UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 19, 2017

Return Receipt Requested
Certified Mail# 70153010000112675201

In Reply Refer to:
EPA File No. 09R-02-R6

Deborah Reade
117 Duran Street
Santa Fe, NM 87501-1817

Dear Ms. Reade:

This letter is to inform you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between EPA and the New Mexico Environment Department (NMED). On June 27, 2005, EPA accepted your complaint, No. 09R-02-R6, which alleged discrimination based on race and national origin in violation of Title VI and EPA regulation at 40 C.F.R. Part 7 relating to NMED's issuance of a treatment, storage and disposal permit to Gandy-Marley, Inc. (GMI) on March 18, 2002. Specifically, the allegations accepted for investigation were:

- Whether NMED failed to require or perform a scientific investigation into possible disparate impacts;
- Whether NMED failed to ensure that limited-English proficient Spanish speaking residents were provided a meaningful opportunity for effective public participation (through use of notice of public hearings and interpretation and translation services) in the permitting process; and
- Whether NMED has a statewide pattern and practice of similar discriminatory permitting and lack of access for limited-English proficient residents to the public participation and permitting process.

During the course of EPA's investigation, NMED agreed to enter into an Informal Resolution Agreement in order to resolve this complaint.[1] The enclosed Agreement is entered into by the NMED and the EPA pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation

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[1] See ECRCO's Case Resolution Manual regarding informal resolution of complaints, at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf .

found at 40 C.F.R. Part 7. It resolves complaint No. 09R-02-R6 and additional concerns identified by EPA. It is understood that the Agreement does not constitute an admission by NMED or a finding by EPA of violations of 40 C.F.R. Part 7.

The enclosed Agreement does not affect NMED's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulation at 40 C.F.R. Part 7 nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth ECRCO's disposition of the complaint. This letter is not a formal statement of ECRCO policy and should not be relied upon, cited, or construed as such.

If you have any questions, please feel free to contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,

Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

Cc:

Elise Packard
Associate General Counsel Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

Samuel Coleman, P.E.
Deputy Regional Administrator and Deputy Civil Rights Official
U.S. EPA Region 6

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

INFORMAL RESOLUTION AGREEMENT
between the
NEW MEXICO ENVIROMENT DEPARTMENT
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ECRCO Complaint No. 09R-02-R6

I. PURPOSE AND JURISDICTION

A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and United States Environmental Protection Agency's (EPA) regulations at 40 C.F.R. Part 7 prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. The New Mexico Environmental Department (NMED) is a recipient[1] of federal financial assistance from the EPA and is subject to the provisions of Title VI and 40 C.F.R. Part 7.

B. On June 27, 2005, EPA accepted complaint No. 09R-02-R6 brought under Title VI and EPA's regulations at 40 C.F.R. Part 7 that alleged discrimination based on race and national origin in violation of Title VI. In response to the complaint, EPA began an investigation of NMED's compliance with Title VI and EPA regulations. During the course of EPA's investigation, NMED agreed to enter into this Informal Resolution Agreement (Agreement) in order to resolve this complaint.

C. This Agreement is entered into by NMED and the EPA's External Civil Rights Compliance Office (ECRCO).

D. This Agreement is entered into pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulations found at 40 C.F.R. Part 7. It resolves complaint No. 09R-02-R6 and additional concerns identified by EPA. It is understood that this Agreement does not constitute an admission by NMED or a finding by EPA of violations of 40 C.F.R. Part 7.

E. NMED is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulation at 40 C.F.R. Part 7. The activities

[1] Throughout this Informal Resolution Agreement, "Recipient" refers to NMED.

detailed in Section III of this Agreement, which NMED has voluntarily agreed to undertake and implement, are in furtherance of this commitment.

II. BACKGROUND

A. On June 27, 2005, EPA accepted complaint No. 09R-02-R6, that alleged discrimination based on race and national origin in violation of Title VI and EPA regulation at 40 C.F.R. Part 7 relating to the issuance of a treatment, storage and disposal (TSD) permit to Gandy-Marley, Inc. (GMI) on March 18, 2002. The complaint alleged that NMED failed to require or perform a scientific investigation into possible disparate impacts; failed to ensure that limited-English proficient Spanish speaking residents were provided a meaningful opportunity for effective public participation (through use of notice of public hearings and interpretation and translation services) in the permitting process; and has a statewide pattern and practice of similar discriminatory permitting and lack of access for limited-English proficient residents to the public participation and permitting process.

B. In response to this complaint, EPA initiated an investigation of NMED's compliance with Title VI and EPA regulations at 40 C.F.R. Part 7.

C. In addition, during the course of the investigation, EPA reviewed the requirements of 40 C.F.R. Part 7, Subpart D that are foundational elements of a recipient's non-discrimination program and are required for all recipient programs and activities. These include: the designation of at least one person to coordinate its efforts to comply with its non-discrimination obligations under 40 C.F.R. § 7.85(g); adoption of grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90; and, continuing notice of non-discrimination under 40 C.F.R. § 7.95.

D. Consistent with the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §§ 6901 et seq., the New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 to -14, and the associated Hazardous Waste Management regulations, 20.4.1 NMAC, incorporate by reference, among other things, the RCRA implementing federal regulations found at 40 CFR Part 270 – EPA Administered Permit Programs: the Hazardous Waste Permit Program. NMED adheres to the permitting process contained within RCRA, correlated federal regulations, the HWA and the Hazardous Waste Management regulations.

E. On March 18, 2002, NMED issued for the first time a Hazardous Waste Facility Permit to GMI, (RCRA Permit No NM0001002484) for the storage, treatment, and disposal of hazardous waste at its proposed facility in southeastern New Mexico. The proposed facility was to be located on approximately 480 acres of land in Chaves County.[2] The Triassic Park Waste Disposal Facility was not constructed under this permit.[3]

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[2] NMED Triassic Park https://www.env.nm.gov/HWB/tpperm.html (May 10, 2016).

[3] https://www.env.nm.gov/HWB/documents/TraissicPark-PublicNoticeofReceiptofAppication11-29-2011.pdf.

F. On October 17, 2011, GMI submitted to NMED a hazardous waste permit renewal application for the Triassic Park Waste Disposal Facility (Facility). The renewal application proposes a significantly scaled back facility, removing the storage and treatment component of the existing permit, but retaining the ability to dispose of hazardous waste in the proposed hazardous waste landfill. On November 29, 2011, GMI published in major local newspapers that the October 17, 2011 hazardous waste permit renewal application had been submitted to NMED and that it was available for public review. The notice explained that no action or decision was proposed by NMED at that time regarding the permit renewal application.

G. NMED issued a letter to GMI on March 14, 2012, indicating that the permit application was determined to be administratively incomplete. On April 30, 2012, GMI submitted a revised permit application to address deficiencies in the NMED Notice of Administrative Incompleteness letter. On May 17, 2012, NMED determined the application to be administratively complete.

H. On February 5, 2013, NMED issued a Disapproval Letter to the Permittee on the Part A and B Renewal Application. On July 5, 2013, GMI submitted a revised permit application to address deficiencies in the NMED February 5, 2013 Notice of Disapproval Letter.[4]

I. On June 12, 2016, NMED issued Public Notice 16-07, "Notice of Public Comment Period and Opportunity to Request a Public Hearing on a Draft Hazardous Waste Permit for Triassic Park Waste Disposal Facility, EPA ID Number: NM0001002484." The notice stated NMED's intent to issue a Hazardous Waste Permit to GMI as the owner and operator of the Facility to dispose of hazardous waste under RCRA and the HWA. The 60-day comment period was to run from June 15, 2016, through August 14, 2016. During the comment period, any person could submit a request for a public hearing.[5]

J. On August 1, 2016, after communications with ECRCO, NMED agreed to extend the public comment period and translate the Fact Sheet into Spanish.

K. On August 12, 2016, NMED issued Public Notice 16-10, "Notice of Extended Public Comment Period on a Draft Hazardous Waste Permit for Triassic Park Waste Disposal Facility, EPA ID Number: NM0001002484." This notice extended the period for public comment or to request a public hearing to November 18, 2016. The notice also stated that NMED would issue a future notice announcing a public meeting to be held during the extended comment period.[6] Public Notice 16-10 was sent out in English and Spanish to NMED's mailing list for the Permit; posted in local newspapers (Roswell Daily Record, Albuquerque Journal and the Carlsbad Current

[4] NMED Triassic Park https://www.env.nm.gov/HWB/tpperm.html
[5] NMED Triassic Park https://www.env.nm.gov/HWB/tpperm.html (August, 16 2016)
[6] NMED Triassic Park https://www.env.nm.gov/HWB/tpperm.html (August, 16 2016)

Argus) in both English and Spanish; read on KUNM radio station in both English and Spanish; and posted in 25 locations in 7 communities.

L. Also, NMED posted the permit Fact Sheet in Spanish on NMED's website and made it available for review in the Roswell Field Office (1914 W. Second, Roswell, NM 88201), Phone (575) 624-6046). NMED also provided a copy directly to Citizens for Alternatives to Radioactive Dumping (CARD).

M. NMED held an informational public meeting on the permit on October 22, 2016 in Roswell, NM. At this meeting, members of the community were able to discuss their concerns regarding the permitting of the facility. NMED provided simultaneous interpretation in Spanish for the entire meeting. Hard copies of the presentation, the Fact Sheet (English and Spanish versions), the Administrative Record Index and the Public Notice (English and Spanish versions) were provided to meeting participants.

N. NMED posted a copy of the presentation from the October 22, 2016 Public Information meeting on its website.[7]

O. On November 1, 2016, after communications with ECRCO, NMED agreed to extend the public comment period for an additional 60 days, post the Fact Sheets (English and Spanish versions) at 23 different locations, announce the public notice on several radio stations identified by Complainants, and publish the notice in the local newspapers.

P. The extended comment period will end on January 20, 2017 at 5:00 PM. NMED sent a third Public Notice in English and Spanish to the Hazardous Waste Bureau's notification list for Triassic Park notifying stakeholders of the extension.

Q. NMED posted the third Public Notice and Fact Sheet (English and Spanish versions) at the locations identified in *Posting Locations for Triassic Park Permit Notices (*See attachment*)* [8] as well as NMED's district office in Roswell (1914 W. Second Street, Roswell, NM 88201/Phone (575) 624-6046) and the Roswell Public Library located at 301 N. Pennsylvania Ave., Roswell, New Mexico.

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[7] https://www.env.nm.gov/HWB/documents/PublicMeetingpresentationonTriassicPark10-22-2016.pdf).

[8] With the following exceptions:

a. The Artesia Post Office wouldn't allow NMED to post the Public Notices and Fact Sheet. However, post office staff accepted the documents in case the Post Master made an exception.

b. The Tatum post Office wouldn't allow NMED to post the Public Notices and Fact Sheet. Previously, the office was unmanned and so NMED was able to leave copies of the Public Notices and Fact Sheet. However, this time NMED was not granted permission to post the documents.

c. The Roswell post offices wouldn't allow NMED to post the Public Notices and Fact Sheet, but NMED was able to leave copies at the warehouse building.

d. The Cumberland Cooperative Water Users Association on Hobson Road is now closed, so NMED was unable to post the Public Notices or Fact Sheet at this location.

R. NMED sent the third Public Notice (Spanish and English versions) to KENW 89.5[9], KBIM 94.9, and KALN 96.1 radio stations to be read as a public service announcement (PSA).

S. NMED subsequently purchased 25 spots on KBIM 94.9. A commercial will run during the following time periods: 10 spots - between 11/28 - 12/6; 7 spots – between 12/30 - 1/5; 8 spots - between 1/14-1/20. [10]

T. On November 17, 2016, NMED published[11] the third Public Notice in three newspapers[12]: Albuquerque Journal, Roswell Daily Record, and Carlsbad Current Argus.[13]

U. In addition, NMED clarified that, as stated in Section 2.5.2 (Prohibited Waste Streams) of the Triassic Park Disposal Facility draft permit, radioactive wastes[14] are prohibited from disposal at the facility.

V. NMED stated that an exposure evaluation was conducted for Triassic Park Waste Disposal Facility EPA ID Number: NM0001002484 as required by 40 C.F.R. §270.10 (j). Also, NMED clarified that Triassic Park Waste Disposal Facility's permit application contains the necessary components in accordance with the HWA and correlated Hazardous Waste Management regulations, which incorporate the federal RCRA regulations.

III. SPECIFIC NMED COMMITMENTS

A. Specific Actions Related to Hazardous Waste Permits

Triassic Facility

1. NMED has confirmed that it has carefully reviewed the pending permit application and determined that the application contains all necessary

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[9] NMED requested to purchase radio spots on KENW 89.5. However; KENW, does not sell advertising because they are a public radio station. NMED stated that KENW 89.5 did agree to run the PSA on their Community Calendar which runs each day near the noon hour. KENW 89.5 also committed to running the PSA on their television station and would do their best to "work the announcement into various parts of their broadcast day" until January 20th. NMED stated that KENW 89.5 declined to broadcast the PSA in Spanish because: 1) KENW doesn't broadcast in Spanish and 2) "that's not their audience" (see attached email chain between NMED's Communications Director and the radio station).

[10] NMED attempted to purchase spots on KALN 96.1, but did not receive a response from the station.

[11] Albuquerque Journal (http://legals.abqjournal.com/legals/show/377233); Roswell Daily Record (http://www.publicnoticeads.com/NM/search/view.asp?T=PN&id=3099/11172016_23787235.htm); Carlsbad Current Argus (http://www.publicnoticeads.com/NM/search/view.asp?T=PN&id=3036/11172016_23786824.htm) – English only

[12] NMED was unable to find a Spanish-only periodical near the proposed facility.

[13] Public Notices usually appear in the classified section of these newspapers on the day of issuance.

[14] RCRA Permit Number: NM0001002484 NMED: Radioactive/nuclear materials regulated by the NMED and defined in 20.3.14.7 NMAC; or other naturally occurring materials which contain radioactivity concentrations above the concentration levels regulated under 20.3 14 NMAC, as specified in Permit Attachment F1, Rationale for Analytical Parameter Section; or materials regulated under the Atomic Energy Act of 1954, as amended (including source, special nuclear materials, and byproduct materials as defined in 10 CFR § 20.1003). Page 25

components of permit applications as required by 40 C.F.R. §270.10, including Section (j) related to "exposure information", and any necessary follow-up has and will be taken to ensure protection of human health and the environment.

2. At the close of the public comment period on January 20, 2017, NMED will review all public comments and will consider holding a public hearing prior to reaching a final decision regarding issuance of the permit. NMED will respond to comments at a public hearing, if a public hearing is held, and, if the permit is issued, at the time of issuance through a formal "Response to Comments.".

3. NMED will continue to notify Complainants, in English and in Spanish, about opportunities for public comment and other important actions related to the permitting and operations of the Triassic Park Waste Disposal Facility.

4. NMED will make any changes it deems necessary to the draft permit based upon the public comments received.

Future Modifications to Permit

1. If the current permit is issued, NMED will ensure that the permittee follows the modification requirements established under 40CFR 270.42 for any changes to the permit necessary before the next permit renewal period. This includes any modifications found to be necessary by the permittee to begin actual construction or operation of the facility that are not included in the existing permit at the time of the modification. NMED will ensure that any public notice and public participation requirements associated with a particular modification are adhered to by both the permittee and NMED.

2. NMED will continue to monitor the construction and operation of the Facility to ensure GMI adheres to state and federal rules and any correlated permit issued by NMED.

3. NMED acknowledges that any future actions/decisions regarding whether to issue or deny Triassic Park Facility permit modifications, renewals or other permit decisions, when applicable, must be made on the record after public notice, and opportunity must be given for public comment and the requesting of a public hearing, and in compliance with all applicable state and federal regulations, including civil rights and language access laws and regulations.

B. *Access to Vital Information Related to Triassic Facility*

1. NMED will make all reasonable efforts to ensure that all "vital" [15]information related to the Triassic Facility Permit Process is accessible to LEP persons in a language they can understand. If it is not reasonable to translate an entire document, NMED must ensure that any vital information contained within such a document will be translated. For the current permitting action, this information may be added to the existing Triassic Park Facility Fact Sheet, translated into Spanish and redistributed to all appropriate facilities as previously identified. (See Section II. (Q) above.)

2. Any vital information regarding the Facility that is readily available to the public in English, whether in written form or orally, will, at a minimum, be available to the non-English speaking public through a qualified interpreter or through translation, depending on the circumstances. NMED is not required to translate all documents posted on its Facility-specific website or in the administrative record.

3. NMED commits to having technical staff available to answer questions from the public about this permit via phone or e-mail and will answer any questions regarding this permit in a language other than English through the timely use of a qualified interpreter provided by NMED. The contact information for such staff will be placed on NMED's facility-specific webpage, and on all public notices and fact sheets.

C. Hazardous Waste Permits in General

a) NMED will ensure that all permit applications contain necessary components as required by 40 C.F.R. §270.10, including Section (j) related to "exposure information", and necessary follow-up will be taken to ensure protection of human health and the environment.

Non-Discrimination Procedural Safeguards

NMED is in the process of reviewing its non-discrimination procedural safeguards and taking steps to bring its program into compliance within the timeframe set forth below.

D. Notice of Non-Discrimination under the Federal Non-Discrimination Statutes

1. NMED will post a notice of non-discrimination on the NMED website and in general publications that are distributed to the public. In order to ensure effective communication with the public, NMED will ensure that its notice of non-discrimination is accessible to limited-English proficient individuals and individuals with disabilities.

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[15] Whether or not a document (or the information it disseminates or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to individual with the LEP if the information in question is not provided accurately or in a timely manner. *(See* EPA's 2004 *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Individuals at* http://www.gpo.gov/fdsys/pkg/FR-2004-06-25/pdf/04-14464.pdf)

2. The notice will contain, at a minimum, the following statements:

   a) NMED does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.

   b) NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination statutes).

   c) If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:
      i. [Insert name and title of Non-Discrimination Coordinator]
      ii. New Mexico Environmental Department Address Line 1
      iii. Address Line 2
      iv. Address Line 3
      v. Phone number
      vi. Email address

   d) If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the [insert title of Non-Discrimination Coordinator] identified above or visit our website at [insert] to learn how and where to file a complaint of discrimination.

3. Within 30 days of the effective date of this Agreement, NMED will publish its notice of non-discrimination on its website as specified above.

E. Grievance Procedures for Complaints filed under the Federal Non-Discrimination Statutes

1. NMED will ensure that it has widely and prominently published in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes. NMED will review the grievance procedures on an annual basis (for both in-print and online materials), and revise as necessary, to allow for prompt and appropriate handling of discrimination complaints.

2. The grievance procedures will at a minimum address the following:

a. Clearly identify the Non-Discriminator Coordinator, including contact information;

b. Explain the role of the Non-Discrimination Coordinator relative to the coordination and oversight of the grievance procedures;

c. State who may file a complaint under the procedures;

d. Describe which formal and informal process(es) are available, and the options for complainants in pursuing either;

e. Explain that an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted. (Whether ECRCO considers complaint investigations and resolutions to be "prompt" will vary depending on the complexity of the investigation and the severity and extent of the alleged discrimination. For example, the investigation and resolution of a complaint involving multiple allegations and multiple complainants likely would take longer than one involving a single allegation of discrimination and a single complainant.)

f. State that the preponderance of the evidence standard will be applied during the analysis of the complaint;

g. Contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly;

h. State that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process.

3. Within 90 days of the effective date of this Agreement, NMED will forward to ECRCO a final draft of its grievance procedures for review. ERCCO will review the draft procedures and provide any comments within 60 days of receipt.

F. Designation of a Non-Discrimination Coordinator

1. NMED will ensure that it has designated at least one Non-Discrimination Coordinator to ensure NMED's compliance with the federal non-discrimination statutes).

2. NMED will ensure that its notice and grievance procedures that it has widely published in print and on-line include the title, email address, telephone number, and other contact information of the Non-Discrimination Coordinator. NMED will explain the responsibilities of the Non-Discrimination Coordinator in its grievance procedures adopted pursuant to Section III, Paragraph c of this Agreement.

3. NMED will ensure that the Non-Discrimination Coordinator's responsibilities include the following:

a) Providing information to individuals internally and externally regarding their right to services, aids, benefits, and participation in any NMED program or activity without regard to their race, national origin, color, sex, disability, age or prior opposition to discrimination;

b) Providing notice of NMED's formal and informal grievance processes and the ability to file a discrimination complaint with NMED;

c) Establishing grievance policies and procedures or mechanisms (*e.g.*, an investigation manual) to ensure that all discrimination complaints filed with NMED under federal non-discrimination statutes are processed promptly and appropriately. One element of any policy and procedure or mechanism must include meaningful access for limited-English proficient individuals and individuals with disabilities to NMED programs and activities;

d) Ensuring the tracking of all discrimination complaints filed with NMED under federal non-discrimination statutes, including any patterns or systemic problems;

e) Conducting a semiannual review of all formal and informal discrimination complaints filed with the NMED Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other complaints independently investigated by NMED in order to identify and address any patterns or systemic problems;

f) Informing and advising NMED staff regarding NMED's obligations to comply with federal non-discrimination statutes and serve as a resource on such issues;

g) Ensuring that complainants are updated on the progress of their discrimination complaints filed with NMED under federal non-discrimination statutes and are promptly informed as to any determinations made;

h) Periodically evaluating the efficacy of NMED's efforts to provide services, aids, benefits, and participation in any NMED program or activity without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination;

i) Ensuring appropriate training in the formal and informal processes available to resolve complaints filed under federal non-discrimination statutes; and,

j) Providing or procuring appropriate services to ensure NMED employees are appropriately trained on NMED non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.

4. The Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (*e.g.*, serving as the Non-Discrimination Coordinator as well as NMED legal advisor or representative on civil rights issues);

5. Within 30 days of the effective date of this Agreement, NMED will have designated a Non-Discrimination Coordinator and provided appropriate public notice of such as specified above.

6. Within 30 days of appointment of a Non-Discrimination Coordinator, NMED will forward to ECRCO proof that the responsibilities have been included in the incumbent's statement of duties and that the incumbent has accepted the duties.

G. Public Participation

1. NMED understands that meaningful public involvement consists of informing, consulting and working with potentially affected and affected communities at various stages of the environmental decision-making process to address their needs. *See* EPA's ECRCO's Public Participation Guidance found at 71 FR 14,207, 14,210 (March 21, 2006). Therefore, NMED will ensure its public involvement process is available to all persons regardless of race, color, national origin (including limited-English proficiency), age, disability, and sex.

2. NMED will develop and implement a public participation policy that will require NMED to create and/or carry out each step listed in (a) – (i), below, each time they engage in an action that triggers the public participation process.

a) An overview of the Recipient's plan of action for addressing the community's needs and concerns;

b) A description of the community[16] (including demographics, history, and background);

c) A contact list of agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet;

[16] In order to identify stakeholders in the affected community, the recipient will make a concerted effort to create partnerships with private and public entities to share information in addition to efforts to share information on its website and through standard media outlets. Such information sharing should include communities in the relevant geographic area to the permitted activity; those who have previously expressed an interest in environmental decision making activities; environment and environmental justice organizations; religious institutions and organizations; public administration, environmental, law and health departments at colleges and universities; tribal governments; and relevant community service organizations.

d) A detailed plan of action (outreach activities) Recipient will take to address concerns;

e) A contingency plan for unexpected events;

f) Location(s) where public meetings will be held (consider the availability and schedules of public transportation);

g) Contact names for obtaining language assistance services for limited-English proficient persons, including translation of documents and/or interpreters for meetings;

h) Appropriate local media contacts (based on the culture and linguistic needs of the community); and

i) Location of the information repository.

3. Within 60 days of the effective date of this Agreement, NMED will forward to ECRCO a final draft of its public participation process/procedures for review. EPA will review the draft process/procedures and provide any comments within 60 days of receipt.

H. NMED Plan to Ensure Access for Persons with Limited-English Proficiency

1. NMED will develop, publish, and implement written procedures to ensure meaningful access to all of NMED's programs and activities by all persons, including access by limited-English proficient individuals and individuals with disabilities at no cost to those individuals.

2. NMED will conduct the appropriate analysis described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004) and http://www.lep.gov to determine what language services it may need to provide to ensure that limited-English proficient individuals can meaningfully participate in the process. NMED should develop a language access plan consistent with the details found in ECRCO's training module for LEP. http://www.epa.gov/civilrights/lepaccess.htm

3. Within 60 days of the effective date of this Agreement, NMED will forward to ECRCO a final draft of its written procedures to ensure meaningful access to all of NMED's programs and activities by all persons, including access by limited-English proficient individuals and individuals with disabilities. ECRCO will review the draft procedures and provide any comments within 60 days of receipt.

I. NMED Plan to Ensure Access for Persons with Disabilities:

1. NMED will provide at no cost appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an

equal opportunity to participate fully in the benefits, activities, programs and services provided by NMED in a timely manner and in such a way as to protect the privacy and independence of the individual.

2. Within 60 days of the effective date of this Agreement, NMED will forward to ECRCO a final draft of its written procedures to ensure meaningful access to all of NMED's programs and activities by individuals with disabilities. ECRCO will review the draft procedures and provide any comments within 60 days of receipt.

H. Training

i. Within 120 days after the effective date of the deliverables identified in this Agreement, including fulfilling the requirements for a Non-Discrimination Coordinator, Non-Discrimination Notice, Grievance Procedures, and Public Participation Process/Procedures, NMED will certify that all appropriate staff have been trained on these processes and procedures and on the nature of the federal non-discrimination obligations.

ii. Within 90 days after execution of this Agreement, NMED will forward to ECRCO the plan that NMED will put in place to ensure that such training is a routine part of annual or refresher training to appropriate staff.

IV. GENERAL

A. In consideration of NMED's implementation of commitments and actions described in Section III of this Agreement, EPA will end its investigation of the complaint No. 09R-02-R6 and not issue a decision containing findings on the merits of the complaint.

B. EPA will, upon request, provide technical assistance to NMED regarding any of the civil rights obligations previously referenced.

C. EPA will review and provide feedback about any documentation submitted by NMED demonstrating completion of each commitment (*e.g.*, evidence of publication of the designation of the Non-Discrimination Coordinator) and will provide an assessment as to whether the documentation satisfies the commitment.

D. NMED will report the completion of each commitment identified under Section III consistent with the timeframes in Section III by certified mail to the Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by NMED of each commitment.

E. EPA will monitor the implementation of the commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied,

EPA will issue a letter documenting closure of its monitoring actions in complaint No. 09R-02-R6 and closure of the complaint as of the date of that letter.

V. COMPUTATION OF TIME AND NOTICE

A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

C. Documents submitted by NMED to EPA shall be sent to the Director, U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.

D. Documents submitted by EPA to NMED shall be sent to the Cabinet Secretary, State of New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Dr., Suite N4050, Santa Fe, NM, 87505, or for U.S. Postal Service, Cabinet Secretary, New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502.

VI. EFFECT OF THE AGREEMENT

A. NMED understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, NMED understands that during the monitoring of this Agreement, if necessary, EPA may visit NMED, interview staff, and request such additional reports or data as are necessary for EPA to determine whether NMED has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R Part 7, which were at issue in this case.

B. NMED understands that EPA will close its monitoring of this Agreement when EPA determines that NMED has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in EPA re-opening the investigation.

C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to NMED's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by the Director of NMED and the Director of EPA.

D. This Agreement constitutes the entire Agreement between NMED and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by NMED and EPA in accordance with the provisions of Section VI. Paragraph c above.

E. This Agreement does not affect NMED's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 CFR Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.

F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Cabinet Secretary, in his capacity as an official of NMED, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the New Mexico Environmental Department,

Butch Tongate — 1/19/17
Butch Tongate (Date)
Secretary-Designate

On behalf of the U.S. Environmental Protection Agency,

Lilian S. Dorka — January 19, 2017
Lilian S. Dorka (Date)

Director
External Civil Rights Compliance Office
Office of General Counsel