

CARD

Citizens For Alternatives To Radioactive Dumping

(b)(6) Privacy, (b)(7)(C) Ent. Priv.

Albuquerque, New Mexico 87106

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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 (b)(6) Privacy, (b)(7)(C) Ent. Priv. 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,

(b)(6) Privacy, (b)(7)(C) Env. Privacy

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Attachment