-line as promised until sometime after the hearing as over. The written Spanish Fact Sheet was only mailed to people who had somehow known to request it. A Spanish Fact Sheet was finally sent to the Roswell Public Library in late August. No translations of any presentations were provided until the Hearing when translators were available at the final GMI presentation and the Hearing itself.

NMED did not follow the guidance described in EPA's *Final Rule on Expanded Public Participation* when it was told early in the comment period that the Hispanic and Mexican community needed more information and help in creating informed public comment but did not respond in an adequate or timely manner. Literally hundreds of people wrote to NMED from all over the state informing the department that there were potential environmental justice problems with facility siting and that these problems included the disenfranchisement of the Spanish-speaking residents who were, "being left out of the process because of a language barrier..." (9AR 01-179) A letter from the Fambrough Water Cooperative near Hagerman stated that:

"We collectively believe that a sense of disenfranchisement, the prominence of a communication barrier, a lack of effort to overcome it by the NMED and GMI, and a perception of being taken advantage of by this industry are serious concerns." (Attachment G)

NMED's single request to GMI to provide notice in Spanish during the public information meetings was never followed up and was hypocritical since the Department itself was not providing any Public Notice or Fact Sheets in Spanish at the time. When NMED finally did provide a Spanish Fact Sheet, it had an

affirmative duty to seek out Spanish-speakers in the facility area who would benefit from receiving it, but the Department did not follow through on this.

These problems were compounded by the *Hearing Officer's Report* where the Hearing Officer incorrectly referred to "...only two requests for Spanish interpretation..." when there were, in fact, at least 20 requests for various kinds of information in Spanish documented in the Record.

GMI never provided any written presentation materials or fact sheets in Spanish and refused to provide Spanish translations of its oral presentations until the October 15th meeting (on the first day of the hearing) despite earlier promises to do so. At that point it was too late for interested Spanish-speakers to inform themselves to participate effectively in the hearing. GMI refused to use the translator that was present at the July 19 Hagerman public meeting to translate the English presentation despite previous assurances to the public from both NMED and GMI that the presentation would be translated at that meeting. GMI obtusely insisted that the translator was only to be used to translate a question and answer session on an English presentation that people couldn't understand. Unfortunately, because of their lack of English, some people didn't even know that the translator was available for the question and answer portion of the meeting.

B. NMED'S AND GMI'S HARASSMENT AND INTIMIDATION OF THE PUBLIC AND ESPECIALLY HISPANIC AND MEXICAN MEMBERS OF THE PUBLIC, INCLUDING MEMBERS OF COMPLAINANTS HAS HAD THE EFFECT OF DISCRIMINATING AGAINST HISPANIC AND MEXICAN COMPLAINANTS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

NMED was facilitating the Hagerman meeting and should have insisted on the translation that they themselves had promised. Instead, the NMED meeting facilitator harassed and obstructed the Hispanic and Mexican public and was so rude to a Spanish-speaking community and religious leader and to other Spanish-speaking members of the public that 50-70 people left the meeting. One commentor who was present stated that the disrespect displayed toward Hispanic and Mexican members of the community "...displayed the malicious intent of GMI's public information meeting..." (AR 01-163)

Again, the Hearing Officer's Report said that "There is no evidence that applicant would not have given a presentation [at the Hagerman meeting] in Spanish if asked..." despite at least 2 Affidavits in the record to the contrary. The Hearing Officer shifted the burden of proof for meeting public participation requirements onto the public in a "blame the victim" approach when she claimed that:

"...those who would claim that a process does not meet their needs bear some responsibility for timely making their needs known...[T]hey bear some responsibility for assuring their own participation..."

She again chastised the public for protesting the lack of Spanish translation at the Hagerman meeting while incorrectly claiming that the public did not request such a translation.

It was at the July 17, 2001 Sally Port Inn meeting in Roswell that GMI went so far as to threaten and intimidate members of the public, including a member of CURE who is of Mexican descent. GMI's public information officer threatened several people with arrest for passing out information and a petition critical of the facility despite their having permission from the hotel to do so. The public information officer then denied making the threat under oath at the hearing. This type of action has a chilling effect on public participation in government, yet NMED never chastised GMI for this or even seemed to take any notice of the event. To her credit, the Hearing Officer believed CURE's witness on what happened, but stated that she didn't believe that "...this incident represents a violation of the public participation requirements for a RCRA facility..." since some of the CURE members present were able to overcome their feelings about the incident and participate fully in the hearing. She completely ignored information in the record describing how one CURE member was so frightened by the incident that she never participated publicly in the permitting process again.

C. NMED BOTH ACTIVELY AND PASSIVELY OBSTRUCTED HISPANIC AND MEXICAN MEMBERS OF THE PUBLIC INCLUDING MEMBERS OF COMPLAINANTS FROM FULLY PARTICIPATING IN THE PERMITTING PROCESS AND FROM EXERCISING THEIR RIGHTS UNDER TITLE VI OF THE CIVIL RIGHTS ACT WHICH HAS HAD THE EFFECT OF DISCRIMINATING AGAINST HISPANIC AND MEXICAN MEMBER OF COMPLAINANTS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

40 CFR §25.3(b) states that:

"...Public agencies...should make special efforts to encourage and assist participation...by others whose resources and access to decision-making may be relatively limited."

But NMED did not make any special efforts to encourage and assist participation by these persons whose resources and access to decision-making was limited, including Hispanic and Mexican members of Complainants and other Hispanic and Mexican residents, when it allowed access to even the most basic permit documents to remain so difficult, time-consuming and expensive, and would not provide information about the facility in a language that these people could understand. NMED's apparent acceptance of GMI's harassment of the public and mis-information at the "information" meetings, coupled with NMED's own intimidation and harassment of Hispanic and Mexican participants at the Hagerman meeting show their bias in favor of GMI and industry and against Spanish-speaking members of the public. (see above).

One commentor asked NMED for information about any "...documents, correspondence, guidelines and directives to and from EPA and NMED concerning environmental justice..." but was told that "...few such items existed..." (AR 01-16) No such information or even document names or descriptions were ever provided despite two requests. This type of "passive" obstruction is part of a pattern of refusing to provide information pertinent to Hispanic and Mexican members of the public, including Complainants, or only providing it so slowly that it becomes almost useless. Historically, if

NMED is actually forced to provide such information, only the absolute minimum is provided. There is no good-faith effort to encourage public participation by Hispanic and Mexican members of the public.

This attempt to limit Hispanic and Mexican Complainants' exercise of their rights under Title VI is further illustrated by NMED's neglect in posting an English Fact Sheet but waiting months to post the Spanish Fact Sheet on the website after it was available, their refusal to allow testimony on Title VI and environmental justice issues during the permitting process, and finally by their attempt to block Complainants' filing of this complaint by removing the English and Spanish Fact Sheets from the Triassic Park web page (see above).

II. NMED HAS ESTABLISHED A PATTERN OR PRACTICE OF OBSTRUCTION OF MEANINGFUL PUBLIC PARTICIPATION IN THE PERMITTING PROCESS CREATING AND/OR ADDING TO DISCRIMINATION AGAINST HISPANICS AND MEXICANS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

NMED has also now established a pattern and/or practice of criteria and/or methods of administering its programs, which has the effect, if not the intent, of subjecting individuals to discrimination due to their race or color. Specifically, NMED has established a pattern and practice of obstruction of meaningful public participation in NMED permitting. This pattern and practice of obstruction has had the effect of creating a disparate impact and discriminating against Hispanic and Mexican members of Complainants as well as other Hispanics and Mexicans in the State because of their race, color or national origin. Specific incidents of discrimination include, but are not limited to the following:

A. NMED HAS OBSTRUCTED MEANINGFUL PUBLIC PARTICIPATION IN ADMINISTERING THE WASTE ISOLATION PILOT PLANT PERMITTING PROCESS, DISCRIMINATING AGAINST HISPANIC AND MEXICAN COMPLAINANTS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

During the permitting hearing for WIPP, the Hearing Officer again refused to allow the introduction of Title VI or environmental justice issues in even the most minimal way (see above). No notice or Fact Sheets were published in Spanish either in print or on-line. No attempt was made to ascertain if Hispanic and Mexican members of the public could be affected by the facility or by effects from its associated transportation. It is clear that this transportation, at least, goes through and near many Hispanic and Mexican communities in New Mexico.

Again, during the recent Class III permit modification hearing no notice or Fact Sheets were provided in Spanish and no attempts were made to include this portion of the public in the permitting process.

B. NMED HAS OBSTRUCTED MEANINGFUL PUBLIC PARTICIPATION IN ADMINISTERING THE RHINO LANDFILL PERMITTING PROCESS, DISCRIMINATING AGAINST HISPANIC AND MEXICAN COMPLAINANTS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

Similar problems arose during the Rhino Landfill permit process at Chaparral, New Mexico. Despite having large numbers of Mexicans living quite near the proposed site, Title VI and environmental justice issues were not allowed to be raised. Upon information and belief, Chaparral has filed a Title VI complaint with EPA. (see above)

C. NMED HAS OBSTRUCTED MEANINGFUL PUBLIC PARTICIPATION AS DESCRIBED IN THE LA CIENEGA VALLEY CITIZENS FOR ENVIRONMENTAL SAFEGUARDS TITLE VI COMPLAINT, DISCRIMINATING AGAINST HISPANIC AND MEXICAN COMPLAINANTS DUE TO THEIR RACE, COLOR OR NATIONAL ORIGIN.

The La Cienega Valley Citizens for Environmental Safeguards' Title VI complaint is under investigation now by EPA. This complaint details problems, also with Hispanic and Mexican members of Complainants as well as others, where Complainants were not allowed to participate in county meetings or obtain needed public documents in a timely manner. These members of the public were threatened with arrest or arrested at least three times. This pattern of behavior intimidates the public and causes a chilling effect to public participation in government (as it did during the Triassic Park process).

RELIEF

NMED's discriminatory actions in permitting the GMI facility and especially the discriminatory problems that are pervasive throughout NMED's program must stop and must also be subject to consequences. However, Complainants hesitate to recommend full and immediate removal of Federal funding. NMED's resources are already too limited to fulfill their current obligations adequately. Basic information (like facility locations) is not available; sometimes Class I modifications cannot be reviewed in a timely manner resulting in waste being characterized in an unauthorized fashion. (This happened under the WIPP project.) Also, if NMED is to make Title VI-related improvements in their program, they will need funding to do so.

However, Complainants have no faith that NMED will be able to make adequate Title VI-related improvements to their program without rigorous oversight from EPA. NMED's arbitrary and capricious "consideration" of affected populations described in the *Final Order* permitting GMI's facility only continues NMED's discriminatory actions under the guise of "improvements." Other attempts at improving public participation described in the *Final Order* are commendable but do not go far enough. Even if regulations are written correctly there is no guarantee that they will be implemented correctly and in a non-discriminatory manner. This is particularly true since NMED has never admitted that there is anything wrong with its program and seems to have no real understanding of what their Title VI obligations are.

That the State still does not intend to involve the public adequately in any proposed regulatory changes is shown by their recent actions involving revisions of Air Quality and Drinking Water regulations. The Environmental Improvement Board ("EIB") creates regulations for NMED and is one of the organizations referred to in the GMI facility *Final Order*. Notices of Public Hearing to consider

these revisions state that notices of intent to present technical testimony at the hearings must be received in the Office of the Environmental Improvement Board no later than 5:00 p.m. on August 30, 2002. (Attachment F) Yet these EIB public hearing notices were not even mailed to the interested public until August 29th. It is likely that some notices were not even received until after August 30th. Certainly, few members of the public would be able to provide akk names of their technical witnesses or perhaps even decide whether to present technical testimony or not in such a short period of time.

Complainants would like NMED to be put on notice that they **will** lose their federal funding if they do not make and implement necessary Title VI-related changes to their program **in a timely manner**. Complainants would like EPA to educate NMED on their Title VI obligations, their regulatory authority to fulfill those obligations, and to monitor the State's regulatory changes and their implementation in future permitting closely. Complainants would also like to be involved in oversight of this process along with other members of the affected public to be sure the public's needs are being met. Complainants believe the State also needs education from EPA on ways to fund necessary work adequately through charges to the regulated community. More realistic flat fees for services along with charging an adequate hourly rate for staff time (as is done in some states) would be one method of providing resources and personnel adequate to the tasks NMED must perform.

Regarding the Triassic Park facility individually, Complainants would like a science-based disparate impact study to be performed for the facility. If results of this study show that there would be a significant negative disparate impact on local Hispanic and Mexican residents, including Hispanic and Mexican members of Complainants, we would like the permit for GMI's facility east of Roswell to be vacated permanently. Since this facility would receive waste from all over the United States and is not a facility limited to New Mexico alone, Complainants believe affected populations should be compared to the United States' population as a whole—not just to another population in New Mexico. We also believe the lack of air release monitoring, the inadequate and inappropriate vadose zone monitoring system approved by NMED (see Attachments C and D), and the inability of the facility's designated emergency coordinator to demonstrate even the most basic understanding of the chemicals the facility could receive and their effects (even after having completed several haz-mat trainings) should be taken into consideration when assessing the possible impacts of the Triassic Park Landfill.

In the alternative, if EPA does not direct NMED to vacate the Triassic Park permit permanently, Complainants request that the entire permitting process for the facility be redone in a manner consistent with EPA *Investigations, Recipient and Public Participation Guidance*. There continues to be a great need within the public in southeastern New Mexico, including he Spanish-speaking public, to be informed and involved in this process and to know that their situation and needs are truly being considered.

CONCLUSION

Every area has a maximum "carrying capacity" for contamination before human health and the environment are significantly affected. This maximum has already been passed in southeastern New Mexico—especially as it relates to Hispanic and Mexican residents in that area.

Therefore, for the reasons set forth above, Complainants allege that NMED's actions in permitting the GMI landfill and other facilities in this area of New Mexico violate Title VI. Accordingly, Complainants request that EPA accept this complaint and use any means authorized by law to obtain compliance by NMED with Title VI.

Respectfully submitted,

Deborah Reade
Research Director, CARD

117 Duran Street
Santa Fe, New Mexico 87501
(505) 986-9284 (voice and fax)
reade@nets.com

Date

Notes

¹ J. Alex Valdez, Secretary, *1999 New Mexico Selected Health Statistics Annual Report* (The State Center for Health Statistics, Office of New Mexico Vital Records & Health Statistics; October 2001)

² Id.

³ J. Alex Valdez, Secretary, *The State of Health in New Mexico: 2000 Report, Appendix A: How Social Factors Affect Health in New Mexico*, on-line (New Mexico Department of Health, www.health.state.nm.us/stateofnm2000, 2001)

⁴ Mary Olguin, *Children's Chronic Conditions Registry Annual Report 2000* (New Mexico Department of Health, Public Health Division, Family Health Bureau, CMS Program; 2001)

⁵ *2000 Census*, U.S. Census Bureau

⁶ J. Alex Valdez, Secretary, *The State of Health in New Mexico: 2000 Report, Environmental Health*, on-line (New Mexico Department of Health; www.health.state.nm.us/stateofnm2000; 2001)

⁷ Betty Hileman, Chief, *Chaves County 1999 County Health Profile* (New Mexico Department of Health, Public Health Division, Office of Information Management, New Mexico Vital Records and Health Statistics; January 1999)

⁸ Id.

⁹ William F. Athas, Ph.d., *Cancer in New Mexico, Changing Patterns and Emerging Trends*, on-line (New Mexico Department of Health, The University of New Mexico Health Sciences Center, Epidemiology and Cancer Control, New Mexico Tumor Registry; <http://hsc.unm.edu/epiccpro/>; 2001)

¹⁰ Margaret M. Gallaher, MD. MPH, *Birth Defects in New Mexico 1995-1999 Births* (New Mexico Department of Health, Public Health Division, Family Health Bureau, Children's Medical Services; December 2001)

¹¹ Mary Olguin, *Children's Chronic Conditions Registry Annual Report 2000* (New Mexico Department of Health, Public Health division, Family Health Bureau, CMS Program; 2001)

¹² J. Alex Valdez, Secretary, *1999 New Mexico Selected Health Statistics Annual Report* (The State Center for Health Statistics, Office of New Mexico Vital Records & Health Statistics; October 2001)

¹³ *Environmental Research*, 68(2), (February, 1995)

¹⁴ James VanDerslice, Ph.D., *Analysis of the Relationship Between Proximity to Selected Industrial Facilities and Prevalence of Self-Reported Symptoms in Sunland Park, New Mexico* (New Mexico Department of Health, Public Health Division, Border Health Office, June 30, 2000)

¹⁵ *Environmental Health Perspectives*, 108: Suppl. 1 (March, 2000)

¹⁶ *American Journal of Epidemiology*, (July, 1990)

¹⁷ H Dolk, et al., "Risk of Congenital Anomalies Near Hazardous-Waste Landfill Sites in Europe: the EUROHAZCON Study", (*Lancet* 352, 1998)

¹⁸ M. Vrijheid, et. al., "Chromosomal Congenital Anomalies and Residence Near Hazardous Waste Landfill Sites: the EUROHAZCON Study", (*Lancet* 359, 2002)

¹⁹ Gary S. Guzy, General Counsel, *Memo: EPA Statutory and Regulatory Authorities Under Which Environmental Justice Issues May be Addressed in Permitting* (EPA Office of General Counsel, December 1, 2000)

Attachments

Attachment A: Map of southeastern New Mexico and west Texas showing some of the contaminated areas and potentially polluting industrial development, including attempted but canceled projects, current and inactive development and proposed future development.

Attachment B: E-mail correspondence between Complainants and NMED, NMED Triassic Park web page showing date of modification and NMED WIPP web pages showing Fact Sheets still on-line

Attachment C: *Proposed Findings of Fact and Conclusions of Law of Citizens for Alternatives to Radioactive dumping (CARD)* for the Triassic Park (GMI) facility.

Attachment D: *CARD's Response to the Hearing Officer's Report and Proposed Findings of Fact and Conclusions of Law* for the Triassic Park facility

Attachment E: *Final Order* by the Secretary of the New Mexico Environment Department permitting the Triassic Park facility

Attachment F: New Mexico Environmental Improvement Board Notices of Public Hearings to consider proposed revisions of 20 NMAC 7.1 *Drinking Water* and Air Quality Regulations.

Attachment G: Letter from the Fambrough Water Cooperative to New Mexico Environmental Law Center ("NMELC") describing the Hispanic and Mexican population near Hagerman and requesting information in Spanish, translation, help in facilitating public comment and a disparate impact study. Though originally sent to the NMELC, this letter was sent by them to NMED and became part of the Record (AR 01-179)

Cobrain, Dave, NMENV

From: Sherry Smith <sls@plateautel.net>
Sent: Wednesday, August 10, 2016 11:48 AM
To: Cobrain, Dave, NMENV
Subject: Triassic Park Draft Permit Public Comments

DO NOT WANT A NUKE DUMP SITE IN ROSWELL. WHY DONT YOU PUT ONE IN YOUR BACKYARD....NO???.....ok same reasons we don't want it.

From Sherry's iPad ;~)



Cobrain, Dave, NMENV

From: Michael Porter <mdporter@dfn.com>
Sent: Friday, July 08, 2016 4:30 AM
To: Cobrain, Dave, NMENV
Subject: GMI permit renewal

You are designated the contact person for this permit renewal. If some other person has this responsibility, please forward. You may consider the following comments as both responding to notice for public comment and as reasons expressed in favor of new hearings.

First, a new hearing is, to my mind, required, for several reasons.

Most prominently, the principal executives in GMI at the time of the first permit issuance, Dale Gandy and Bob Marley, are both dead. Their successors must explain to the public either their continuance of purpose or any change in direction of corporate intentions for the site.

Second, we seem to have no significant indication that a comprehensive environmental review has been done pursuant to renewal, to answer questions of any changes at or around the site, of groundwater patterns or of changes in behavior in the underlying Santa Rosa equivalent, corrections of deficiencies noted in the hearings of training and qualifications of pertinent site officials, or pertinent changes with regard to habitat of endangered or threatened species at or near the site.

Third, the reasons given by GMI at the time of permit issuance in 2002 for their suspension of any work to develop the permitted site were bogus, and still are today. They have made no attempt to develop the site, and for an obvious reason: they never intended to use the site as they testified, and always intended to use the permit as a stepping stone for a modified permit to accept nuclear/mixed waste, or for some other nuclear material purpose. There was documentation of that intended purpose at the time of the first permit issuance, and in 2007, they made those intentions clear by having the former Johnson administration head of the NMED, Pete Maggiore, prepare an application for them for consideration of inclusion in the federal GNEP program which involved the use of their site for storage of nuclear waste, with the eventual probability of the addition of nucleotide chemical separations, MOX fuel rod preparation and operation of a small fast breeder reactor of new design (and in which application they used the issued hazardous waste permit to sidestep a federal EIR for GNEP consideration). This program was effectively defunded by Congress because of gross inadequacies in the financial and technical documentation associated with the program along with the withdrawal of the DOE of their initial estimates of lifetime costs.

That said, it's apparent that the Gandys and Marleys have no intention to develop the site as the permit allows. Their intentions have, to my mind, always been to use the site for purposes not allowed in the existing permit, and, simply, no one in their right mind is going to allow the construction of a nuclear site on top of a closed hazardous waste landfill, and that's why they've never developed the site. That alone should have been reason enough to allow the ten-year permit to expire on schedule.

They never cared about educating themselves about safety when they were seeking the initial permit--that fact was amply demonstrated in the initial public hearings. Their protestations during the initial permit hearings that their only interest was in hazardous waste have been amply disproved by their failure to implement the permitted activities in fourteen years and by their GNEP application, perhaps even to the level of perjury (although I have no expectation that the state will pursue such). Their governmental affairs advisor and lobbyist during the first permit process has been convicted of conspiracy and mail fraud, at the very least indicating that they were likely indifferent to whom they employed to gain their desired ends, which are very evidently not corporate service to satisfy a public need, but, rather, to cash in.

There was no demonstrated need for a hazardous waste site at their location in 2001, and that remains the case today. The permit renewal should be denied.

Sincerely,

/s/

--

Michael Porter
Roswell, NM

Never let anyone drive you crazy when you know it's within walking distance....

Cobrain, Dave, NMENV

From: Deborah Reade <reade@nets.com>
Sent: Friday, July 29, 2016 1:26 PM
To: Cobrain, Dave, NMENV
Subject: Triassic Park Comments and requests to extent the comment period
Attachments: Deborah Reade's comments on Triassic Park.pdf

Dear Mr. Cobrain,

Attached, and copied here, are additional comments and requests for the Triassic park permit. Thank you for posting information on notification in the Record. However, I see that more than half way through the comment period the Record still does not include documents from the first hearing or an index of documents that are in the confidential file.

Sincerely,
Deborah Reade

From: Deborah Reade
117 Duran Street
Santa Fe, NM 87501-1817
Phone/Fax 505-986-9284
reade@nets.com

To: Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

Triassic Park Draft Permit Public Comment

I request an extension of the 60 day comment period for an addition 60 days to begin when the below mentioned problems are corrected and requests fulfilled.

1. I request that when the comment period is extended, improved and meaningful notification be directed at the public and at the Spanish-speaking public in particular.

Public notice has been completely inadequate and in particular has left out Spanish speaking members of the public. Most county residents identify themselves as Hispanic and more than a third speak a language other than English at home. Yet no meaningful efforts were made to notify the Spanish-speaking public and general notification was little better.

Although the written Public Notice (No. 16-07) of the comment period and opportunity to request a public hearing on the Triassic Park permit renewal was written in both English and Spanish, it was mailed only to a very limited list of people and was not available anywhere in the area around the

dump site except one day in three English-language newspapers and one day as a public service announcement on KUNM radio station. Very few people in the area had seen or heard these. Certainly, almost none of the people originally involved in requesting information in Spanish during the first hearing and in signing the Title VI complaint saw or heard these notices and almost all were not mailed official notification.

Though each of the four announcements was given in Spanish as well as English, all three newspapers are English-language papers. It should be noted that putting a Spanish notice in an English-language newspaper is woefully ineffective. There are no Spanish-language newspapers in the affected area.

KUNM radio station does have some programs in Spanish, but it is also primarily an English-language station. No efforts were made to put an announcement in Spanish on a Spanish language radio station nor to put up posters or flyers in churches, post offices, restaurants and other public meeting areas where Spanish-speaking residents would see them. NMED has been informed numerous times of the need for information in Spanish about this hazardous waste dump and has also been given information on better ways to inform people for whom Spanish is their primary language yet has chosen to ignore all of this.

Only if it is NMED's *intention* that the general public and particularly the Spanish-speaking public be completely left out of the process are these sad efforts at notification okay.

2. I request that all documents from the original permit process and an index of the Confidential File records be included in the Record and be made available to the public. The Record is still incomplete. Documents are missing from the Record including documents from the original permit hearing (which are still important and pertinent to the draft permit renewal) and an index of documents in the Confidential File. During the first hearing, at least one document was inappropriately secreted in the *confidential file*. An index of all documents in that file is necessary to see if additional documents have been inappropriately hidden there.

3. I request that NMED make the Notification, the Fact Sheet, the draft permit, the Record and all supporting documents available in hard copy near the site. There are no documents of any kind near the site, so access to documents and information is difficult or impossible for the public that would be most affected by the dump. Many local people are poor, (21% of people in Chaves County live below the poverty line), don't have access to the internet and are computer illiterate. Providing documents only online is inadequate.

NMED's approach to the permit assumes that everyone knows how to access online documents and is comfortable working in a paperless environment. This is not the situation with many segments of the population and certainly not with the potentially affected communities near the site. NMED is making it almost impossible for these members of the public to participate in the permitting process.

As was pointed out in the past and again both by phone and by email to NMED, poor people and people in rural areas also do not have easy access to the internet. There have been articles written in the *New Mexican* about the high cost of and problems involved with connecting rural areas to the

internet. Hard copies of all documents need to be put in the Roswell Public Library as they were eventually during the original permit comment period. Mr. Cobrain said it was just as easy for folks to access the documents on the library computer as it is to read hard copy documents, but this is not the case. Local residents may be computer illiterate. It is ridiculous to expect people to study how to use a computer before they can access documents.

Mr. Cobrain also said there was a problem leaving documents at the library as people would take sections of the documents away. However, this was not a problem during the original permit hearing and there is no reason to expect this to be a problem now. Certainly, this is no excuse for not having even the fact sheet available in hardcopy as it is not that long and could easily be reprinted by the library if it should disappear.

4. I request that hardcopy of the Record be made readable and that it be available both at the Santa Fe office and at a location near the site. Although the Public Notice says that a copy of the Administrative Record may be reviewed at their Santa Fe office, in fact hardcopy of the Record is boxed up as loose pages and is not in readable form. Everything is still in storage in boxes in another part of the building from the Library. It is obviously a hardship for the Librarian to unbox everything and bring it over. Though the Record may be technically available, you would have to ask for individual documents and would be made to feel that you are causing a big problem. Plus the documents would be hard to find and read because they are all mixed together loose as they were not stapled together after scanning. Many people, especially older people, would much prefer to view hardcopy documents because they are much more comfortable reading paper.

5. I request that the index of the Record be expanded so that titles or descriptions represent what the document actually contains. This is particularly important when multiple documents are included under one confusing title. Problems from total reliance on online documents is compounded by the way the Record is indexed. There is so little information in the online index titles that every single document must be opened and sifted through to the end to find information. This makes it difficult even for veteran online researchers. The Title VI complaint that was filed with EPA is actually present, but only as an attachment to another EPA document. This was not reflected in the title. Index items need not only minimal titles, but descriptions or at least lists of what is included, particularly when multiple documents are included under one title. Again, information is presented to the public in ways that are guaranteed to make participation almost impossible. This is another reason to have hard copy of the Record available.

6. I request that a Spanish Fact Sheet be created and be made available to the public both online and in hardcopy near the site. Not providing even the most basic information in Spanish ignores both social and environmental justice concerns and is discriminatory.

Dave Cobrain, the project manager, stated that it is too expensive to translate anything other than the Public Notice into Spanish and that NMED has no intention of *ever* creating one. Since NMED should know from the first hearing and the Title VI complaint as well as from more recent communications that many local people have Low English Proficiency (LEP), this is clearly discriminatory. Most Chaves County residents identify themselves as Hispanic and **more than a third speak a language other than English in their home**. During the original permit process there were complaints that the Spanish Fact Sheet was delayed after the English one and wasn't up on the website until after the hearing was over, but at least one existed and was in hardcopy near the site. This time it's worse—NMED sees no need to provide any information in Spanish at all.

NMED claims that they can't afford to provide information in Spanish but that is only because they don't charge applicants adequately. ***Therefore I also request that NMED charge applicants adequate fees to meet the State's obligations to the public as well as their obligations to the applicants.***

7. I request that NMED or the applicants hold public information meetings at least in the local area and that at least one of these meetings be held in Spanish. I also request that notification of these meetings be targeted to the local general public and specifically to the Spanish speaking public as well as to the public statewide. Mr. Cobrain stated that if there were information meetings at all, they would be at the end of or after the comment period was over. When you have potentially affected people living near the site who are illiterate, they need an oral presentations in a timely manner so they can understand what will be happening to them and be able to comment, if they wish, before the comment period is over. Because of the technical nature of the permit, it's helpful even for people who can read to have a presentation with a question and answer period in a language they can understand. Again, it was stated that it is too expensive to make presentations around the state. Information meetings in both English and Spanish are what is needed, what we requested before, what we request now and what was complained about in the Title VI Complaint.

Again, NMED has said they can't afford to provide public meetings. ***Therefore I also request that NMED charge applicants adequate fees to meet the State's obligations to the public as well as obligations to the applicants.***

NMED has obligations not only to the applicants but also to the public. They cannot charge inadequate fees from the applicants, spend all the money on the application process and then say they have nothing left for public participation. NMED has regulatory and legal obligations to adequately notify and inform the public, to further public participation and to consider public comments, including comments on social or environmental justice issues. They must charge adequate fees to fulfill these obligations.

To: Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

Triassic Park Draft Permit Public Comment

I request an extension of the 60 day comment period for an addition 60 days to begin when the below mentioned problems are corrected and requests fulfilled.

1. I request that when the comment period is extended, improved and meaningful notification be directed at the public and at the Spanish-speaking public in particular. Public notice has been completely inadequate and in particular has left out Spanish speaking members of the public. Most county residents identify themselves as Hispanic and more than a third speak a language other than English at home. Yet no meaningful efforts were made to notify the Spanish-speaking public and general notification was little better.

Although the written Public Notice (No. 16-07) of the comment period and opportunity to request a public hearing on the Triassic Park permit renewal was written in both English and Spanish, it was mailed only to a very limited list of people and was not available anywhere in the area around the dump site except one day in three English-language newspapers and one day as a public service announcement on KUNM radio station. Very few people in the area had seen or heard these. Certainly, almost none of the people originally involved in requesting information in Spanish during the first hearing and in signing the Title VI complaint saw or heard these notices and almost all were not mailed official notification.

Though each of the four announcements was given in Spanish as well as English, all three newspapers are English-language papers. It should be noted that putting a Spanish notice in an English-language newspaper is woefully ineffective. There are no Spanish-language newspapers in the affected area.

KUNM radio station does have some programs in Spanish, but it is also primarily an English-language station. No efforts were made to put an announcement in Spanish on a Spanish language radio station nor to put up posters or flyers in churches, post offices, restaurants and other public meeting areas where Spanish-speaking residents would see them. NMED has been informed numerous times of the need for information in Spanish about this hazardous waste dump and has also been given information on better ways to inform people for whom Spanish is their primary language yet has chosen to ignore all of this.

Only if it is NMED's *intention* that the general public and particularly the Spanish-speaking public be completely left out of the process are these sad efforts at notification okay.

2. I request that all documents from the original permit process and an index of the Confidential File records be included in the Record and be made available to the public. The Record is still incomplete. Documents are missing from the Record including documents from the original permit hearing (which are still important and pertinent to the draft permit renewal) and an index of documents in the Confidential File. During the first hearing, at least one document was inappropriately secreted in the *confidential file*. An index of all documents in that file is necessary to see if additional documents have been inappropriately hidden there.

3. I request that NMED make the Notification, the Fact Sheet, the draft permit, the Record and all supporting documents available in hard copy near the site. There are no documents of any kind near the site, so access to documents and information is difficult or impossible for the public that would be most affected by the dump. Many local people are poor, (21% of people in Chaves County live below the poverty line), don't have access to the internet and are computer illiterate. Providing documents only online is inadequate.

NMED's approach to the permit assumes that everyone knows how to access online documents and is comfortable working in a paperless environment. This is not the situation with many segments of the population and certainly not with the potentially affected communities near the site. NMED is making it almost impossible for these members of the public to participate in the permitting process.

As was pointed out in the past and again both by phone and by email to NMED, poor people and people in rural areas also do not have easy access to the internet. There have been articles written in the *New Mexican* about the high cost of and problems involved with connecting rural areas to the internet. Hard copies of all documents need to be put in the Roswell Public Library as they were eventually during the original permit comment period. Mr. Cobrain said it was just as easy for folks to access the documents on the library computer as it is to read hard copy documents, but this is not the case. Local residents may be computer illiterate. It is ridiculous to expect people to study how to use a computer before they can access documents.

Mr. Cobrain also said there was a problem leaving documents at the library as people would take sections of the documents away. However, this was not a problem during the original permit hearing and there is no reason to expect this to be a problem now. Certainly, this is no excuse for not having even the fact sheet available in hardcopy as it is not that long and could easily be reprinted by the library if it should disappear.

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especially older people, would much prefer to view hardcopy documents because they are much more comfortable reading paper.

5. I request that the index of the Record be expanded so that titles or descriptions represent what the document actually contains. This is particularly important when multiple documents are included under one confusing title. Problems from total reliance on online documents is compounded by the way the Record is indexed. There is so little information in the online index titles that every single document must be opened and sifted through to the end to find information. This makes it difficult even for veteran online researchers. The Title VI complaint that was filed with EPA is actually present, but only as an attachment to another EPA document. This was not reflected in the title. Index items need not only minimal titles, but descriptions or at least lists of what is included, particularly when multiple documents are included under one title. Again, information is presented to the public in ways that are guaranteed to make participation almost impossible. This is another reason to have hard copy of the Record available.

6. I request that a Spanish Fact Sheet be created and be made available to the public both online and in hardcopy near the site. Not providing even the most basic information in Spanish ignores both social and environmental justice concerns and is discriminatory.

Dave Cobrain, the project manager, stated that it is too expensive to translate anything other than the Public Notice into Spanish and that NMED has no intention of *ever* creating one. Since NMED should know from the first hearing and the Title VI complaint as well as from more recent communications that many local people have Low English Proficiency (LEP), this is clearly discriminatory. Most Chaves Count residents identify themselves as Hispanic and **more than a third speak a language other than English in their home.** During the original permit process there were complaints that the Spanish Fact Sheet was delayed after the English one and wasn't up on the website until after the hearing was over, but at least one existed and was in hardcopy near the site. This time it's worse—NMED sees no need to provide any information in Spanish at all.

NMED claims that they can't afford to provide information in Spanish but that is only because they don't charge applicants adequately. **Therefore I also request that NMED charge applicants adequate fees to meet the State's obligations to the public as well as their obligations to the applicants.**

7. I request that NMED or the applicants hold public information meetings at least in the local area and that at least one of these meetings be held in Spanish. I also request that notification of these meetings be targeted to the local general public and specifically to the Spanish speaking public as well as to the public statewide. Mr. Cobrain stated that if there were information meetings at all, they would be at the end of or after the comment period was over. When you have potentially affected people living near the site who are illiterate, they need an oral presentations in a timely manner so they can understand what will be happening to them and be able to comment, if they wish, before the comment period is over. Because of the technical nature of the permit, it's helpful even for people who can read to have a

presentation with a question and answer period in a language they can understand. Again, it was stated that it is too expensive to make presentations around the state. Information meetings in both English and Spanish are what is needed, what we requested before, what we request now and what was complained about in the Title VI Complaint.

Again, NMED has said they can't afford to provide public meetings. ***Therefore I also request that NMED charge applicants adequate fees to meet the State's obligations to the public as well as obligations to the applicants.***

NMED has obligations not only to the applicants but also to the public. They cannot charge inadequate fees from the applicants, spend all the money on the application process and then say they have nothing left for public participation. NMED has regulatory and legal obligations to adequately notify and inform the public, to further public participation and to consider public comments, including comments on social or environmental justice issues. They must charge adequate fees to fulfill these obligations.

Cobrain, Dave, NMENV

From: Laura Watchempino <5000wave@gmail.com>
Sent: Monday, August 08, 2016 9:09 PM
To: Cobrain, Dave, NMENV
Subject: Draft Permit for Triassic Park Waste Disposal Facility; No, NM 0001002484
Attachments: Triassic Park Public Comments.8.8.16.docx

Mr. Cobrain,

I have attached my comments to this email.

Thank you,
Laura Watchempino

August 8, 2016

Mr. David Cobrain
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505

Re: Public Comment about the draft Hazardous Waste Permit for the Triassic Park Disposal Facility

Dear Mr. Cobrain:

I provide the following public comments about the draft permit for the Triassic Park Hazardous Waste Facility issued by the New Mexico Environment Department ("the Department").

1. I request that the Department grant a 60-day extension of time for the public to provide informed comments. The draft permit is over 200 pages and there are 18 permit attachments.
2. I request that the Department provide a public hearing about the draft permit.
3. I am concerned that Gandy Marley, Inc., the owner and operator of Triassic Park, is proposing to bring not only hazardous waste from the United States, but also foreign wastes to the proposed 553,200 cubic foot landfill.
4. I am concerned about the potential disposal of polychlorinated biphenyl (PCB) wastes.
5. I am concerned about whether the draft permit protects the Ogallala Aquifer to the extent that is required for a hazardous waste landfill. In 2002, the Department approved a waiver from monitoring the groundwater below the site and proposes to continue that waiver.

Thank you for your careful consideration of my comments. I look forward to receiving your response.

Sincerely,

Laura Watchempino
Pueblo of Acoma, NM 87034

Cobrain, Dave, NMENV

From: Joan Brown,osf <joankansas@swcp.com>
Sent: Wednesday, August 10, 2016 10:19 AM
To: Cobrain, Dave, NMENV
Subject: Fwd: Fwd: Please consider signing and e mailing this letter to NMED by Sunday

August 11, 2016

Mr. Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
"Cobrain, Dave, NMENV" <dave.cobrain@state.nm.us>

Re: Public Comment on the draft renewal permit for the Triassic Park Hazardous Waste Facility

1. I request a 60 day extension of the public comment period to begin when the deficiencies described below are corrected. All bulleted items in this section are also requests.

- Notification of the draft permit, the comment period etc. was inadequate—particularly for the Spanish-speaking public. Meaningful notification, done in ways that will actually reach the public, needs to take place
- The Record is incomplete. Missing documents need to be added to the Record
- A Spanish Fact Sheet needs to be created as there are many people in the area who either don't speak English or are more comfortable in Spanish
- Hardcopy of the English and Spanish Notice, the English and Spanish Fact Sheet, the draft permit, the Record and all supporting documentation must be made available near the site
- The online Record is hard to use, information is missing, documents are included within other documents and titles are confusing and misleading. There is no description of documents. The online Record needs to correct these problems
- Public meetings in both English and Spanish need to be held at least near the site and at least 30 days before the end of the comment period so people can understand the permit and comment if they wish.

2. **I request a public hearing on this draft permit.** A permit was issued for this facility more than 10 years ago. Since then, situations have changed and more is known now than was known before. In particular, social and environmental justice concerns were never addressed, though they are required to be addressed now. There is increased trucking in the area, including WIPP trucking (WIPP is planning to resume shipping in December). The WIPP release has added to contamination in the area. Therefore, impacts on the local population have changed significantly as well. These are only a few things, pertinent to the permit, that have changed over the last 15 years.

3. Objections to the permit and issues to be raised

- I object to the lack of investigation of possible disparate impacts from the Triassic Park (TP) facility on potentially affected low income, Spanish-speaking community members.

- NMED has used as an excuse that there would be no effects off site at all, but has used a gas (VOC) to represent all possible releases even though the applicant's own expert stated that heavy metal particulates would be a significant portion of possible releases. I object to accepting this study as representative of all releases. I would like to raise this issue at the hearing.
- I object to ignoring the social impacts of yet another waste dump in the southeastern New Mexico area. The area is already known as the "nuclear corridor" and a "national sacrifice area." Many dumps and polluting facilities already exist in this area. Adding additional dumps increases the social stigma and bad reputation of the area. Whether contamination actually exists or not, the belief that it does contributes to social and economic decline. I would like to raise this issue at the hearing.
- Transportation and shipping has increased significantly since the original hearing including hazardous and radioactive shipping. I object to the lack of analysis of the effects from trucking on the public and on the "environmental justice" public in particular. I would like to raise this issue at the hearing.
- I object to the applicants being allowed to use 5-year old data for financial assurance. Figures are from 2011. 2016 data needs to be used. I would like to raise this issue at the hearing.
- I also want to hear testimony from both NMED and applicants on their new long-term intentions for the facility. Applicants have a long history of wanting the facility to accept radioactive materials. I would like to raise this issue at the hearing.

General Comment

It is very important for the public to have an opportunity to comment on these important concerns that have implications for hundreds of years into the future. We have a moral responsibility to act for the future generations. While this has a cost, it is extremely important and it seems that the state can find money for other things and thus must meet its obligation to engage the public.

Thank you for your work,
Sincerely,

Joan Brown,osf
1004 Major Ave. NW
Albuquerque, NM 87107

Cobrain, Dave, NMENV

From: Gary Oliver <golliver@sbcglobal.net>
Sent: Wednesday, August 10, 2016 8:17 AM
To: Cobrain, Dave, NMENV
Subject: Re: Public Comment on the draft renewal permit for the Triassic Park Hazardous Waste Facility

August 10, 2016

Mr. Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
"Cobrain, Dave, NMENV" <dave.cobrain@state.nm.us>

Re: Public Comment on the draft renewal permit for the Triassic Park Hazardous Waste Facility

1. I request a 60 day extension of the public comment period to begin when the deficiencies described below are corrected. All bulleted items in this section are also requests.

- Notification of the draft permit, the comment period etc. was inadequate—particularly for the Spanish-speaking public. Meaningful notification, done in ways that will actually reach the public, needs to take place
- The Record is incomplete. Missing documents need to be added to the Record
- A Spanish Fact Sheet needs to be created as there are many people in the area who either don't speak English or are more comfortable in Spanish
- Hardcopy of the English and Spanish Notice, the English and Spanish Fact Sheet, the draft permit, the Record and all supporting documentation must be made available near the site
- The online Record is hard to use, information is missing, documents are included within other documents and titles are confusing and misleading. There is no description of documents. The online Record needs to correct these problems
- Public meetings in both English and Spanish need to be held at least near the site and at least 30 days before the end of the comment period so people can understand the permit and comment if they wish.

2. **I request a public hearing on this draft permit.** A permit was issued for this facility more than 10 years ago. Since then, situations have changed and more is known now than was known before. In particular, social and environmental justice concerns were never addressed, though they are required to be addressed now. There is increased trucking in the area, including WIPP trucking (WIPP is planning to resume shipping in December). The WIPP release has added to contamination in the area. Therefore, impacts on the local population have changed significantly as well. These are only a few things, pertinent to the permit, that have changed over the last 15 years.

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- I object to the lack of investigation of possible disparate impacts from the Triassic Park (TP) facility on potentially affected low income, Spanish-speaking community members.

- NMED has used as an excuse that there would be no effects off site at all, but has used a gas (VOC) to represent all possible releases even though the applicant's own expert stated that heavy metal particulates would be a significant portion of possible releases. I object to accepting this study as representative of all releases. I would like to raise this issue at the hearing.
- I object to ignoring the social impacts of yet another waste dump in the southeastern New Mexico area. The area is already known as the "nuclear corridor" and a "national sacrifice area." Many dumps and polluting facilities already exist in this area. Adding additional dumps increases the social stigma and bad reputation of the area. Whether contamination actually exists or not, the belief that it does contributes to social and economic decline. I would like to raise this issue at the hearing.
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- I also want to hear testimony from both NMED and applicants on their new long-term intentions for the facility. Applicants have a long history of wanting the facility to accept radioactive materials. I would like to raise this issue at the hearing.

General Comment

There is a pattern emerging of NMED saying they can't provide what people need to participate in the permitting process because they don't have the money for it. NMED is willing to spend almost any amount of time and money to help the applicants but has little or no time and little money left to spend on their public obligations. Therefore I also request that NMED charge applicants adequate fees to meet the State's obligations to the public as well as their obligations to the applicants.

Sincerely,

Gary Olliver
PO Box 1174
Marfa, TX 79843
golliver@sbcglobal.net

Cobrain, Dave, NMENV

From: Ross Lockridge <murlock@raintreecounty.com>
Sent: Wednesday, August 10, 2016 8:09 AM
To: Cobrain, Dave, NMENV
Subject: Public Comment on the draft renewal permit for the Triassic Park Hazardous Waste Facility

August 10, 2016

Mr. Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Re: Public Comment on the draft renewal permit for the Triassic Park Hazardous Waste Facility

Dear Mr. Cobrain, I fully support this Letter of petition requesting a 60 day extension of the public comment period, as follows:

1. I request a 60 day extension of the public comment period to begin when the deficiencies described below are corrected. All bulleted items in this section are also requests.

- Notification of the draft permit, the comment period etc. was inadequate—particularly for the Spanish-speaking public. Meaningful notification, done in ways that will actually reach the public, needs to take place
- The Record is incomplete. Missing documents need to be added to the Record
- A Spanish Fact Sheet needs to be created as there are many people in the area who either don't speak English or are more comfortable in Spanish
- Hardcopy of the English and Spanish Notice, the English and Spanish Fact Sheet, the draft permit, the Record and all supporting documentation must be made available near the site
- The online Record is hard to use, information is missing, documents are included within other documents and titles are confusing and misleading. There is no description of documents. The online Record needs to correct these problems
- Public meetings in both English and Spanish need to be held at least near the site and at least 30 days before the end of the comment period so people can understand the permit and comment if they wish.

2. **I request a public hearing on this draft permit.** A permit was issued for this facility more than 10 years ago. Since then, situations have changed and more is known now than was known before. In particular, social and environmental justice concerns were never addressed, though they are required to be addressed now. There is increased trucking in the area, including WIPP trucking (WIPP is planning to resume shipping in December). The WIPP release has added to contamination in the area. Therefore, impacts on the local population have changed significantly as well. These are only a few things, pertinent to the permit, that have changed over the last 15 years.

3. **Objections to the permit and issues to be raised**

- I object to the lack of investigation of possible disparate impacts from the Triassic Park (TP) facility on potentially affected low income, Spanish-speaking community members.

- NMED has used as an excuse that there would be no effects off site at all, but has used a gas (VOC) to represent all possible releases even though the applicant's own expert stated that heavy metal particulates would be a significant portion of possible releases. I object to accepting this study as representative of all releases. I would like to raise this issue at the hearing.
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General Comment

There is a pattern emerging of NMED saying they can't provide what people need to participate in the permitting process because they don't have the money for it. NMED is willing to spend almost any amount of time and money to help the applicants but has little or no time and little money left to spend on their public obligations. Therefore I also request that NMED charge applicants adequate fees to meet the State's obligations to the public as well as their obligations to the applicants.

Sincerely,

Ross Lockridge
POB 22
12 Waldo St.
Cerrillos, NM 87010

Cobrain, Dave, NMENV

From: Frank McKinnon <mckinnon7654321@gmail.com>
Sent: Friday, August 05, 2016 10:06 AM
To: Cobrain, Dave, NMENV
Cc: Frank McKinnon
Subject: Triassic Park Draft Permit Public Comment

August 5, 2016

Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

Re: Triassic Park Draft Public Comment with Request for a 60 day Extension for Public Comment, and Request for Public Hearing

Dear Mr. Cobrain:

I would like to request that you put an end to the idea of having a commercial hazardous waste disposal facility located on the Gandy Marley Inc. Land identified as Triassic Park about 37 miles east of Roswell. The potential for such a facility to have a disastrous impact on the lives of people, wildlife, and the natural environment in the Pecos Valley of southeastern New Mexico is very high.

I would like to request that you provide a 60 day extension for public comment on this issue.

I would like to request that you facilitate a public hearing in Roswell on a Saturday afternoon.

Sincerely,

Frank McKinnon
2501 Gaye Drive
Roswell, NM 88201
(575) 420-8199
mckinnon7654321@gmail.com



Cobrain, Dave, NMENV

From: Joni Arends <jarends@nuclearactive.org>
Sent: Wednesday, August 03, 2016 3:02 PM
To: Cobrain, Dave, NMENV
Subject: Triassic Park - Request for 60-day Extension of Time to Provide Comments

Good afternoon Dave,

CCNS requests a 60-day extension of time to provide informed public comments about the Triassic Park Waste Disposal Facility draft Permit to the NM Environment Department. It is a HUGE permit, with Sections 1 through 10 comprising more than 200 pages. That does not even include the length of Attachments A through V.

More time is needed not only because of the size of the draft permit, but the fact that comments were due to the Department for LANL's Groundwater Discharge Permit DP-857 renewal on Mon. August 1. Comments are due on the Class 2 permit modification request for WIPP (a submittal of 329 pages) on Monday, August 8th. And comments are due on August 17th about the Department's rewrite of the surface and ground water standards.

Thank you for your careful consideration of our request.

Sincerely,

Joni Arends, Executive Director
Concerned Citizens for Nuclear Safety
P. O. Box 31147
Santa Fe, NM 87594-1147
505 986-1973
www.nuclearactive.org

