

07-037

From: Dave McCoy [mailto:dave@radfreenm.org]
Sent: Wednesday, January 17, 2007 1:27 PM
To: Bearzi, James, NMENV; Curry, Ron, NMENV
Cc: Dare.Larry@epamail.epa.gov; EPA/Laurie King; Ed Baldinger; John Coll; McAdam, Daniel; EPA Edward Padilla
Subject: Public Information Request

January 17, 2007

Mr. James Bearzi, Chief
Hazardous Waste Bureau
New Mexico Environment Department

Dear Mr. Bearzi,

1. Citizen Action hereby requests that NMED furnish copies of all documentation electronic and written, including but not limited to, e-mails, records, notes, notes of telephonic conversations, notes of meetings, related to the approval for subgrade construction at the Mixed Waste Landfill (MWL).

The information stated in the Albuquerque Journal article below, is at odds with representations to citizens in a November 2006 letter and in the November 2006 Notice of Disapproval from the Hazardous Waste Bureau. The failure to provide such information does not meet the spirit or the letter of the permit for the MWL stated in the Corrective Measures Implementation plan. NMED has not furnished notice to the public of any NMED approval of subgrade construction prior to this statement to the press. Nor was there a posting on the NMED website of any such approval in September 2006 for the public to gain knowledge. Here is the language from the Permit for the MWL requiring furnishing documents to the public. Mr Bearzi has not heretofore furnished the documents showing NMED approval for subgrade construction to the public on the NMED website. The claim that the subgrade construction was approved in September 2006 is at odds with the requirements for notification of the public and is contrary to the language in the November letter to citizens and the November Notice of Disapproval.

“V. CORRECTIVE MEASURES FOR THE MIXED WASTE LANDFILL (SWMU 76)

7. The Permittees shall provide a convenient method for the public to review the Permittees' Corrective Measures Implementation Plan, Corrective Measures Implementation Report, progress reports, long-term monitoring and maintenance plan, and any other major documents developed by the Permittees for the MWL, including but not limited to, posting the documents on a publicly-accessible website.

8. The Permittees shall allow interested members of the public to review and comment on the documents referenced in Section V.7 above. The Administrative Authority will review, consider and respond to these public comments prior to approving any of these documents (with the exception of

any documents, such as progress reports, that the Administrative Authority does not approve in the normal course of permit review and oversight).

9. The Permittees shall prepare a report every 5 years, re-evaluating the feasibility of excavation and analyzing the continued effectiveness of the selected remedy. The report shall include a review of the documents referenced in Section V.7 above, monitoring reports and any other pertinent data, and anything additional required by the Administrative Authority. In each 5-year report, the Permittees shall update the fate and transport model for the site with current data, and re-evaluate any likelihood of contaminants reaching groundwater. Additionally, the report shall detail all efforts to ensure any future releases or movement of contaminants are detected and addressed well before any effect on groundwater or increased risk to public health or the environment. The Permittees shall make the report and supporting information readily available to the public, before it is approved by the Administrative Authority. The Administrative Authority will provide a process whereby members of the public may comment on the report and its conclusions, and will respond to those comments in its final approval of the report.”

On November 21, 2006. NMED sent out a Dear Interested Citizen Letter which was a cover letter to NMED Responses to Public Comments on the Mixed Waste Landfill. It states (last paragraph) that “NMED’s review of the CMI Plan has revealed several deficiencies that must be corrected before implementation of the CMI work.”

[http://www.nmenv.state.nm.us/hwb/SNL/MWL/Interested_Citizen_Letter_-_Response_Comments_\(11-21-2006\).pdf](http://www.nmenv.state.nm.us/hwb/SNL/MWL/Interested_Citizen_Letter_-_Response_Comments_(11-21-2006).pdf)

The Corrective Measures Implementation Plan (CMIP) was part of the Resource Conservation and Recovery Act (RCRA) Corrective Action plan under 40 CFR 264.101 mandated for the Mixed Waste Landfill. Sandia/DOE have violated RCRA by proceeding with subgrade construction that is part of the dirt cover remedy prior to approval and despite a November Notice of Disapproval (http://www.nmenv.state.nm.us/hwb/SNL/MWL/SNL_NOD_11-20-2006_MWL_CMI_WP.pdf).

In the Notice of Disapproval, NMED stated “... actual start time is dependent on when the CMI Plan is approved...” (NOD, Part 1, Paragraph 2).

In Appendix A at p. 8, paragraph 3.1 SNL admits that it has recently completed the subgrade and that added thickness will have to be accounted for at boring locations. http://www.nmenv.state.nm.us/hwb/SNL/CMIWP/SAP_for_VOCs,_Tritium,_Radon_at_MWL-Dec2006.pdf

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Wednesday, January 17, 2007 Albuquerque Journal Metro Section

State OKs Sandia Labs' Dump Work

The Associated Press

An environmental group is complaining about work Sandia National Laboratories is doing to cover a toxic waste dump, but state Environment Department officials said Tuesday the work is allowed.

Citizen Action contended Sandia has begun constructing a dirt and vegetation cover for the dump at Kirtland Air Force Base although the New Mexico Environment Department did not approve it.

James Bearzi, chief of the department's hazardous waste bureau, said the so-called subgrade work by Sandia was approved in September.

"It's a narrow aspect of the preparation for building the cover" that involves laying dirt to smooth over the landfill's surface to prevent water runoff, he said.

The state rejected Sandia's overall plan in November because some parts needed clarification and others needed changing, Bearzi said. State officials are evaluating Sandia's responses, he said.

Citizen Action has had a challenge before the state Court of Appeals since 2005 against state Environment Secretary Ron Curry's decision to leave toxic and radioactive waste in the landfill.

The group contends the waste poses a danger to Albuquerque's water and air, and wants it removed.

Sandia officials have said the landfill doesn't contain enough waste to warrant a cleanup.

Bearzi said environmental covers have proved to be effective, particularly in climates like New Mexico's.

Lab spokesman Will Keener said Sandia's work does not impede its ability to monitor and do sampling at the site.

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