

October 25, 2017

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Re: Public processes for DP-1817 and DP-1132 must be stopped because they are proceeding in a discriminatory manner that does not meet the requirements of the EPA & NMED Resolution Agreement

Dear Michelle:

We appreciated your meeting with us previously and also the cooperation that you and Steve Pullen have extended to make it easy for CARD to review the WCS and URENCO discharge permit Administrative Records. However, we were disappointed when we saw that the comment period for the WCS discharge permit (DP-1817) had already started again without most of the changes we discussed in the meeting.

There was one definite improvement for the second comment period—the Public Notice has been translated into Spanish. However, as far as we can tell, none of the other items to increase community involvement and to deal with community concerns that we discussed appear to have been done. In fact, since our original comments on May 2nd, 2017 informing the Bureau about the need to meet the Resolution Agreement requirements, the Ground Water Quality Bureau (GWQB) has issued or re-issued public Notices on at least 30 discharge permits for comment. At least thirteen new notices were issued after our meeting. In fact, it appears that over 100 discharge permits have been put out for public process *after* the Resolution Agreement was issued. Only the WCS permit Public Notice has been issued in a language other than English.

Many of these permits are probably mundane and only of interest to the applicants and the Department. However, at least two (and possibly more) of these are highly controversial and potentially damaging to large numbers of people of color and LEP (Low English Proficiency) persons. These are the Waste Control Specialists (WCS) discharge permit (DP-1817) and the Los Alamos National Laboratory (LANL) Radioactive Liquid Waste Treatment Plant permit (DP-1132). DP-1817 is, as we said, in the middle of a comment period that ends October 31st and DP-1132 has closed out their comment period and is proceeding rapidly toward a hearing. Unfortunately, it appears that little or no community research has been done for either permit, nor has information been provided in a language other than English except for the most recent notification for DP-1817 and disclaimers of non-discrimination in Spanish in recent notifications for both. LANL has the highest concentration of people of color around it of all Department of Energy (DOE) sites. Because a variety of languages are spoken downstream and downwind of LANL, notifications and disclaimers may need to be provided in a variety of languages as well.

As we have described in our previous comments, emails and in our meeting with you, "...each time [NMED engages] in an action that triggers the public participation process..." the Resolution Agreement requires NMED to carry out each of the following steps:

- a) an overview of your plan of action for addressing the community's needs and concerns
- b) a description of the community (including demographics, history and background)
- c) a contact list of agency officials with phone numbers and email addresses
- d) a detailed plan of action (outreach activities) you will use to address community concerns
- e) a contingency plan for unexpected events
- f) locations where public meetings will be held taking public transportation into consideration
- g) Contact names for obtaining language assistance for LEP persons
- h) appropriate local media contacts (based on the culture and linguistic needs of the community)
- J) location of the information repository

This applies to all the permits when they are in a public process including notification, comments and more. Since we already know that the WCS permit could affect an LEP community, all decision documents and

vital scientific documents must be translated in their entirety or summarized and translated. It is likely that any study of the communities surrounding LANL and potentially affected by DP-1132 will show the same result.

Finally, to meet the requirements resulting from the New Mexico State Appeals Court decision in *Colonias Development Council vs. Rhino Environmental Services, Inc.*, a disparate impact study of effects on potentially affected communities could also be required for both permits.

Because a) b) and d) above have not been done, NMED doesn't truly know what the communities' needs and concerns are and has not created plans to address those concerns. Although one meeting with concerned citizens is not at all definitive to explain all needs and concerns, when we met with you we did suggest some possible actions that could be taken. Though we were talking of the WCS permit at the time, this could apply to DP-1132 and possibly other permits as well. These suggestions included enhanced posting of notices and the addition of radio notices in Spanish since there are no Spanish language newspapers in the area, a Spanish as well as English sign posted by the applicants, a Fact Sheet in English and Spanish outlining not only technical information about the permit including hydrology and geology, possible effects on residents, but also the complex history of the NMED's interaction with WCS and Texas regulators over this discharge permit.

We also discussed in the meeting and elsewhere that the GWQB has essentially made it impossible for LEP persons living in the local area to participate. This would also include persons of Spanish descent who are fluent in English because not only is there absolutely no information about the discharge permit in Spanish but it is impossible for persons of Hispanic descent living near the site to get information in *any* language. Since there appears to be a majority of Spanish speakers in Eunice, the closest town to the site, this would clearly discriminate against the Spanish community.

All documents are in English and all documents are at NMED's office in Santa Fe. They are also only available during working hours, Monday through Friday. Despite requests, even the Index of the Public Record is not available in hard copy near the site or online. It is almost a 700 mile round trip between Eunice and Santa Fe which would cost almost \$100 in gas plus at least one overnight stay and meals—and taking time off of work. This is prohibitively expensive for the Hispanic community in Southeast New Mexico. NMED has made no effort to provide printed copies of any documents locally—as we said, not even the Record Index—and seems content that it is impossible for local LEP persons and other Spanish-speakers to participate.

In addition, there are no Index entries after early February 2017 even though two public comment periods, including the one we are in now, have been run after that. Even information from the first comment period is not indexed. Hopefully it is all actually present in the Record, but the public has no way of knowing for sure. Multiple entries are also missing from the Index even before February 2017 and many items are entered years out of order. And everything in the Index before mid-2012 (about 57 items) appears to be missing from the Record itself. It is difficult for a fluent English speaker to use the Index, let alone someone with Limited English Proficiency. Public notification for a comment period or other public process shouldn't even be issued until all the documents are in place, properly indexed, translated, and summarized and with printed copies available locally, if necessary.

As far as we can see, the only thing that has been changed since the comment period was stopped the first time for the WCS permit is that now the Notice of the new comment period is available in Spanish as well as English. Nothing has changed for the LANL discharge permit at all since before the Resolution Agreement was issued.

It is disturbing that the Ground Water Quality Bureau continues to proceed in the same manner as they have always done in the issuing of discharge permits; that is, continues to proceed in the same discriminatory manner as before the Resolution Agreement was issued—even after they have been told multiple times that this is not acceptable. We are concerned because it appears there are many—possibly more than 100—discharge permits that have been proceeding in this way since NMED signed the Resolution Agreement with EPA in January of this year.

Furthermore, it is irrelevant for all of these permits that NMED's plans to meet the Resolution Agreement requirements are not finalized. The Agreement sets up the steps that NMED needs to take to make sure they are not discriminating in the public participation process. However, even if everything is not in place, *it is still illegal to discriminate—period*. It is not okay to discriminate “one last time,” or in the case of the GWQB possibly 100 or more “last times.”

The WCS discharge permit is controversial and is in an area that is already deluged with polluting facilities. There is a long history of the community expressing its concerns. It's time that NMED study these concerns and respond to them. The same is true of the LANL permit. Pollution from LANL is so bad that some dark leafy greens grown in Española and traditionally irrigated with water from the Rio Grande are better used to remediate the garden soil and then to be discarded as hazardous waste than to be eaten.

(<http://sacredtrustnm.org/red-dust-contamination-in-northern-new-mexico/>)

We feel that the comment period must be stopped yet again for DP-1817 and the hearing process stopped for DP-1132 until NMED has:

- Finalized the steps in a-j above including “enhanced” notifications similar to the process used for the recent Triassic Park permit
- Created a Fact Sheet in English, Spanish and possibly in other languages to be posted with notifications
- Updated the Record Index
- Copied all relevant documents from nearby site Records into the DP-1817 Public Record (URENCO, Lea County Landfill, etc.)
- Translated all vital documents or summaries into Spanish (or other languages) including the Public Record Index
- Investigated whether a Disparate Impact Study is necessary and if it is, finished the study
- Put at least a copy of the updated and translated Public Record Index online
- Put hardcopy in English and Spanish of the updated Public Record Index, all vital documents and/or summaries in the Eunice Public Library or another community center where they can be viewed outside of working hours (for DP-1817)

We may find that other discharge permits also require this full treatment once we are able to review the 100+ permits that have been put out for public process this year. Just getting the Public Notice translated is where we started 15 years ago with Triassic Park and the original Title VI Discrimination Complaint that resulted in the Resolution Agreement. Do we have to repeat that long, complicated and expensive process with at least two more Title VI and NMED discrimination complaints? This is not something we look forward to, as many resources, both NMED's and our own could be so much better put to use protecting the environment and the potentially affected communities instead.

In order for NMED to comply fully with Title VI of the Civil Rights Act and the Resolution Agreement, we respectfully request that the DP-1817 comment period and the DP-1132 hearing process be stopped until NMED fully complies with the Resolution Agreement requirements.

Thank you for your careful consideration of our comments.

Sincerely,

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