

Response to EPA's Request for Information

INFORMATION MEETINGS

Part of the permit hearing process is for the applicants (Gandy-Marley, Inc. or GMI) to hold at least one information meeting to inform the public about the project. This is a requirement and it is also a requirement that 30 days notice be given before the meeting takes place. (Copies of the regulations are included.) GMI actually put on at least seven meetings:

May 4, 2001	Roswell Chamber of Commerce
July 16, 2001	Santa Fe
July 17, 2001	Roswell Sally Port Inn
July 18, 2001	Tatum
July 19, 2001	Hagerman—this is the Hagerman meeting
October 16 (15), 2001	Roswell—on the first day of the hearing, in the same building
approx. October 26, 2001	Hagerman—to receive public comment

(These dates are mostly taken from NMED's letter to EPA responding to our complaint. However, the dates may not all be correct as I believe the Santa Fe meeting took place later on and there are other dates which don't seem quite right.)

INEFFECTIVE MEETINGS and other participation problems

Although GMI put on many information meetings, they were often more of a problem than a help. NMED allowed and even encouraged GMI to ignore the notice requirement. (NMED FAX to Dale Gandy about foregoing the 30 day notice.) Victor Blair speaks of the Hagerman meeting actually having the most notice at less than two weeks. I know myself that the Santa Fe meeting had only a few days notice and thus was very sparsely attended. It seems clear that the point was to inform as few people as possible.

NMED allowed the participants to avoid interpreting any of the information at these "information meetings" until the final meeting. And that meeting was on the morning of the first day of the hearing—months too late for people to inform themselves so that they could actually participate or give an informed presentation at the hearing. That was a totally useless meeting for the local Spanish community. Since there was only a single fact sheet in Spanish, and that wasn't readily available for most folks, by avoiding communicating with locals in their own language GMI and NMED were very effective in keeping folks from participating in the process or voicing objections. Almost all the Triassic Park interviews and statements talk about these problems.

CURE's counsel asked to extend the beginning of the hearing so people could get more information in Spanish but that motion was denied. Yet whenever GMI needed more time—even after the public hearing process had already started—they were fully accommodated. (*Hearing Officer's Report*, pg. 70)

At the last Hagerman meeting, supposedly to receive public comment specifically from the Spanish community, NMED either never reviewed these comments or removed them later from the Record. Certainly, they never indexed these comments as they had with all the other comments and many

of them were just completely missing. (CARD letter to EPA of 11-20-07 amending our complaint and interview with Victor Blair) This showed a complete disrespect for people's comments and laid bare what a sham this meeting was.

Many people had also asked for Spanish interpretation and for information in Spanish. At least 20 entries in the Administrative Record support this (Card's *Response to the Hearing Officer's Report*, pg. 11). The Fambrough letter also asked for information in Spanish and "A certified translator for informal question and answer sessions" which clearly meant the information meetings and not just the Q & A afterwards. Even if GMI could be so obtuse as to think anyone could ask questions about a presentation they couldn't understand, Judy King and Victor Blair had at least three meetings where they discussed having interpretation for the whole Hagerman meeting, **including the presentation** with both Mr. Gandy and with NMED and signed affidavits to that effect. (Card's *Response to the Hearing Officer's Report*, pg. 10 and in their interviews).

CARD's *Findings of Fact and Conclusions of Law* and our *Response to the Hearing Officer's Report* describe all of the above difficulties and more with citations to the Administrative Record and the transcript. Most of the folks that were interviewed about Triassic Park, on video, in person or by phone, also described these problems—how difficult it was for local Hispanics to access documents and understand information about the site, the need for Spanish interpretation and translation, etc.. Librado de la O also testified at the hearing that he couldn't understand anything at the Hagerman meeting because it wasn't in Spanish; he didn't even know there was going to be translation or interpretation for the Q & A session because he wasn't told in Spanish. (*Hearing Officer's Report* pg. 30)

USING THE MEETINGS TO MISINFORM THE PUBLIC

1. It was at the July 17 Roswell Sally Port Inn meeting where GMI assured a cancer survivor twice that there would be no carcinogens accepted at the facility. A statement that is totally untrue if you look at the list of materials allowed. Although I couldn't find the person who was told this, Victor Blair believes it was a woman who worked at the NMED Roswell field office. Another participant at that meeting heard this and said this information from GMI was "...in total disagreement to the statements by GMI concerning the same subject at the May meeting." (AR 01-110 and pgs. 10 and 11 of CARD's *Findings of Fact and Conclusions of Law*)
2. GMI also downplayed the potential negative economic effects of a hazardous waste dump on an agricultural area to such an extent that one listener said that GMI's answers were "...downright deceitful." (AR 01-173, pg. 10 of CARD's *Findings of Fact and Conclusions of Law*)
3. I myself heard GMI talk at the Santa Fe hearing about how they were building berms at the site to protect the Lessor Prairie Chicken (a threatened species at the time). In fact, the berms weren't built for that at all, but were required by NMED for other reasons. (See the permit)
4. In his interview, Ray Juarez describes going to one of the Roswell meetings where they "...said things that weren't true." He describes them saying the plastic liner wouldn't leak. He knew this wasn't true from his years working with similar problems. In fact, technical testimony from GMI's witnesses and several other witnesses at the hearing admitted that all liners eventually leak. (pg. 7 *Hearing Officer's Report* and pg. 26 CARD's *Findings of Fact and Conclusions of Law*)

5. In more than one meeting GMI used their PowerPoint presentation and the presentation handout to underestimate how much transportation there would be. (Tr. 347, 359; AR 01-103; Permit Att. L, Table 1 and pg. 10 of CARD's *Findings of Fact and Conclusions of Law*) This is important, because much of the trucking went through poor and Hispanic neighborhoods in surrounding towns—Roswell, Hagerman etc. This was also talked about in Judy King's interview and in other interviews. When GMI did talk about trucking, they tried to avoid the actual facts. They would describe trucking for part of the project but ignore the rest. (pg. 65 *Hearing Officer's Report* and Michael Porter interview) NMED never required GMI to look into the negative health and social effects on the public or the Spanish communities from this transportation, though they could have been significant.

6. And finally, there is the "radioactive memo." NMED and GMI consistently denied that GMI had any interest in bringing radioactive waste to Triassic Park, although Steve Pullen, Triassic Park's project manager, did explain to me at one point how there was no money in a purely hazardous waste dump—especially with another one right over the border in Texas (WCS). Dale Gandy testified under oath that he had "no intention of applying to take mixed or radioactive waste. (pg. 17 *Hearing Officer's Report*) Steve Pullen claimed during testimony that NMED had never received indications from GMI of interest for receiving radioactive waste. (pg. 56 *Hearing Officer's Report*) Meanwhile, Steve Pullen and others at NMED had discussed this very thing with GMI as described in a memo of February 4, 1999. There was also a checklist where radioactive materials were also indicated as possible acceptable wastes. (AR 97-042 and pg. 11 of CARD's *Findings of Fact and Conclusions of Law*) This memo was hidden in the "confidential file" until after the hearing was over so we were never able to cross examine either man about this.

The strange tale of this memo is described more fully in our letter to EPA of 11-20-07, amending the complaint. There may, in fact, have been many more memos like this. Dave McCoy, who talks about public participation and discrimination problems his group Citizen Action experiences today with NMED, describes in his interview how they found hundreds of pages of Triassic Park documents in this secret file. NMED seemed **really** not to want any copies of the "radioactive memo" to survive. They were ordered to put it into the public Record but either never did, or put it in and then took it out again.

And GMI has clearly, all along, had a desire to bring radioactive materials to the site. At the beginning, it was discussions with NMED about low level waste as described in the memo. In 2003, in Deb Petrone's notes on a meeting about bringing pit production to Carlsbad (included here), Triassic Park is suggested as a site to receive waste from that project by one of the presenters. In 2007 GMI applied to be a site that would receive high level waste (fuel rods) and reprocess them on site, creating more high level waste (Michael Porter interview). Now, in 2014, there is a lot of talk about bringing high level waste (spent fuel rods from reactors) to the "nuclear corridor" in southeastern New Mexico. Businesspeople in west Texas and SE New Mexico are constantly trying to figure a way to do this. (various newspaper articles, and posts on the "nuclear corridor" at www.SacredTrustNM.org) The Triassic Park permit is up for renewal and many of us wonder if this storage will end up at TP instead of Lea County or West Texas.

It has been obvious all along that there is way more money in mixed or radioactive waste disposal than in purely hazardous waste. And the history of the New Mexico hazardous waste is intimately

mixed with radioactive materials. Huge areas of the state are contaminated with both—north central NM from LANL, Sandia and Kirtland; the uranium mining belt around Gallup; and the "nuclear corridor" in southeastern New Mexico with WIPP and other mixed facilities. WIPP, after being totally mismanaged, had an explosion and a radioactive release last February which released radiation as far as Carlsbad, 30 miles away. (various maps including the *New Mexico Threats Map* on the back of the brochure)

HARASSMENT

GMI and NMED also harassed the public and especially the Spanish Speaking public, and NMED allowed harassment to go on during the information meetings and elsewhere. NMED personnel were at almost all of the meetings, usually Pat Pattengale from the Roswell Field Office and/or Steve Pullen the TP project manager, but sometimes others from NMED were there as well. Early on, in a 1996 letter, NMED claimed that opposition to the project was being orchestrated by Waste Control Specialists (WCS) across the border in Texas. When Victor Blair became involved, NMED told GMI that he was getting involved and GMI then came out with a series of untruths about him and his character. (Interview with Victor Blair) GMI emailed Deb Petrone early in the process saying, in part "I would like to know exactly what entitles you to protest construction of this facility. What exactly are your credentials? ...You don't know the facts and you have no right spreading word of mouth rumors over the Internet..." This all created a feeling of intimidation right at the start.

GMI and their political friends yelled and berated the public after the Roswell Chamber of Commerce meeting—coming up to Deb Petrone and yelling at her personally. NMED were present for all this and just let it go on. (Interview with Deb Petrone) Similar verbal attacks on the public, including on elders, were described by Jimi Gadzia in her interview. Again, NMED was there but did nothing.

At the Sally Port meeting members of the public were threatened with arrest by GMI's representative Ken Schultz when they were doing nothing wrong. I believe at least one person who was intimidated, Elizabeth J. Price was Hispanic. However, I have not been able to get ahold of Ms Price to confirm this. According to testimony and interviews with Jimi Gadzia, Deb Petrone and others as well as testimony at the hearing, Mr. Schultz was enraged and frightened some folks so they never participated again. Many felt intimidated. (pgs. 22, 24-26, 29 *Hearing Officer's Report*) Mr. Schultz then denied under oath that he had threatened folks. (pgs. 18-19 *Hearing Officer's Report*) However, who is to be believed on what happened—Jimi Gadzia who served 10 years on the EIB for the State, or Mr. Schultz who later pled guilty in a plea deal to bribery and conspiracy. (Plea document included) Pat Pattengale from NMED's field office was facilitating the meeting. At least he wasn't actively joining in on the intimidation as he did later on.

Perhaps the worst example of harassing the public and especially harassing the Hispanic community was what went on in the first Hagerman meeting. These activities are described in detail in almost all the TP interviews. We even have a video interview with Deacon Herrera, the community and religious leader who was insulted at that meeting by the NMED facilitator, Pat Pattengale. The Deacon describes how initially folks were excited that there would be a meeting where they would be able to understand and how disappointed and sad they were to see that they

weren't welcome at all. Virtually all the Spanish people in attendance walked out along with many Anglos after the Deacon was insulted.

That seemed to be about it for the participation of the Spanish community, though some did attend the hearing and a very few testified. I only have contact information for a few Spanish members of the public who walked out of that meeting because most folks never returned. I would like to point out that I myself witnessed some of the Gandys and Marleys who were sitting in the front row at the hearing, laughing and snickering while the de la Os were testifying in Spanish about their health problems and Mr. de la O's experience at the Hagerman meeting. The NMED Hearing Officer, Felicia Orth, did nothing to rebuke them. The whole atmosphere at the information meetings, where the Spanish community was clearly unwelcome, and even at the hearing itself, was very oppressive. All of this is detailed in the interviews, selected pages from the *Hearing Officer's Report*, CARD's *Findings of Fact and Conclusions of Law* and CARD's *Response to the Hearing Officer's Report*.

GENERAL OBSTRUCTION

The original complaint details problems with accessing the permit in the local area. Not all pertinent documents were made available, and access for poor, working people to documents was almost impossible. This is described with citations to the Record in CARD's *Findings of Fact and Conclusions of Law* and CARD's *Response to the Hearing Officer's Report*, as well as in the original complaint. Some of the interviews cover this as well.

The *Spanish Fact Sheet* was available much after the *English Fact Sheet* and never appeared on the website until the hearing was over. This was the only written information available in Spanish. It was later removed from the website completely, which was an unusual move. The original WIPP fact sheet (only English was available then) is still up on the website 15 years later. Advertisements in Spanish weren't in newspapers, on radio or elsewhere until later in the process as well. All of this despite almost 800 letters, cards and notices to NMED that there were potential EJ issues with the project.

In addition, although NMED was quite happy to spend many meetings, including secret meetings as described in the Radioactive Memo, with the applicants and was fine with giving them multiple extensions, they seemed to see the public as a problem or as the enemy. As described above, when CURE requested an extension so Spanish speakers would be able to inform themselves, it was denied. NMED talks a lot about all the time folks had for comment, but Spanish speakers could have benefited from an extension since they only received oral information in Spanish (and some could not read so they couldn't understand the Fact Sheet) on the morning of the hearing itself.

CONCLUSION

I believe if you read all the documents in COMPLAINT-NMEDdocs and read and watch all the statements and interviews, you will find plenty of documentation in addition to those that I have cited above to support our complaint. I have also included the Permit itself as well as informational maps and some of the original flyers that were handed out at the time. I did not include the entire *Hearing Officer's Report* as it is lengthy, I don't have an electronic copy of it and my original, as you will see, is very marked up. I can provide that, however, if you want it. I also

have a copy of the transcript. Both these documents are lengthy so I would prefer to provide selected pages if you need more information.

I have also attached a contact list for all those I interviewed and have included names and contact information when available for Spanish speaking members of the public who were harassed at the Hagerman meeting and elsewhere. There were certainly plenty of witnesses to that harassment.

THE PRESENT DAY

NMED has made some improvements in including Hispanic and Native American communities in the process. Notices and Fact sheets are available more often than not in Spanish and sometimes in Dine as well. Interpretation at the hearing is more common. They have included an EJ mapping GIS system on their site so that it is possible now to see if sitings are discriminatory. They have formed committees on Environmental Justice, there is an EJ web page and under Governor Richardson they held listening Sessions in 2004. Richardson signed an Executive Order on Environmental Justice in 2005 and an EJ coordinator was hired. Region 6 held an EJ workshop this year.

However, almost everything is just on paper. No real changes have come out of the listening sessions. The points the public made then in 2004 were many of the ones we made about Triassic Park. The same concerns were discussed in the Region 6 2014 workshop. The Executive Order is **not** followed. And NMED is continuing to allow new sites in heavily impacted areas where huge amounts of old contamination are not being cleaned up. (Michael Jensen interview)

Not long after the Triassic Park decision, the Solid Waste Department tried to site a fourth landfill in the *colonia* of Chaparral. Folks fought for social and EJ concerns to be considered. Just as at Triassic Park, the same hearing officer, Felicia Orth said those concerns were irrelevant (we were also not allowed to testify about EJ concerns at TP) Chaparral sued, however, and won a landmark victory at the State Supreme Court. Much of NMED's EJ activity happened after that. Unfortunately, though there is a disparate impact study of sorts (the Community Impact Assessment or CIA is included) that is required for "vulnerable communities" in the Solid Waste Bureau, this has not spread to other departments even though after Chaparral NMED said "We anticipate some of the resulting changes in the permitting processes will eventually be more broadly applied." Almost 10 years later this hasn't happened. Plus, the CIA is hardly a true disparate impact study. And the definition of *vulnerable community* is actually more limiting than it is helpful since the community must be within 4 miles of the facility and not in an area designated for industrial uses. In fact, in much of New Mexico contamination is spread way farther than 3 or 4 miles. Look at the large numbers of people of color surrounding LANL in the CCNS statement—the most of any DOE site. Many are very far from the Lab, but the multiple fires that have occurred about every 10 years at the Lab have spread contamination well past 4 miles as has the contamination down stream. The same is true in SE New Mexico where WIPP contamination was found 30 miles away in Carlsbad.

NMED said that it didn't matter that they didn't do a disparate impact study because the Spanish community was too far away and the contamination couldn't get that far. However, they never truly modeled airborne contamination, pollution from transportation and even their hydrology studies were so serious flawed that one of NMED's contractor A.T. Kearny stated in a 1997 report describing GMI's monitoring program that "[t]his approach seems to provide a good way to avoid

detection of saturated strata which may exist below the perforated zones." The site only has to contain the waste for 60 years—30 operational years and 30 years for closure. And then what? I guess it doesn't matter if it then contaminates Spanish communities and others.

In many ways, however, things have just gotten worse for public participation with NMED. Information is still being withheld and communities of color are the ones that are suffering most. Despite all the problems with documents during Triassic Park we were successful in finding out a lot of information and especially in finding the Radioactive Memo. NMED seems determined this will never happen again. They hide documents, lie about them, don't release them at all, sue organizations to keep them from obtaining public documents and refuse to generate documents at all—just having phone calls—so there won't be anything for the public to find. Now, instead of just making an appointment to see the Record, you have to file an IPRA request (the state equivalent of a FOIA) for every public document or Record you want to see. I am not the only one who was told to file an IPRA request to see the titles of documents so I could then file an IPRA request to see the documents themselves.

This puts an incredible burden on poor communities and communities of color. Sometimes NMED holds on to documents so long that there are only a few days left before the hearing for people to review thousands of pages of documents. This is very much like having the only Spanish information meeting on the day of the hearing itself. How can this be considered to meet the requirements of "public participation" in the regulations? Just as we didn't have the Radioactive Memo in time to cross examine GMI and NMED about it at the hearing, Citizen Action toiled for three years to get a document that would have shown how inadequate NMED's solution for the Mixed Waste Landfill was in Albuquerque if they'd only been able to see it. It is a financial and time burden on poor communities—not to mention the difficulty in fully participating—when they find while looking at documents that they need something else and have to put in another IPRA and wait weeks or longer to see it. Some of these communities are hundreds of miles away from Santa Fe and the NMED library. Current-day interviews with Dave McCoy, Michael Jensen, Kitty Richards and Don Hancock, and the anonymous NMED employee, describe these problems in detail.

Getting information from NMED is an incredible fight and their goal seems to be to keep the public away as much as possible. In fact, it's pretty clear that they don't want the public to participate and they **really** don't want to have to deal with pesky things like discrimination—which appears to be rampant throughout NMED, Region 6 and other regulating entities in New Mexico. The Chaparral paper *The Colonia and the Landfill (AKA Rhino in the Colonia)* goes into NMED's thinking on why discrimination is irrelevant to permitting and the problems with NMED's "solution" after losing the lawsuit. It explains a lot very clearly about now as well as what happened 12 years ago, and I urge you to read it. In truth, the contamination problem in New Mexico is enormous. Just look at the *New Mexico Threats Map* on the back of the brochure, the oil and gas map and others. Yet NMED seems happy mostly to ignore this contamination when it impacts communities of color as in the Grants uranium belt, the Mixed Waste Landfill in the middle of Albuquerque and the nuclear corridor in SE New Mexico.

Although these current documents and current interviews go beyond what you asked for, I thought it was important to show what the state of affairs is now. It is not good. Part of the problem is that NMED isn't collecting enough money in fees to do what they should to make documents available and indexed, to do enforcement and to do the outreach they should to EJ

communities. However, even if they had the money, they clearly don't have the will. They see us, the public, as the enemy since they identify so closely with industry, the DOE etc. They have actually stated that they are partners with these entities. They certainly aren't partners with the public, and most divisions do what they can to obstruct the public and keep them from slowing down the permitting process. I urge you to read all the statements and watch all the video interviews, including the current ones so you will have a comprehensive picture of what went on 12 years ago and what things are like today. At the end of disk 3 there is even a little tour of Lake Arthur, Hagerman and the surrounding area.

And a couple of interesting facts. Pete Maggiore who was Secretary of NMED 12 years ago, made the decision to permit Triassic Park and wanted to limit vulnerable communities to within three miles from the site, (Final Order) worked for GMI about 5 years later preparing their application for GNEP. (interview with Mike Porter) Ryan Flynn who is the current Secretary has a major conflict of interest as he is regulating some nasty things at Kirtland AFB while he his working for the base. He also regulates all the military bases in New Mexico, most of which have serious contamination. Again, he's working for the DOD who own those bases. (interview with Dave McCoy) He is the same person who, as NMED's general counsel, refused to speak to members of the public about documents in the Record, insisting on speaking only with another lawyer. (interview with Michael Jensen) This is our Secretary right now.

I thank you for giving me this opportunity to respond to your questions and also thank you for giving me a deadline. I'm the kind of person who does very well if a deadline is set, but without one I can flounder around forever (as you can see from how long it took me to get started). Without the deadline I would probably still be thinking about my response!

Feel free to contact me if you have further questions or need additional materials.

Best wishes,

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Attachments