



Allen, Pam, NMENV

From: Cobrain, Dave, NMENV
Sent: Thursday, January 19, 2017 9:05 AM
To: Singleton, Stacie, NMENV; Allen, Pam, NMENV
Subject: FW: Triassic Park: CCNS Requests for Ext of Time and Public Hrg

More of the same.

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From: Joni Arends [mailto:jarends@nuclearactive.org]
Sent: Thursday, January 19, 2017 8:21 AM
To: Cobrain, Dave, NMENV <dave.cobrain@state.nm.us>
Subject: Triassic Park: CCNS Requests for Ext of Time and Public Hrg

January 19, 2017

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: CCNS Request for an Extension of Time and Request for a Public Hearing about the draft renewal permit for the Triassic Park Hazardous Waste Facility

Dear Mr. Cobrain:

The Environmental Protection Agency (EPA) states that meaningful participation by affected communities requires that recipients provide critical information prior to the issuance of permits and to do so in a manner that is accessible. *EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Program (Recipient Guidance)*, 81 Fed. Reg. 14,213-15 (March 21, 2006). Unfortunately, this is still not the case for the Triassic Park Hazardous Waste permit renewal process. As a result, Concerned Citizens for Nuclear Safety (CCNS) requests an extension of time to submit informed public comments until 60 days following the New Mexico Environment Department (NMED) and the Permittees take the following corrective actions to provide the public with a complete application, vital documents in the online Record and the Index, translation of specific documents into Spanish, and hosting a public meeting in Roswell, New Mexico:

1. The online Record has not been updated since November 2016 and many comments are not entered including over 100 comments received through Communities for Environmental Justice's

petition. All comments and other documents must be entered into the Record and the Index in a timely manner which should be in days following submittal, not months. The comment period is only days from expiring and comments have not been entered for the public to have access to and to read.

2. The Index of the online Record still has almost 200 mistakes, as documented by Citizens for Alternatives to Radioactive Dumping (CARD), in it making it difficult or impossible to use. The NMED has been advised about this multiple times over a period of many months and has still not taken corrective action. Once corrected, the Index should be translated into Spanish and printed copies of both the English and Spanish versions must be placed in the Roswell Public Library

3. Many documents are missing from the Record including, but not limited to the documents listed below. Those listed should be included in both English and Spanish and printed copies of both must be placed in the Roswell Public Library

- Exposure information as required by 40 C.F.R. § 270.10(j) and adopted by the N.M. Admin. Code 20.4.1.900, including information about potential releases from normal operations, accidental releases, and transportation-related releases; all potential pathways of human exposure including those from facility trucking during normal operations; and the potential magnitude and nature of human exposure. To CCNS's knowledge, this information is not in the online record.

- A transcript of the original hearing and pre- and post-hearing documents, including those submitted during the hearing. Most of the discussion of important aspects of the project occurred through testimony and document submittals at the original hearing, including discussion of the liner, the leachate collection system, the groundwater monitoring variance, the vadose zone monitoring system, and the inadequacy of financial assurance. To CCNS's knowledge, these issues are not fully addressed in documents currently in the record. Critical items to be included in the record from this hearing include:

- Hydrologist George Rice's testimony about the problems with NMED's vadose zone monitoring system;

- Patrick Corser's testimony about landfill liners;

- Paul Robinson's testimony on the inadequacy of NMED's financial assurance requirements;

- CARD's attempt during the hearing to question the landfill designer on his previous landfill that leaked early and badly (CARD was denied this request);

- CARD exhibits on the designer's previous record; and

- CURE Exhibit 5: Landfill Leak by Dr. Dennis Williams.

Documents required by federal and state law providing information about the potential impacts of the facility — such as information about reasonably foreseeable potential releases from normal operations and from accidents and information about pathways of human exposure, such as the effects of facility transportation, pursuant to 40 CFR § 270.10(j) — are vital and trigger NMED's obligation to provide translations, either translations of the documents as a whole or summaries

containing vital information, in accordance with EPA, *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 69 Fed. Reg. 35,602, 35,609-10 (June 25, 2004) (discussion of vital documents). Similarly, allegations raised in CARD's complaint to Office of Civil Rights (OCR) under Title VI of the Civil Rights Act are also vital information and should be translated. *See Id.* at 25,610 (analogous documents, such as petitions for enforcement of local environmental health rules, may be considered vital).

4. The following documents are in the online record in English only, but should be available in Spanish as well:

- "2012-09-24 Draft Technical Review Comments." These technical review comments (such as these and the item below) are important to translate, because they are often the only documents that contain NMED's concerns about the project, and are usually written in non-technical language.
- "2013-08-18 Draft Technical Review Comments"
- "2002-04-10 Monitoring Well Details & Locations"
- "2002-04-08 Triassic Park financial Assurance cost comparisons." In addition to providing information about the adequacy of the facility's financial assurances, this document includes a list of equipment and activities that may lead to impacts.
- Documents in the record discussing Land Disposal Restrictions (LDR);
- "1999-02-04 Briefing on Permit." This is the "Radioactive Memo" noted in the Dec. 21 email. To clarify a point from that email, this document suggests that the facility would be accepting any kind of mixed waste, including transuranic and low-level radioactive waste in addition to high-level radioactive waste.
- "2013-02-05 Disapproval Part A & Part B Permit Renewal." This is the "Procedures Document" referenced in the Dec. 21 email, discussing soil cover and leachate spraying.

As noted above, key documents remain missing from the record – including documents required by EPA and NMED regulations. NMED must include these documents in the record and translate the record index and relevant record documents. Once these documents and their translations are available online and in paper copy at the local Roswell Public Library, an additional 60 days must be added to the comment period, and another public information meeting held with proper notice and adequate notice (e.g., radio notice, putting up flyers etc.) in Roswell.

5. CCNS also believes that the current application may still be incomplete if required information on potential releases from normal operations and accidents at the facility (including contamination by heavy metals- and PCB-contaminated particulates spread by the local high winds and tornados); facility transportation-related accidental releases and transportation related human exposure from normal transportation; and specifically the effects of the above on potentially affected low-income Spanish speaking communities within range (even if 30 or more miles from the facility) or along transportation routes; is not currently included in the application.

CCNS appreciates the efforts of NMED and the Permittees to provide the above-referenced materials to the public. We renew our request for an extension of time for 60-days following NMED completing the corrective actions needed. A public meeting must be held in Roswell following the completion of the corrective actions.

Because the issues raised in the first public hearing on important environmental justice, civil rights, and technical issues that have yet to be resolved, CCNS requests a public hearing on the Triassic Park draft renewal hazardous waste permit.

Please contact me with any questions or comments.

Sincerely,

Joni Arends, Executive Director
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