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STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
BEFORE HEARING OFFICER FELICIA ORTH

IN THE MATTER OF THE DRAFT)
FINAL PERMIT FOR THE TRIASSIC PARK)
WASTE DISPOSAL FACILITY)
U.S. EPA NO. NM0001002484)

No. HRM 01-02(P)

JOINT REPLY TO RESPONSE TO OPPOSED MOTION
FOR PUBLIC HEARING

I. Introduction

Conservative Use of Resources (hereinafter "CURE") filed a Motion for Public Hearing on August 23, 2001 requesting that the public hearing be rescheduled no earlier than November 12, 2001, that before the hearing, the applicant holds public meetings with at least 15 days notice at which a Spanish translator is present in Hagerman, Santa Fe, Roswell and Tatum, that the applicant discuss its proposed changes to the draft permit at those meetings, and that the Gandy Marley, Inc. (hereinafter "Applicant") have a fact sheet in Spanish available for members of the public at those meetings. These requests were made to increase public participation and to ensure a fair adjudication of the issues. Contrary to the Applicant's and the New Mexico Environment Department's (hereinafter "NMED") assertions, these requests neither require the creation of new regulations nor have an adverse effect on public participation.

This case is an example of both the Applicant's, and the NMED's assertions of what they have done in an effort to disguise what they should do. CURE members have been unable to

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| NATURE SAVER™ FAX MEMO 01616 | | Date <u>9/12/01</u> | # of pages <u>▶</u> |
| To <u>STEVE PULLEN</u> | From <u>HEATHER GREEN</u> | | |
| Co / Dept <u>NMED/HWB</u> | Co <u>NMELC</u> | | |
| Phone # | Priority # | | |
| Fax # <u>428-2567</u> | Fax # | | |

meaningfully participate in this draft permit process as a result of Applicant's continuous refusal to provide information about its proposal in Spanish, to use a Spanish translator for an entire public information meeting, and to give more than a few days notice for the public information meetings Applicant did hold. Further, portions of the draft permit are not available even at the Hazardous Waste Bureau library. Since the Roswell Library closed, the only opportunity for many CURE members to view the draft permit has also been foreclosed.

For these reasons, CURE requests that the Hearing Officer grant Cure its August 23, 2001 Motion for Public Hearing.

II. CURE And Its Members' Ability To Participate And To Have A Fair Adjudication Of Issues Is Foreclosed By Their Inability To Access Or Understand Pertinent Documents.

The Applicant has continually precluded CURE's and its members' from meaningfully participating in the proposed Triassic Park facility permitting process despite their interest. Because of CURE members' inability to access or understand pertinent documents, they will not be able to fully comment on the draft permit, and this in turn will insure a partial and unfair hearing. No new rules are required to protect CURE's endangered rights. The objective of the New Mexico Administrative Code environmental regulations governing hearings before the Environment Department is "to establish hearing procedures for permit issuance, renewal, denial, or modification, license and variance petitions; *to ensure due process for all persons; to ensure the ability to participate of all persons and entities who desire to take part; and to give an orderly structure to proceedings.*" 20 NMAC 1.4.I.106, emphasis added. Moreover, the Hearing Officer has the "authority to take all measures necessary for the maintenance of order . . . for the efficient, fair and impartial adjudication of issues." 20 NMAC 1.4.I.112. CURE's motion will

increase the number of interested public who will be able to participate. Likewise, CURE's motion will insure that all pertinent information and comments are gathered at the hearing, and thus provides for a fair and impartial adjudication of the issues.

A. Portions of the Triassic Park Draft Permit Have Been Unavailable Since the Draft Permit Was Released To the Public, And Now Many CURE Members Do Not Have Access To the Proposed Draft Permit At All.

Despite the one-hundred and twenty-five (125) days of review and comment the NMED has provided for the draft permit, CURE members have never seen the complete draft permit, and since the Roswell Library closed, many CURE members do not have access to any part of the draft permit or any other pertinent document.

Attachments U - *Action Levels For Corrective Action*, U1 - *Background Concentrations For Soil*, U2 - *Vadose Zone Baseline Concentrations For Non-Leachates*, U3 - *Background Concentrations For Ground Water* and V - *Vadose Zone Monitoring Indicator Parameters* are unavailable. Both the hard copies of the draft permit CURE members have had access to, and the draft permit available online at www.nmcnv.state.nm.us/hwb/hazwaste_home.html contain only the title pages of those attachments. Some drawings and charts referenced as Attachment L1 in Part 1 through Part 10 of the draft permit are also not currently available in any hard copy or in the draft permit available online.

Counsel for CURE received a Notice of Filing dated August 31, 2001 from the Applicant on September 4, 2001 that included a new copy of Attachment II - *Groundwater Monitoring Waiver Request*. The Applicant filed this new copy of Attachment H because, in its own admission, portions of that document had previously been omitted. The omissions include Appendix A - *Water Quality Data*, a landfill profile, charts involving Steady State Effective

Saturation v. Distance From Source, Steady State Unsaturated Hydraulic Conductivity v. Distance From Source, Interstitial Water Velocity v. Distance From Source, Steady State Leakage Into Lower Dockum v. Distance From Source, and other data results. This information is pertinent to the groundwater monitoring technical CURE plans to present, and CURE's experts need time to assess this additional information.

Counsel for CURE also received the Applicant's Notice of Filing of Comments constituting Applicant's requested changes to the draft permit on September 6, 2001. Approximately six of Applicant's comments requesting changes to the proposed Triassic Park facility draft permit ask for less stringent requirements. The requested changes involve the proposed contingency plan, the groundwater monitoring variance, and the financial assurance plan. Again, these issues are issues on which CURE plans to present technical testimony. While CURE received Applicant's comments requesting changes to the NMED draft permit for the Triassic Park Facility on September 6, 2001, this was only ten working days before the deadline for submitting technical testimony, and is insufficient time for CURE to prepare additional technical testimony on those points.

In addition, the fact that a partial draft permit is available online and at the Roswell Library is of little help when the Roswell Library is closed and many CURE members do not even own computers. See, Genevieve Y. Richardson Affidavit ¶¶ 1 to -3, Sarah J. Pretti Affidavit ¶ 1, Thomas L. Pearson Affidavit ¶¶ 1 to -4, Mary O. Ely Affidavit ¶¶ 1 to 2, and Martha Gilespeie Affidavit ¶¶ 1 to -3. No amount of time, no matter how generous that amount of time is, is sufficient to review, comment, and prepare for technical testimony on specific issues in a draft permit if the entire document is not available. The public, CURE, and CURE

members, cannot take part in the hearing process without having access to the entire draft permit and other pertinent documents.

B. The Public Information Meetings Held By the Applicant And Noticed By the NMED Did Not Serve Their Purpose Of Educating the Public and CURE Members About the Proposed Facility And Requiring An Additional Public Meeting At Which A Spanish Translator And a Fact Sheet In Spanish Is Available Would Not Go Beyond the Scope of Existing Rules.

The NMED and Applicant admit that the public must be involved in this process, and cited the number of public information meetings Applicant has held. See, Response To Opposed Motion For Public Hearing, 2, Response To Opposed Motion For Public Hearing, Exhibit B (explaining that the public information meetings are so that the public might “become more knowledgeable about the proposed facility”); The New Mexico Environment Department’s Response To Movants’ Motion For Change Of Public Hearing Date, 1. However, as noted by the attached affidavits, the public and specifically members of CURE have been shut out of the process. Although Applicant has held eight public information meetings over a six year period, three of those meetings were held for a different application not at issue here; five of the meetings were held with almost no notice, without a Spanish translator or any information in Spanish available; and none of the meetings have been held since the Applicant requested more changes to the draft permit. These omissions have perpetuated a situation in which CURE members have been unable to participate or to prepare for a hearing, and without the presentation of their full, informed comments, the hearing process will not be a fair or impartial process. For this reason, CURE’s motion is not an invitation to create a new rule. It is an invitation to enforce existing policy.

CURE members who have been able to attend public meetings despite the short notice, have done so of their own accord, and when no Spanish translator was used for an entire meeting, many of those attending the meetings left of their own accord. See, Judy King Affidavit ¶ 7, Sonya L. Wilson Affidavit ¶¶ 3 to -4. Specifically, when no Spanish translator was provided for an entire meeting at Hagerman, New Mexico, and contrary to Applicant's assertions, at least 50 to 60 people left the meeting of their own accord either because they could not speak English and could not understand the presentation to make it worth their while to wait for the comment/question portion of the meeting, or because they sympathized with those who do not speak English. See, King Aff. ¶¶ 7 to -9, Wilson Aff. ¶¶ 3 to -4, Jimi S. Gadzia Affidavit ¶¶ 1 to -4, Victor Blair Affidavit ¶¶ 3 to -9. No public information meetings, no matter how many are held, allow Spanish only speakers to participate in any of the process if they cannot understand the issues. Nor will any amount of time to review an English document allow Spanish only speakers to participate in any of this process.

III. Conclusion

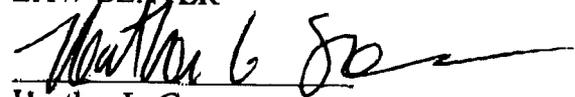
CURE's, and CURE members' ability to participate, to present technical testimony on all of the Applicant's submissions, and to insure a fair and impartial adjudication of the issues for itself by presenting full comments and prepared technical testimony are hindered. For this, and the above stated reasons, CURE respectfully requests the Hearing Officer to grant its Motion For Public Hearing and

- (1) reschedule the public hearing no earlier than November 12, 2001;
- (2) require that the Applicant hold additional public meetings with at least 15 days notice at which a Spanish translator is present in Hagerman, Santa Fe, Roswell and Tatum;

- (3) require that the Applicant discuss its proposed changes to the draft permit at those meetings; and
- (4) require that the Applicant have a fact sheet in Spanish available for members of the public at those meetings.

Respectfully submitted,

NEW MEXICO ENVIRONMENTAL
LAW CENTER



Heather L. Green
Douglas Meiklejohn
1405 Luisa Street, Suite 5
Santa Fe, NM 87505
(505) 989-9022

Attorneys for the Conservative Use of
Resources and Environment

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U.S. EPA NO. 00010112484)

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Genevieve Y. Richardson

GENEVIEVE Y. RICHARDSON, being duly sworn, deposes and says:

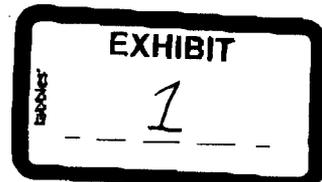
I go to the Roswell Public Library when I want to use the Internet.

I have been told that the Roswell Public Library or the internet are the only Roswell locations where the complete permit is available for review.

The Roswell Public Library is closed.

This permit is very complex, lengthy and technical for people like me.

This approximate two week closure just before the final hearing is not fair.



State of New Mexico

County of Chaves

The foregoing was acknowledged before me on this 10th day of Sept, 2001

by Genevieve G. Richardson

Marguerite G. Sanders
Notary Public

My Commission Expires May 31, 2003

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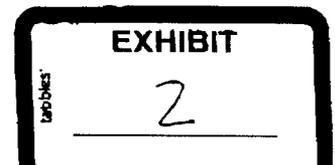
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Sarah J. Pretti

SARAH J. PRETTI, being duly sworn, deposes and says:

I have not had enough time to study the Triassic Park permit. I do not have a computer, and our Roswell Public Library has been in a state of chaos for a long time. Right now it is closed.

I think the Environment Department should give people like me more time, and I am asking you to extend the October 15 hearing for at least two months.



State of New Mexico

County of Chaves

The foregoing was acknowledged before me on this 10th day of Sept, 2001

by Sarah J. Petti

Marguerite G. Sanders
Notary Public

My Commission Expires: May 31, 2003

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Thomas L. Pearson
Thomas L. Pearson

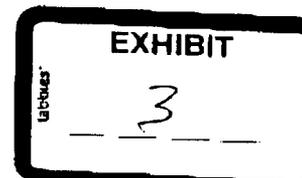
, being duly sworn, deposes and says:

At the Roswell information meeting for Triassic Park, state representatives announced to me and other members of the audience that the draft permit was locally available for review at the Roswell Public Library instead of at the Environment Department's area office.

The library is closed for renovation.

Since I don't have a computer, I have no way to continue reviewing the permit.

It was to my disadvantage to lose approximately two weeks of study, and I feel strongly that the permit hearing should be postponed.



State of New Mexico

County of Chaves

The foregoing was acknowledged before me on this 10th day of Sept, 2001

by Thomas L. Pearson

Marguerite G. Sanders
Notary Public

My Commission Expires: May 31, 2003

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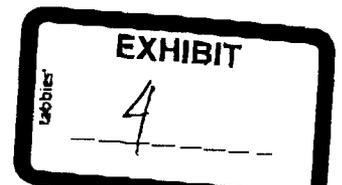
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MARY D. ELY

MARY D. ELY, being duly sworn, deposes and says:

With the present closure of the Roswell Public Library, I do not have access to the internet for the immediate purpose of obtaining further information on the proposed hazardous waste facility, nor am I able to further examine the permit for said facility.

This pertains to many Roswell citizens.



State of New Mexico

County of Chaves

The foregoing was acknowledged before me on this 10th day of Sept, 2001

by Mary D Ely.

Marguerite G Sanders
Notary Public

My Commission Expires May 31, 2003

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Martha Gillespie

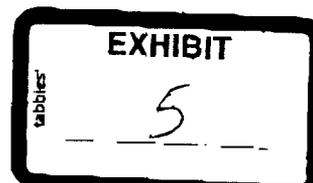
MARTHA GILLESPIE, being duly sworn, deposes and says:

Our usual internet access to state offices is via the Roswell Public Library.

Due to the library being closed for construction, I am denied this access and therefore access to information about the Triassic Park draft permit.

I and other people of Roswell needed the maximum time to study this complex issue.

In fairness, the final public hearing should be postponed to compensate for this closure.



State of New Mexico

County of Chaves

The foregoing was acknowledged before me on this 10th day of Sept, 2001

by Martha Gillespie

Marguerite G. Sanders
Notary Public

My Commission Expires: May 31, 2003

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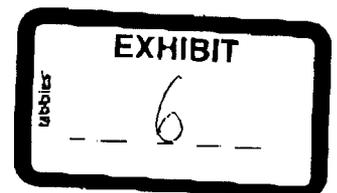
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AFFIDAVIT OF JUDY KING

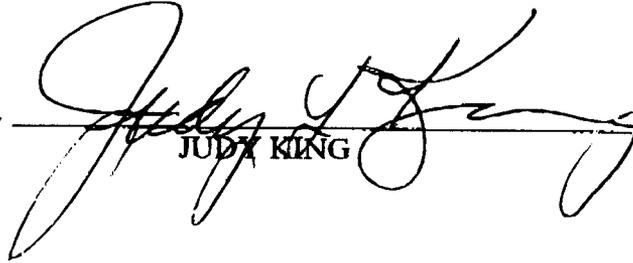
JUDY KING, bring duly sworn, deposes and says,

1. I have lived in the community of Hagerman, New Mexico most of my life.
2. I attended the July 19, 2001 Hagerman public information meeting.
3. I believe that Ken Schultz is wrong. Victor Blair did not orchestrate the protest during the July 19, 2001 public information meeting in Hagerman. I believe the fault lies with Dale Gandy, Gandy Marley, Inc., and the New Mexico Environment Department.
4. Mr. Gandy called me at home on June 6, 2001. He asked for my assistance in facilitating the July 19, 2001 public information meeting to be held in Hagerman and in securing a building and an interpreter. I told him it was his responsibility. He assured me he would have an interpreter at the Hagerman meeting.
5. On June 21, 2001 I called Mr. Gandy to ask if the information meetings had been arranged. Not yet, he said, but he assured me again during our conversation that all details, including an interpreter, would be seen to.
6. Because of Mr. Dale Gandy's prior knowledge of the need for a Spanish interpreter at the July 19, 2001 Hagerman public information, because of the non-utilization of the alleged interpreter in attendance, and because of NMED facilitator Pat Pattengale's rudeness to Deacon Herrera and everyone in attendance, I believe the facts clearly indicate the responsibility for causing the protest lies with GMI and NMED.
7. I left the public information meeting of July 19, 2001 in Hagerman of my own accord. No one told me to leave. I was the first to leave a few minutes before the others began filing out.
8. I left because I believed that the rudeness of the facilitator and the total disrespect of Hispanics by not using an interpreter displayed the malicious intent of GMI's public information meeting.



9. In my opinion, Den Schultz is deliberately undercounting the number of people he claims left the public information meeting in Hagerman July 19, 2001. From my unique perspective I would estimate that there were more than twenty minor children who left with families and that a majority of people left the meeting.

Dated Sept. 10, 2001.
Hagerman, NM


JUDY KING

Sworn to before me this 10
day of September, 2001

Eugenia D. Levaris

Notary Public

STATE OF NEW MEXICO
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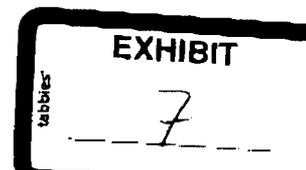
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AFFIDAVIT OF SONYA L. WILSON

SONYA L. WILSON, being duly sworn, deposes and says:

1. I live southwest of Hagerman approximately 5 miles. I work as a teacher's aide in the Hagerman Public School system and I am the secretary/treasurer of Fambrough Mutual Domestic Water Consumer's Association.
2. I oppose Triassic Park Hazardous Waste Facility. I believe that it will effect my family's health for generations to come.
3. I attended the July 19, 2001 public information meeting in Hagerman. In my estimation, 50 to 60 people left the auditorium initially. Another 20 filtered out intermittently before I left, partly out of disgust and partly out of respect for the Hispanics who left.
4. Because of my position in the school system and at the water company, I recognized about 30 people who left who did not speak English. As the evening progressed I estimate that approximately 15 people remained as I left.

Dated: 9-7-01, 2001. Sonya L. Wilson
Hagerman, New Mexico Sonya L. Wilson



Sworn to before me this 7
day of September, 2001

Angelia D. Levario

Notary Public

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Jimi S. GAZZIA

, being duly sworn, deposes and says:

I attended the public information meeting concerning Triassic Park in Hagerman, New Mexico on Thursday, July 19, 2001.

It appeared that approximately 50 or 60 people left the meeting room during the beginning of the presentation by Gandy-Marley, Inc.

I stayed for the entire meeting.

Other than owners, employees, and family members of Gandy-Marley, Inc., there were approximately 10 to 12 other people in attendance, including myself.



State of New Mexico

County of Chaves

The foregoing was acknowledged before me on this 10th day of Sept, 2001

by Jimi S. Ladzia

Marguerite G. Sanders
Notary Public

My Commission Expires May 31, 2003

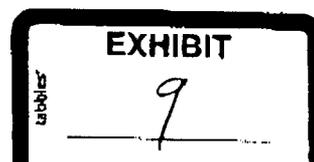
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AFFIDAVIT OF VICTOR BLAIR

VICTOR BLAIR, being duly sworn, deposes and says,

1. I live southwest of Hagerman approximately 5 and one half miles.
2. I invited many non-English speaking families to attend the public information meeting July 19, 2001 in Hagerman, New Mexico because Steve Pullen, project manager of Triassic Park, informed me that there would be a translator in attendance.
3. I attended the beginning of the information meeting in Hagerman on July 19, 2001.
4. I did not orchestrate the "demonstration".
5. Walking to the GMI meeting on July 19, 2001 I asked Deacon Jesus Herrera to request the use of an interpreter if none were utilized.
6. Just after the GMI meeting began on July 19, 2001, Deacon Herrera held up his hand and asked if an interpreter would be used. Pat Pattengale, the NMED facilitator, was rude and essentially told him "later".
7. As the meeting continued, I moved to sit next to Deacon and apologized for putting him in that position.
8. As the second English only speaker began, I went to Pat Pattengale and asked for the interpreter. I was told after their presentation in English, there would be a question and answer session in Spanish.
9. I turned away from Pat Pattengale towards the speaker and noticed dozens of expectant glances. I shrugged, with my palms turned upward. I also shook my head "no" while the second speaker continued in English. At that point, the exodus began.
10. I believe NMED and GMI precipitated the events by not utilizing the interpreter who was allegedly in attendance and by displaying a poor attitude towards the general public.
11. I believe more public information meetings should be held with at least thirty days notice.



12. It appears that NMED and GMI have failed to adequately address the language barrier. I believe that some public information meetings should be held in Spanish only.

13. Because of my very large English vocabulary, my very small Spanish vocabulary, and because of my many Spanish only conversations with people in the community, I feel that this provides me with a unique perspective of the language barrier.

14. Because of my unique perspective, I believe that proper technical Spanish is not the same as the local "Tex-Mex" version of Spanish spoken here. "Yarde", "troke", "carro", and "dompe" are not the proper Spanish words for "yard", "truck", "car", and "dump", but more than likely the "Tex-Mex" terms would be more widely understood in the community.

15. I believe that NMED should require GMI to conduct research into the impacted communities so that individual community needs, language barriers, and other uncovered obstacles to community outreach may be overcome. Because EPA has printed materials outlining such actions, it would appear that NMED would be derelict of its duty by allowing GMI to successfully disenfranchise so many people.

16. I believe that postponing the public hearing and holding more public information meetings would contribute to greater public participation.

17. The Roswell Public Library is currently closed for remodeling. A request has just been made of me to retrieve documents which are now unavailable. This has created a hardship.

Dated: 9-10-01, 2001. 
Hagerman, New Mexico VICTOR BLAIR

Sworn to before me this ²² ~~10th~~ 10th
day of September, 2001

Eugenia D. Letario

Notary Public