



STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

11-8-2001

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)

**RESPONSE TO MOTION TO STRIKE NOTICE OF
FILING AND RESPONSE TO APPLICANT'S CONFIDENTIALITY REQUEST**

COMES NOW, the applicant, by and through their counsel of record Dolan & Domenici, P.C. (Pete V. Domenici, Jr., Esq.) and for their response to the Motion to Strike provides the following memorandum:

INTRODUCTION

The disclosures in this matter are made on behalf of Gandy Marley, Inc., a New Mexico corporation and the individual shareholders of Gandy Marley, Inc. The individual shareholders are all members of either the Gandy or Marley families. There has been no change in ownership of Gandy Marley, Inc., since it was formed. The New Mexico statute requires that the disclosure statements be filed by the applicant and that the disclosures be updated when the information in the disclosures has changed 1978 NMSA §74-4-4.7. However, there is no regulation defining the required disclosures, adopting a form for the disclosures or indicating what changes in disclosures are considered material and which changes in the disclosure might be immaterial or de minimus.

At the hearing in this matter, the interveners CURE and CARD had the opportunity to cross examine three of the owners of Gandy Marley, Inc., Dale Gandy, Larry Gandy, and Mark Marley. Dale and Larry Gandy testified at the request of CURE and were asked questions regarding any information related to the disclosures. As

indicated in CURE's brief, CURE contends that they provided information that their drivers license numbers had changed and their loan balances and vehicle ownership had changed.

The form does not require drivers license information be updated, it merely requires a photographic identification. No material information regarding the changes other than ownership of vehicles or personal loan balances was established on cross examination and no other information regarding disclosures was pursued by CURE on examination of those witnesses. Later, CURE'S witness Victor Blair, indicated that he had reviewed records from the Oil Conservation Division and the New Mexico Environment Department related to GMI or Gandy Corporation.

During the hearing, the hearing officer clarified that the hearing record would consist of the administrative record, including everything filed with the Hazardous Waste Bureau in the permit file and would consist of any comments and exhibits introduced in the hearing record. The hearing officer agreed to leave the hearing record open until October 25th. There was no objection to leaving the record open nor was there any objection to the statement that anything in the administrative record would be made part of the hearing record.

Following the hearing, GMI and the individuals submitted updated disclosures to the Hazardous Waste Bureau (Exhibit 1). The transmittal indicates that those were delivered to the Hazardous Waste Bureau on October 25th, and it is therefore part of the administrative record for the Triassic Park permit. A notice of filing was submitted along with these disclosures, notifying all parties that these have been made part of the permit administrative record. Regardless of whether the updated disclosures are part the hearing

record, they are part of the administrative record and there is no basis to strike them from the administrative record. The disclosure statute clearly contemplates periodic updates to the disclosures and does not require re-opening the hearing process with each update. The statute makes it clear that it is contemplated that the disclosures would have to be updated after a permit is issued. There is no basis for re-opening the hearing because disclosures are updated.

An examination of the disclosures indicates that there is no information in it that was not available through witness examination during the hearing. Furthermore, there is no material information disclosed in the disclosures that could possibly have any relevance to the hearing decision itself. The request to reopen the hearing and allow cross-examination is submitted to generate additional cost, expense and delay to the applicant. The applicant has set forth no information in the updated disclosures that would require cross-examination that was not available when the cross-examination took place or that would be material to any decision of the hearing officer.

Confidentiality issues should be addressed by the Department and if either side is dissatisfied with the Departments decision on confidentiality, that decision should be appealed through a separate process. The applicant is prepared to wait for a decision by the Department on the confidentiality and then to determine if further action is necessary on that issue. The hearing officer should reserve ruling on that issue, or refuse to consider it.

Conclusion

Based on all the above the applicant requests that the motion to strike be denied.

Respectfully submitted,

DOLAN & DOMENICI P.C.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was mailed to all counsel listed below this 8 day of November, 2001.



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