

The Triassic Park Hazardous Waste Dump permit renewal application has recently changed from being "under review" to active status and the New Mexico Environment Department (NMED) has issued a draft permit. NMED has stated its intention to approve the draft permit. We are currently about three weeks into the 60 day comment period. Unfortunately, though the New Mexico Environment Department (NMED) has made some improvements in the process since we at CARD sent OCR our Title VI complaint 15 years ago, discrimination against Low English Proficiency Speakers (LEP), in this case Spanish-speakers, and poor people is already as bad, if not worse than it was the first time around. Had OCR adequately investigated the CARD Complaint and NMED in a timely manner, it is possible if not likely that NMED's procedures would have improved over the intervening 15 years, not gotten worse. But why would NMED make any changes when they know that OCR won't investigate and that even if OCR does, there is little to no chance of a finding of discrimination? OCR's inaction calls into question OCR's commitment to Civil Rights Law.

These are some of the problems with NMED's policies and procedures that are already obvious:

1. Notification: Although the written Public Notice (No. 16-07) of the comment period and opportunity to request a public hearing on the Triassic Park permit renewal was in both English and Spanish, it was mailed only to a very limited list of people and was not available anywhere in the area around the dump site except briefly in the newspaper. Although Dave Cobrain, the Program Manager, told me on the phone that they had put notices in both Spanish and English in the local paper and in public service announcements on radio in both languages, no one I spoke with in the area had seen or heard these. It should be noted that putting a Spanish notice in an English-language newspaper is woefully ineffective. (Even Roswell, the largest city in the area and home to about 75% of the Chaves County population, does not have a Spanish-language newspaper.) It's unclear if the notification was actually put on the radio because the Fact sheet stated only that it was put in the newspaper. It is impossible to tell what was actually done because almost three weeks after notification, no information has been entered into the Record about this at all except for copies of the English and Spanish mailed notices. During and after the first permit process we gave many suggestions on how best to notify people, including Spanish-speakers, in the area but this has been almost completely ignored. This was an item in our Title VI complaint.

2. Access to documents and information: NMED has made one improvement here. Previously, anyone who wanted to view any documents, including documents that were part of a hearing process during a comment period, had to put in an IPRA request to see those documents. In the past, it has sometimes taken almost the entire comment period before the documents were available. However, for this proceeding NMED is not requiring that people file an IPRA to see the Triassic Park Record. This does not appear to be the case with any other documents one might want to view as I was told that the IPRA process was still in place for every other facility or site.

However, there are **no documents of any kind, in any language near the site.** Not even the English Fact sheet is available there. Everything that they have put in the Record is online. As we pointed out in the past and again both by phone and by email to NMED, poor people and people in rural areas do not have easy access to the internet. There have been articles written in the paper here about the high cost of and problems involved with connecting rural areas to the internet. I requested that hard copies of all documents be put in the Roswell library as they were eventually during the original permit comment period. Mr. Cobrain said it was just as easy for folks to access the documents on the library computer as it is to read hard copy documents, but this is not the case. Local residents may be computer illiterate. It is ridiculous to expect people to

study how to use a computer before they can access documents. I am not computer illiterate, but I found it somewhat difficult to access the documents, as titles are not always descriptive of what's in the document.

Mr. Cobrain also said there was a problem leaving documents at the library as people would take sections of the documents away. However, this was not a problem during the original permit hearing and there is no reason to expect this to be a problem now. Certainly, this is no excuse for not having even the fact sheet available in hardcopy as it is not that long and could easily be reprinted by the library if it should disappear.

3. Missing documents: It doesn't appear that our Complaint is included in the Record even though NMED was sent a copy and OCR's notice to them and their response to OCR are included. There are also no documents from the original hearing included even though there were many documents introduced at that time that are important and pertinent still to the renewal and Mr. Cobrain told me that both the Public Record and the Administrative Record were there. And, as I said above, there are no documents at all about their efforts to notify the public in the Record even though these were included during the original process.

4. There is no Spanish fact sheet. I was told by Dave Cobrain, the project manager, that it is too expensive to translate anything other than the Public Notice into Spanish and they had no intention of **ever** creating one. Since they should know from the first hearing and our complaint that many local people have Low English Proficiency, this is really unbelievable and clearly discriminatory. It is also, again, an issue that could have already been addressed had OCR timely investigated our complaint. During the original permit process we complained that the Spanish Fact Sheet was delayed after the English one and wasn't up on the website until after the hearing was over. This time it's worse—NMED sees no need to write anything in Spanish at all. Things have gotten worse because they have not been held accountable.

5. There is also no intention of having information meetings in any language in a timely manner. Again, Mr. Cobrain told me that if there were information meetings at all, they would be at the end of or after the comment period was over. When you have potentially affected people living near the site who are illiterate, they need an oral presentations in a timely manner so they can understand what will be happening to them and be able to comment, if they wish, before the comment period is over. Again, I was told that it is too expensive to make presentations around the state. Information meetings in both English and Spanish are what is needed, what we requested before, what we request now and what we complained about in our complaint.

The public notice also states that hardcopy of the administrative record is available at their offices in Santa Fe. However, what that means is that everything is still in storage in boxes in another part of the building from the Library. It is obviously a hardship for the Librarian to unbox everything and bring it over. Also, all the pages are loose. Nothing is stapled together anymore because it was all scanned. Therefore, though it may be technically available, you would have to ask for individual documents and would be made to feel that you are causing a big problem. Plus the documents would be hard to find and read because they are all mixed together loose as they were not stapled together after scanning. I would much prefer to view hardcopy documents because, though I am computer literate and I *can* go online, as an older person I am much more comfortable reading paper. If I were computer illiterate, an incredible burden would be put on me if I wanted to see those documents.

I already see a pattern emerging of NMED saying they can't provide what people need to participate in the permitting process because they don't have the money for it. We have talked

about this before including in our response to your request for additional information and in the complaint. NMED is willing to spend almost any amount of time and money to help the applicants and then tells the public that they don't have time for us and can't afford to do the things for us that we absolutely need. They chronically undercharge the applicants. They know, or should know, what the costs are to run the permitting process in a legal and non-discriminatory manner. Nevertheless, they do not charge high enough fees to the applicants to do this. In fact, it is clear both through their actions and even in their written statements, that they feel they are in partnership with the government agencies and industries that they are supposed to be regulating. We are definitely made to feel that the public is just a bother and waste of time for NMED—not partners. If you are non-English speaking and illiterate, why would you think you have any right to know what's even going on, much less to comment on it? Again, this discriminatory attitude is exactly what we complained about and what OCR's unreasonable delay has allowed to continue.

In fact, it appears that nothing has changed here in New Mexico in 15 years. This is despite a state Supreme Court decision that said that “social concerns” must be considered when permitting a waste dump. Mr. Cobrain appears not to have heard of our complaint or of this court case. He seems to feel that the only law he has to meet is the New Mexico Hazardous Waste Act. I certainly got the impression that as far as he was concerned, the Civil Rights Act was irrelevant to permitting. This is where we started before. Because of OCR's incredibly long delay in investigating our claims the first time around we now have to fight these battles all over again. This is completely shameful.

Thank you for your prompt attention to this matter. Please direct your response to (b)(6) Privacy, (b)(7)(C) Enf. Privacy of CARD (b)(6) Privacy, (b)(7)(C) Enf. Privacy and Marianne Engelman Lado <mengelmanlado@earthjustice.org> and Jonathan Smith <jjsmith@earthjustice.org> at Earthjustice.