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BEFORE THE ENVIRONMENT DEPARTMENT
STATE OF NEW MEXICO

IN THE MATTER OF THE DRAFT)	
FINAL PERMIT FOR THE TRIASSIC PARK)	No. <u>HRM 01-02(P)</u>
WASTE DISPOSAL FACILITY)	
U.S. EPA NO. NM0001002484)	
)	

**CONSERVATIVE USE OF RESOURCES AND ENVIRONMENT'S
RESPONSE TO CARD'S MOTION TO RE-OPEN THE HEARING TO ADD
DOCUMENTS TO THE ADMINISTRATIVE RECORD**

I. Introduction

Conservative Use of Resources and Environment (hereinafter "CURE") files its response in support of CARD's Motion to Re-Open the Hearing to Add Documents to the Administrative Record. CURE reasserts that documents available prior to the hearing and previously part of the record should have been available to CURE, its members, and the public to allow them an opportunity not only to review the documents, but to comment, present evidence and arguments, and to cross-examine the Applicant and the State on those documents if they proved to be of import. Therefore, CURE supports CARD's motion and asserts its right to present testimony, evidence and to cross-examine the Applicant or the State should review of the documents reveal information pertinent to issuance of the draft permit.

II. Argument

As noted by CARD, the Administrative Record includes:

[A]ll public records used by the Division in evaluating the application or petition, including the application or petition and all supporting data furnished by the applicant or petitioner. all

materials cited in the application or petition, public comments, correspondence, and as applicable, the draft permit and statement of basis or fact sheet, and any other material used by the Division to evaluate the application or petition." NMAC 20.1.4.107(A)(2).

20 NMAC 1.4.107(A)(2). This definition is broad and includes the documents outlined by CARD in its motion. Moreover, as stated in the definition of "Administrative Record," those materials are public. CURE notes, in its previous filings, that a crucial piece to the application and permitting process is public involvement. See, e.g., 1978 NMSA § 74-4-4.2(H); 20 NMAC 1.4.1.106.

There are at least six documents listed in CARD exhibit 1 that CURE wants to review and wants to submit to its experts for review. Those documents include "Landfill Liner Alternatives HELP Analysis," AR/Invoice Number 96-019 and "Instructions & Request for Cost Estimate - Permit Application Review," AR/Invoice Number 98-025. The titles of these documents reveal their potentially substantive nature and are clearly documents the State used in evaluating the Applicant's application. As documents the State relied on in evaluation the application, all parties must have the opportunity to review the documents, present comments and arguments on the documents, present testimony and evidence regarding those documents, and to cross-examine the State and the Applicant on the documents.

Counsel for CURE spoke with counsel for the State on November 30, 2001 and understands that the State, although it may not agree to the relevance of the documents mentioned by CARD, agrees to their admission so long as they are not marked confidential by the person or entity submitting those documents. CURE also understands that the State, if CURE disagrees to the designation of any document as confidential, agrees to submit those

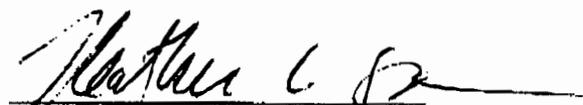
documents to a currently undetermined person with proper authority to determine whether the documents should or should not be confidential. CURE, however, does not agree to be bound by any confidentiality determination made in that manner.

III. Conclusion

No ruling should be made on the Applicant's permit until the public has an opportunity, equal to that of the State and the Applicant, to review any materials submitted to the State in association with the proposed Triassic Park hazardous waste disposal facility, to present testimony and evidence on those documents and to cross-examine the Applicant and the State about those materials.

Dated: December 3, 2001.

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CERTIFICATE OF SERVICE

I certify that on December 3, 2001 copies of Conservative Use of Resources and Environment's Response to CARD's Motion to Re-Open the Hearing To Add Documents to the Administrative Record were served upon the following counsel of record by facsimile and first class mail, postage prepaid:

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