

P R E S S R E L E A S E

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New Mexico Environment Department Obeys Court Order to Release Secret TechLaw Report to Citizen Action

The New Mexico Environment Department (NMED) decided to drop appeal of the lawsuit it lost against *Citizen Action New Mexico*, an Albuquerque-based public interest group. NMED sued Citizen Action seeking to withhold a secret 2006 technical report written by TechLaw, Inc. The TechLaw report reviewed a computer model that was written by Sandia Laboratories to assure the public that poisonous wastes from the Mixed Waste Landfill (MWL) would not contaminate Albuquerque's drinking water. Citizen Action received the TechLaw report on Tuesday.

Attorney Nancy Simmons stated, "What was the point of the Environment Department to spend a huge amount of taxpayer dollars, more money than dozens of New Mexico taxpayers combined make in a year, to generate and hide this report from the public and to sue my client in court to block its release? Now my client has discovered that the Department has literally hundreds of other technical reports that they're also refusing to release."

The TechLaw report presents serious doubts as to the reliability of the Sandia computer model used to predict contaminant movement beneath the MWL dump. Dave McCoy, Director of Citizen Action states, "NMED secrecy put Citizen Action and the public at a disadvantage in proceedings held to determine if it would be safe to leave the dump's cancer-causing, long-lived radionuclides, solvents and heavy metals under a dirt cover in unlined pits and trenches. NMED ran interference to avoid public scrutiny until Sandia Labs could complete installation of the dirt cover rather than excavate the dump's 720,000 cubic feet of radioactive and hazardous wastes above Albuquerque's drinking water."

The TechLaw report describes the Sandia computer model as a "Black Box." TechLaw said, "We caution NMED against its acceptance." TechLaw cites the lack of adequate information to assess whether the model could actually perform satisfactorily. Software quality assurance was absent. A special TechLaw concern is that the computer model is not accurate to identify the danger of the mobile contaminants like tritium and the cancer-causing solvent PCE to contaminate groundwater. The Sandia record of disposal shows a large inventory of solvents including PCE and the radionuclide Tritium buried in the dump. The computer model does not recognize that Tritium and many solvents have already been released from the dump and thus did not identify the danger for solvents including PCE and Tritium to contaminate the groundwater.

The computer model predicts that tritium would not contaminate the groundwater in a thousand years. Registered Geologist and hydrogeologist, Robert Gilkeson, said that, "As real time proof that the Sandia computer model is worthless, Tritium is already found in a groundwater monitoring well MW4 that was installed deep below the dump. In addition, there is a plume of nickel contamination in the groundwater below the dump that is growing in size. The groundwater may also be contaminated with PCE and other solvents but the monitoring wells and sampling methods have many features to hide the detection of the solvent contamination. The National Academy of Sciences has rejected the Department of Energy's use of computer models that are not supported by accurate data. There has never been a reliable network of monitoring wells at the MWL dump to provide accurate data to a computer model."

Gilkeson added that “TechLaw’s recommendation to improve the design of the dirt cover were not paid attention to. TechLaw also identified that the placement of neutron probes beneath the unlined pits and trenches of the dump has no value for monitoring the movement of water through the dirt cover that is above the dump. The NMED did not make the important changes to the methods used to monitor the performance of the cover that were identified as necessary by TechLaw.” The NMED did not inform the stakeholders of TechLaw’s concerns for the design of the cover and the inappropriate methods used to monitor the integrity of the cover.

TechLaw raises the significant issue that the dirt cover cannot be shown to provide long term protection of the public as required by Department of Energy Order 435.1. The report stated, “[I]t appears unlikely that the United States federal government can or will be able to maintain the integrity of the cover for the entire 1000 year performance period.” TechLaw pointed out that the storm water run-on and run-off controls are inadequate for protecting against damage to the cover for that period of time. Plutonium wastes in the dump can remain dangerous for 250,000 years.

Citizen Action received Freedom of Information documents showing that large portions of the protective berms placed around the MWL dump washed away in major storm activity in 2007. The storm water collected in pools above the buried wastes and the water was a driver to move contamination toward groundwater.

Background of the lawsuit

In October 2008, New Mexico 1st District Court Judge Daniel Sanchez rejected the NMED argument that the TechLaw report involved NMED “thought processes” and could not be examined under the Public Records Act. The Court refused to allow the NMED expansive interpretation of “executive privilege” for withholding the report. Before the NMED lawsuit, Citizen Action requested an opinion from the New Mexico Attorney General. The Attorney General twice issued written decisions that the TechLaw report was subject to being furnished under the Public Records Act and also intervened after NMED filed the lawsuit against Citizen Action.

The 1st District Court decision stated that, “Public business is the public’s business. The people have the right to know. Freedom of information about public records and proceedings is their just heritage. Citizens must have the legal right to investigate the conduct of their affairs.”

A year of appellate delay by NMED ensued after Citizen Action won its counter lawsuit. Citizen Action charged that the state violated the Public Records Act by failing to provide the TechLaw document to Citizen Action. Citizen Action could not obtain the TechLaw document pending the Department’s appeal.

The Appellate Court twice sent notice to NMED of its intention to dismiss their appeal because NMED improperly filed its appeal. NMED explained that the District Court Clerk somehow misplaced the paper work. The Court of Appeals gave NMED 60 days to proceed to an evidentiary hearing in District Court about the excuse. The Court’s deadline passed on September 22, 2009 with no action taken by the NMED attorney. Citizen Action then filed a motion to dismiss the NMED appeal.

For more information contact *Citizen Action New Mexico*: (505) 262-1862 or visit the *Citizen Action* website at www.radfreenm.org. Citizen Action is a project of the New Mexico Community Foundation.