

Mr. Steve Pullen
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303



August 3, 2001

This is my formal request that the Secretary of NMED hold a public hearing on the permit application for the Triassic Park Hazardous Waste Disposal. I am also enclosing my official written comments.

One: Nature and Scope of Request

The nature and scope of my interest in this permit application is two fold. As a local botanist of course I have professional interest in this permit application to make sure that proper biological protocol is followed, and that appropriate state and federal laws are followed. I also live about thirty miles from the proposed site so of course I have a personal need to make sure that this facility is safe for the environment if it does get approved.

Two: People this Request Represents

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Three: Objections and References to Permit Condition

Although I object to several areas of the permit on a personal level I only have the technical expertise to testify at a public hearing about Permit Attachment A, Section 1.2. This whole section is completely flawed. Please see the two page document included called "Comments on Permit Attachment A, Section 1.2 Site Environment Triassic Park Waste Disposal Facility". This is a brief summary of the mentioned comments to Permit Attachment A, section 1.2. First, I found after examining the permit application, and other pertinent data put out by the NM Game and Fish Department, US Fish and Wildlife Service, and the Bureau of Land Management that this section was lacking significantly in data, citations, and evidence. I found that if the Bureau of Hazardous Waste approves the permit in this condition that they would be neglecting their legal duties to the Wildlife Conservation Act Section 17-2-37 to 17-2-46 NMSA1978, and possibly the U.S. Endangered Species Act. In specific GMI did not conduct *ANY* studies to define and describe the flora and fauna of the site, specifically for rare, threatened, and endangered species either potentially or definitely located there. GMI also did not conduct *ANY* studies to demonstrate the effects of this project, environmental conditions influenced by

this project, and construction damages on the rare, threatened, and endangered species that are located there. They also did not conduct any studies into the effects of a site "accident" on any of the rare, threatened, and endangered species known to be there and at the neighboring Mescalero Sands National Recreation Area. They also mention possible casualties of the state threatened, *Scleripurus graciosus arenicolous* by way of netting and fencing, and vegetation removal. There was also no documented consultation process on any of these issues with NM Game and Fish Department, U.S. Fish and Wildlife Service, or Mescalero Sands National Recreation Area.

Four: Issues

At the hearing I will raise the issue and provide evidence that GMI has not properly completed site environment studies and provided evidence that this project will not take threatened or endangered species. I will detail what studies they would need to make before a permit could be granted. I would also detail what consultations they need to make with other appropriate state and federal agencies.

CC:Hearing Clerk

CC: John Kieling

CC: NM Ecological Services Field Office, US Fish and Wildlife Service

CC: Bruce Christman, NM Game and Fish Department

CC: Law Enforcement Division, NM Game and Fish Department

Comments on Permit Attachment A, Section 1.2 Site Environment Triassic Park Waste
Disposal Facility Application
By: Holly Harris-Schott

The following are conclusions I made upon reading the section 1.2 on permit attachment A, including all the information in the application on site environment, and information on the flora and fauna. First, Gandy Marly, Inc. (GMI) covered the biology of a four hundred and eighty-acre site containing a significant amount of rare and state threatened animals in four very short paragraphs that took up less than one half of a page. They wrote opinions and wishful thinking, as biological *facts* yet did not use any citations or references on this information to substantiate their claims. They did not discuss any actual studies or fieldwork done on the site to determine what plants and animals were actually there. GMI also did not state any consultation with New Mexico Game and Fish department or the Ecological Service Branch of U.S. Fish and Wildlife Service. The fact that the New Mexico Environment Department could send this application to the public to view in this manner should at least be considered neglectful of their legal duties in reference to the Wildlife Conservation Act Section 17-2-37 to 17-2-46 NMSA 1978, and the United States Endangered Species Act.

Let me bring up the following points that are based on the section 1.2 of this permit application, and facts that I have gained from reading Bureau of Land Management literature, New Mexico Game and Fish literature, and New Mexico's Bison-M website. First, there have been no adequate survey completed for the plants and animals contained within this project site. There are also no adequate projections on the effects of an accident at this site on these rare and threatened animals. It is my educated opinion that upon further inspection further threatened/endangered species of plants and animals will be found on site. Even if there is not further species GMI must still adequately study and protect the ones known to be there. There are also possible takings mentioned of known threatened species by GMI in way of protective fencing and nets over ponds. There was no mention of studies that establish this fencing or nets as safe for *Scleripurus graciosus arenicolous*, not to mention other species. GMI also did not mention that they will be removing most of the vegetation in the area, or that the removal of shinary oak would constitute a taking of countless numbers of the threatened, *Scleripurus graciosus arenicolous*. If GMI plan to relocate these animals they would need to apply for a special permit from the Game and Fish Department. None of which is mentioned in this document. There are definitely threatened and rare species located inside this project site possibly more then what GMI listed. Whether intentionally or not approval of this permit and the subsequent construction of this facility would be in disagreement with the core principles of the Wildlife Conservation Act section 17-2-37 to 17-2-46 NMSA 1978, and therefore illegal.

The following are excerpts from the Wildlife Conservation Act, section 17-2-37 to 17-2-46 NMSA 1978.

17-2-39

- A. ..threatened species should be managed to maintain and, to the extent possible enhance their numbers.

17-2-40

M. Wherever the director finds that there an emergency posing a significant risk to the well being of any species and that the risk is likely to jeopardize the continued survival or recruitment of the species within the state, the director shall recommend to the commission that the species should be listed as endangered.

17-2-40.1

E. With the assistance of the advisory committee the director shall develop a draft recovery plan to achieve the following objectives;

- (1) restoration and maintenance of a viable population of the threatened or endangered species and its habitat reasonably expected to lead to de-listing of the species;
- (2) avoidance or mitigation of adverse social or economic impacts;
- (3) identification of social or economic benefits and opportunities; and

After review of the permit application the following is what I recommend. First, I recommend that the Environment Department mandate GMI to complete before they continue with the permit application process. First, GMI needs to consult with both New Mexico Game and Fish Department, and Ecological Services Department of U.S. Fish and Wildlife Service. These agencies can help determine what scientific studies need to be done and any specific needs like completion of a NEPA document, or Environmental Impact Assessment. Next, GMI should hire experts with knowledge of the Chaves county area in the fields of Botany, Herpetology, Mammalogy, and Ornithology. These people should be independent experts from semi-local consulting firms or semi-local universities. These professionals should conduct a yearlong study in their respective fields into the flora and fauna of the area. These people should make a complete inventory of what species are located on the site, population density of these species, and determine if these species are threatened, endangered, or rare. These experts should make recommendations on the effects of the project on local biota and how to minimize these effects. Some of the possible effects they should study would be vegetation removal; noise, air and water pollution; fencing and nets over ponds effects on any listed threatened or endangered species. Also they should determine the effect of the increased amount of people, truck traffic, and noise on nesting and courtship behaviors of *Buteo regalis*, *Tympanuchus pallidicinctus*, and *Scleropurus graciosus arenicolus*. These consultants should also recommend proper construction methods and ways to minimize impacts to species during and after construction. These biologists should also make projections covering possible accidents and contamination at this site, and how to minimize effects of an accident on the biota of the site. All this data and any recommendations should be available for public inspection. If Gandy Marley, Inc. refuses to do these studies then the permit should be denied. If they refuse to follow the recommendations of these experts then their permit should be denied. If they can not at least make a token effort to protect the environment before they even get this permit how can we possibly expect them to follow environmental regulations once they are started.