

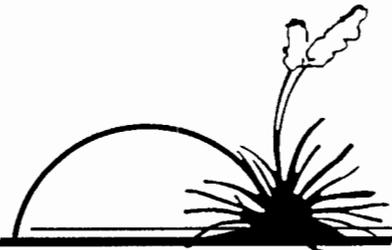


Triassic Park
Draft Permit
Comment 10/17/16

CARD

Citizens For Alternatives To Radioactive Dumping

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October 16, 2016

Mr. Dave Cobrain, Program Manager
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

Re: CARD's Public Comments on the draft renewal permit for the Triassic Park Hazardous Waste Facility

1. CARD appreciates NMED's decision to extend the comment period for 90 days, to do "enhanced" notification for local people and for local Spanish speakers, to provide a Fact Sheet in Spanish, and to provide at least one information meeting in the local area. However, there are still some problems that are outstanding.

• ***We request that the language on requirements to comment and to request a public hearing be revised in any Notices, the English Fact Sheet and the Spanish Fact Sheet, to comply fully with applicable regulations, which mandate only a broad-based request for comment or a hearing. These documents need to be re-issued, along with any newspaper and radio announcements that contained the language. The comment period needs to be extended again so commenters who may have been discouraged from commenting because of said language will have an opportunity to comment.*** The current documents include the following statement:

Written comments must be based on the information available for review and include, to the extent practicable, all referenced factual materials. Documents in the administrative record need not be re-submitted if expressly referenced by the commenter. Requests for a Public Hearing shall provide: (1) a clear and concise factual statement of the nature and scope of the interest of the person requesting the hearing; (2) the name and address of all persons whom the requester represents; (3) a statement of any objections to the draft permit; and (4) a statement of the issues which the commenter proposes to raise for consideration at the hearing.

This additional language, beyond the clear requirements of the applicable regulations, has a chilling effect on the public at large as well as a particular disparate impact on first generation Mexican immigrants and/or monolingual Spanish speaking persons of Mexican descent, who object to the permit, want to comment, or want to request a hearing. In fact, under the regulations (20.4.1.901), an individual or group need only provide "...a timely written notice of opposition to the draft permit and a request for a public hearing..." The regulations also state that "No ruling shall be made on permit issuance or denial without an opportunity for a public hearing..."

RCRA states that "Public participation....should be provided for, encouraged, and assisted by the Administrator and the States." [7004 (b)(1)] For NMED to require the public to

provide documents and reference factual materials makes public participation extremely difficult and discourages members of the public from commenting at all. For NMED to require the names and addresses of all CARD's membership is an invasion of privacy. These requirements are intimidating and the opposite of providing for, encouraging and assisting public participation.

• ***The Record and the Draft Permit are still incomplete. We request that all missing documents and an index of the Confidential File records be included in the Record and be made available to the public.*** Documents are missing from the Record including some documents from the original permit hearing (which are still pertinent to the draft permit renewal) and an index of documents in the Confidential File. During the first hearing, at least one document was inappropriately secreted in the *confidential file*. An index of all documents in that file is necessary to see if additional documents have been inappropriately placed there.

The Spanish Fact Sheet from the original hearing appears to be missing as is CARD's *Comments on the Hearing Officer's Report*. There appears to be no formal approval of Revision 2 of the Application and no link to the actual document. There appear to be problems with the draft permit itself. Attachment O2 is actually O1. Attachment K of the new permit is "reserved." This was an important attachment in the original permit as it is a list of all the hazardous items that can be accepted and needs to be included to make the Draft Permit complete. Does this list exist elsewhere? There are multiple cover sheets that refer to other documents during the original permit process that don't appear to be in the Record. The transcript of the original hearing is missing. The Secretary's Final Order from the original hearing is not listed anywhere. All of the written comments with the so-called "Radioactive Memo" attached that were given to NMED at the end of the original permit hearing on 10-25-01 are gone. Comments that were sent in as long as three months ago are not entered into the Record or Index.

Finally, nothing has been added to the Record since August 12th—more than two months ago. Yet much has happened since then. There may be more documents missing than those listed as it is very hard to negotiate through the online Record.

• ***We request that NMED make the Notification, the Fact Sheet, the draft permit, the Record and all supporting documents available in hard copy near the site in a library or other location that is open evenings and weekends as well as during business hours.*** There are no documents of any kind near the site, so access to documents and information is difficult or impossible for the public that would be most affected by the dump. Many local people are poor, (21% of people in Chaves County live below the poverty line), don't have access to the internet or are computer illiterate. Providing documents only online is inadequate.

NMED's approach to the permit assumes that everyone knows how to access online documents and is comfortable working in a paperless environment. This is not the situation with many segments of the population and certainly not with the potentially affected communities near the site. NMED is making it impossible for these members of the public to participate fully in the permitting process.

As was pointed out in the past by phone, email and in other comments to NMED, poor people and people in rural areas also do not have easy access to the internet. There have been articles written in the *New Mexican* about the high cost of and problems involved with connecting rural areas to the internet. Hard copies of all documents need to be put in

the Artesia or other nearby Public Library as they were eventually during the original permit comment period.

Mr. Cobrain said it is just as easy for folks to access the documents on the library computer as it is to read hard copy documents, but this is not the case. Some local residents are computer illiterate; others know how to use email, but are not at all comfortable doing research. The demographics near the site are those of folks who are most likely to have low internet skills. It is ridiculous to expect people to study how to use a computer and the internet before they can access documents.

In fact, the online Record is very difficult to use even for those with moderate or high online skills in addition to being incomplete. Titles are minimal and often not representative of the titled document. Some documents are included within other documents, but this is not reflected in the title. Descriptions and titles are sometimes incorrect and there are a large number of discrepancies between the Record and the Index.

Mr. Cobrain also said there was a problem leaving documents at the library as people would take sections of the documents away. However, this was not a problem during the original permit hearing and there is no reason to expect this to be a problem now. Certainly, this is no excuse for not having even the Fact Sheets available in hardcopy as they are not that long and could easily be reprinted by the library if they should disappear. It is hard for CARD to understand why NMED would take notifications to the library or libraries and not drop off the Fact Sheets at the same time. Though the Fact Sheets are now available in the NMED Roswell office, that office is only open during business hours. It also appears that no one has been notified except for one CARD member that even this very minimal information is there. Having only the Fact Sheets available in libraries near the site, however, would also be inadequate.

• ***We request that hardcopy of the Record be made readable and that it be available both at the Santa Fe office and at a location near the site.*** Although the Public Notice says that a copy of the Administrative Record may be reviewed at their Santa Fe office, in fact, hardcopy of the Record is boxed up as loose pages and is not in readable form. It is unclear if there is even any way to know where among the boxes a particular document is. Everything is still in storage in another part of the building from the Library and it is obviously a hardship for the Librarian to unbox everything and bring it over. Though the Record may be technically available, it is not usable because pages are mixed together loose as they were not stapled back together after scanning. Many people would much prefer to view hardcopy documents than documents online either because they don't know how to use computers, don't know how to research online, or are just more comfortable with paper. This is particularly true for seniors. The problems with the online Record exacerbate this difficulty.

Certainly, it would be possible to re-staple the paper Record that exists now for minimal cost, add the permit and other new documents and get that to the Artesia Library. Then we could continue to discuss whether additional documents should be printed in hard copy for the Santa Fe Office.

• ***Again, we appreciate NMED's decision to provide a public meeting in October.*** However, the meeting should not be run the way the infamous Hagerman meeting was run during the original permit process. At that time, although a presentation was promised in Spanish with a question and answer period afterwards, the interpreter was only available for the Q & A portion and the presentation was in English. How can people ask questions

when they can't understand the presentation? Either there need to be at least two information meetings, one in English and one completely in Spanish, or there needs to be interpretation of the presentation as it is going on—a more cumbersome procedure. Also, the interpreter must be familiar enough with the technical nature of the presentation to be able to provide an adequate translation.

2. We request a public hearing on this draft permit. A permit was issued for this facility more than 10 years ago. Since then, situations have changed and more is known now than was known before. In particular, social and environmental justice concerns were never addressed, though they are required to be addressed now. There is increased trucking in the area, including WIPP trucking (WIPP is planning to resume shipping in December). The WIPP release has added to contamination in the area. Negative health effects from the oil and gas industry are now known to be even more severe than we realized before. Therefore, impacts on the local population have changed significantly as well. These are only a few of the things, pertinent to the permit, that have changed over the last 15 years.

Objections to the permit and issues to be raised

- We object to the lack of investigation of possible disparate impacts from the Triassic Park (TP) facility on potentially affected low income, limited education, and/or Spanish-speaking community members of Mexican descent. NMED has done no such study. (Transcript of the Hearing and associated hearing documents submitted by Citizens for Alternatives to Radioactive Dumping-CARD during the original hearing process; Colonias Development Council v Rhino Environmental Services, Inc.) We will raise this issue at the hearing.

- NMED has used as an excuse that there would be no effects off site at all, but has used a gas (VOC) to represent all possible releases even though the applicant's own expert stated that heavy metal particulates would be a significant portion of possible releases. There will also be PCB contaminated soil. We object to accepting this study as representative of all releases. We will raise this issue at the hearing and intend to provide expert testimony to prove that you cannot use a gas to be representative of a solid to determine effects off-site. (Transcript of the Hearing and associated hearing documents submitted by Citizens for Alternatives to Radioactive Dumping-CARD during the original hearing process) Further, the focus by NMED on effects off-site entirely ignores the disparate impacts of a waste site, per se, on communities of color in general, and in particular on communities of Mexican national or Mexican heritage communities living in border areas of the Southwest.

- We object to NMED's refusal to allow testimony on environmental justice issues during the first hearing and intend to raise this issue and provide such testimony this time. In fact, the situation has gotten worse and there is new information on this subject including, but not limited to, the release from WIPP and new information about increased health problems from oil and gas activities. Numerous other toxic, hazardous and radioactive facilities and dumps are in the area. Effects from this fall disproportionately on low income people of color who live near the dump. (Transcript of the Hearing and associated hearing documents submitted by CARD during the original hearing process; CARD's Title VI complaint about the original hearing and Colonias Development Council v Rhino Environmental Services, Inc.; New Mexico Threats Map and link to Oil & Gas Site map and text at www.SacredTrustNM.org.)

- We object to ignoring the social impacts of yet another waste dump in the southeastern New Mexico area. There is a perception that the facility area is a "national sacrifice area" and is just good for dumping. Adding additional dumps increases the social stigma and bad

reputation of the area. Whether contamination actually exists or not, the belief that it does exist contributes to social and economic decline. (*Colonias Development Council v Rhino Environmental Services, Inc.*) We will raise this issue at the hearing.

- Transportation and shipping has increased significantly since the original hearing including hazardous and radioactive shipping. During the original hearing, the applicants greatly underestimated effects from facility transportation on the public and on the environmental justice public in particular. In fact, applicants misinformed the public during information meetings and testimony at that time about these effects. We object to the lack of adequate analysis of the effects from trucking on the public and on the "environmental justice" public in particular. We will raise this issue at the hearing. (Title VI Complaint; information meetings; original permit)

- It appears that the current proposed facility was designed by more than one person/firm but that much of it was based on the original design. The original designer had previously designed a site that leaked early and had major problems. However, we were not allowed to cross-examine the designer during the original permit hearing on this or question their qualifications. Therefore, we object to any part of the original design being used unless the applicants can show that the problems with this designer's history have been taken care of. We will raise this issue at the hearing as we have no confidence in the original design. (Transcript of the Hearing —unfortunately, though this should be in the Record, it is currently unavailable to the public.)

- We object to using 5 year old data for closure and post-closure costs for financial assurance. Costs will be updated later, but using outdated figures at this time makes it appear that costs will be much lower than they actually will be. We request that this be corrected. (Draft Permit Attachment P1)

- We also want to hear testimony from both NMED and applicants on the long-term intentions for the facility. During the first hearing, both denied under oath that there was any discussion of modifying the permit to include radioactive materials. These statements were later shown to be false. This time we request that both applicants and NMED be more candid in their description of long-term intent for this facility. Applicants have a long history of wanting the facility to accept radioactive materials. We object to the permit if the long-term intention is to be a mixed waste facility. We will raise this issue at the hearing. (Transcript of the Hearing; 1999-02-04 Briefing on Permit.pdf)

General Comment

There is a pattern emerging in the last few years of NMED saying they can't provide what people need to participate in the permitting process because they don't have the money for it. Despite NMED's written statements that they are in "partnership" with some of the companies they are supposed to be regulating, NMED has obligations not only to the applicants but also to the public. They cannot charge inadequate fees from the applicants, spend all their money and time helping the applicants with the application process and then say they have little left for public participation.

NMED has regulatory and legal obligations to adequately notify and inform the public, to further public participation and to consider public comments, including comments on social or environmental justice issues. NMED has a regulatory obligation to provide for, encouraged and assist public participation. They must charge adequate fees to fulfill these obligations and we request that they start adequately charging applicants.

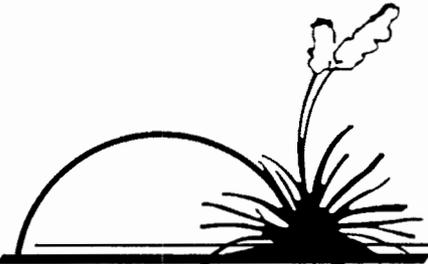
If NMED doesn't have adequate funds to run the permitting process in a way in which all members of the public can inform themselves, comment and participate fully in the public participation portion of the process, NMED should simply admit that they cannot proceed with permitting the facility.

Sincerely,
Janet Greenwald for CARD

CARD

Citizens For Alternatives To Radioactive Dumping

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Karen D. Higginbotham, Director
EPA Office of Civil Rights (Mail Code 1201A)
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-1000

November 20, 2007

Re: EPA File No. 09R-02-R6

Dear Ms. Higginbotham:

We are writing to you to amend our original complaint because of new information that we received several months ago. Unfortunately, we don't actually expect that you will act on this amendment because of EPA's history of ignoring virtually all complaints that are not dismissed outright. (We noticed, when writing this amendment that our last correspondence to you—our response to the New Mexico Environment Department's (NMED) response to your inquiry—was dated almost exactly 2 years ago.) However, we are writing to you so that there will be a record of some of the continuing problems we are having with NMED.

Some months ago we found out that much of the public comment that was submitted during a post-hearing meeting in Hagerman, New Mexico was missing from the Record. This meeting was set up specifically to receive written public comment from local folks in this highly Hispanic area who were not able to make it to the hearing itself.

During the hearing process we had received information from a "whistleblower" that NMED had been having meetings with the applicants on the subject of eventually turning the *Triassic Park* hazardous waste facility into a mixed waste facility. When queried about this, NMED denied ever having discussed this issue with the applicants. However, we found an NMED memo that clearly stated that NMED and the applicants had discussed this possibility on at least one occasion. At the time of the hearing there was clearly no market for a purely hazardous waste facility and, indeed, the applicants have never actually built their permitted facility. However, our fears have been fulfilled as the now-permittees are currently trying to turn the so-called *Triassic Park* facility into a reprocessing facility for high-level radioactive mixed waste.

Because of these recent plans we went to review the *Triassic Park* file at NMED to find a copy of the above mentioned memo describing the applicants' desire eventually to receive radioactive waste as well as hazardous waste at the facility. Though the hearing officer had ruled that this memo should be kept in the Administrative Record and therefore in the public file, NMED had removed it to the confidential file and would not let the public view it. We knew that many people at the Hagerman meeting had attached this memo to their written comments—including Victor Blair who went to review the Administrative Record with this writer and whose letter is attached here. We were sure we would find copies of the memo in the written public comments that were submitted to NMED during that meeting.

However, the hearing clerk told us that the records of this particular meeting were lost. After we insisted on finding these records they were actually found rather quickly. However, all but one of the letters with this memo attached were missing.

It is unclear if the hearing officer ever saw these written comments. Did NMED simply lose these specific comments? Other letters that did not have the memo attached were still in the Record. Were these comments removed after they were handed to NMED's representative? If so, who removed them and when? There were no records in the file of who attended the meeting, nor a list of comments received--though it is standard NMED practice to list all written comments in the Record.

Clearly, NMED has not given these written comments the care that they deserve. We wish that the EPA would investigate whether these comments were lost simply through incompetence or if a more sinister, intentional removal of these comments has occurred.

Years after we filed our complaint with you we continue to have problems with NMED in the area of discrimination against people of color and low income. CARD is currently involved in a lawsuit with NMED because of their continuing insistence that there is no place in the permitting process to look at whether or not discrimination is occurring as a result of their decisions.

We urge you to do actual investigations and to start dealing with the numerous complaints that you have received from individuals and groups who are being sickened and are dying because of the disparate impacts they are receiving from the hazardous facilities that you are allowing to be built. We urge you to advise NMED *now* to include a process to deal with potential and actual discrimination in their permitting process. We urge you to do the job you are mandated to do and to stop the discrimination that is occurring in New Mexico and other states.

Sincerely,

Deborah Reade
Citizens for Alternatives to Radioactive Dumping

Attachment