

- [SRIC Home](#)
- [Staff](#)
- [Our Projects](#)
 - [Community, Development, and Economics](#)
 - [Uranium Impact Assessment](#)
 - [Nuclear Waste Safety](#)
 - [Energy and Natural Resources](#)
 - [Mining](#)
 - [Environmental Information and Education](#)
- [Voices from the Earth](#)
 - [2000 Issues](#)
 - [2001 Issues](#)
 - [2002 Issues](#)
 - [2003 Issues](#)
 - [2004 Issues](#)
 - [2005 Issues](#)
 - [2006 Issues](#)
 - [2007 Issues](#)
 - [2008 Issues](#)
 - [2009 Issues](#)
 - [2010 Issues](#)
- [Web Links](#)

MISSION: Southwest Research and Information Center is a multi-cultural organization working to promote the health of people and communities, protect natural resources, ensure citizen participation, and secure environmental and social justice now and for future generations

Don't Dump on Us!

“This has been a very inclusive process and anyone who didn’t participate can’t complain.”

This comment or a modification of it was voiced more than once by employees from solid waste firms, their lawyers and paid consultants throughout the New Mexico Environment Improvement Board (EIB) Hearing held May 2-5 in Santa Fe. The meetings began early and went progressively later until adjourning on Friday evening at 11:15 PM.

The above quote illustrates how governmental and business consensus is developed and how community organizations and the public are “governed” and marginalized.

Perceptions on participation differ radically between business, government, community organizations and the public. When community organizations speak of meaningful participation, it constitutes numerous notices and follow-ups, meeting accessibility (time of day, place, and location), and of course availability of administrative and financial support. This was not the condition modeled during the process.

The EIB Hearing was the culmination of a process to revise the New Mexico Solid Waste Regulations

begun approximately a year ago. The New Mexico Environment Department (NMED) held public weekday meetings attended by solid waste companies, landfill owners and their lawyers, lobbyists and technical personnel, the Municipal League, the Association of County Governments, individual municipalities and counties, and a small cadre of representation from social and environmental justice folks.

Less represented, or not at all, were small rural municipalities, counties, and the general public. Some sectors of the public were represented by both the New Mexico Environmental Law Center, a Santa Fe-based nonprofit organization that does advocacy and legal work on the environment for communities in the state, and by the New Mexico Environmental Justice Working Group (NMEJWG). The NMEJWG is made up of New Mexico organizations affiliated with the Southwest Network for Environmental and Economic Justice (SNEEJ) and include the Colonias Development Council (CDC), Concerned Citizens of Wagon Mound and Mora County (CCWMMC), Laguna Acoma Coalition for a safe environment, Kalpulli Izkalli, Sage Council, and the SouthWest Organizing Project (SWOP).

I had the opportunity to represent the NMEJWG in a majority of the process along with the NMELC. It was the first time any of our groups had actually participated in this type of a process. However, we would not have been able to do so without the support of SNEEJ, CCWMMC, and Southwest Research and Information Center (SRIC). Douglas Meiklejohn, director of the NMELC, was also able to attend most of the meetings. NMELC has had a long history regarding the Solid Waste Regulations and the NMED. However, I would have to say that the EJ community did not have the resources to participate in these hearings at the same level of both the waste industry and government.

The Solid Waste Act of 1990 in New Mexico provided for the creation of a comprehensive solid waste management program by December 1, 1992, and the implementation of regulations by July 1, 1994. These regulations were to be created by Environmental Improvement Division of the Health and Environment Department. This authority was moved to the New Mexico Environment Department upon its creation in 1991. The original regulations were written in 1993, and the new draft will go into effect in 2007. The revised regulations will include environmental justice language and provisions. This was a major point of discussion and contention throughout the recent Hearings.

We must acknowledge that, although we do not always agree, New Mexico's Governor Bill Richardson and Environment Department Secretary Ron Curry are open to and supportive of environmental justice. Some EJ successes during the last three years include a series of NMED Listening Sessions throughout New Mexico, an Executive Order on Environmental Justice, and the creation of the New Mexico Environmental Justice Policy Commission. Although we can not say that New Mexico leads in the incorporation of EJ into its policies, we can say that we are among the first states to take EJ seriously.

Some major revisions to the regulations had to do with inclusion of environmental justice provisions whose focus is to provide for a Community Impact Assessment before the permitting of a regulated facility. However, a Community Impact Assessment would not be required unless the impacted community was a "vulnerable community" (i.e. a poor or community of color). The problem is that it is the applicant for a regulated facility that would determine the vulnerable areas. This was the point of contention. Why should the regulated facility be the one who decides what type of community is a "vulnerable community?" This goes along with the self-monitoring that is required of all waste entities at the point of generation, hauling or disposal. In other words, the fox is guarding the chicken coop. The EJ community in general felt that all regulated facilities should do a Community Impact

Statement before being permitted.

What constitutes a “vulnerable area” was also a challenge for NMED. The trick was to define an environmental justice community without using the words race and/or ethnicity; language which counsel from NMED felt they could not legally use. The environmental justice parties and their lawyers contested the exclusion of this language. The NMED offered this as a definition for an environmental justice community: “Vulnerable area” means an area with a four-mile radius from the geographic center of a facility or proposed facility, and:

- has a percentage of economically stressed households greater than the state percentage based on the most recent actual census bureau data within either a one-square mile area or within the four-mile radius surrounding the facility or proposed facility and
- where the New Mexico portion has a population of 50 people or more within any square mile within the four-mile radius, and
- has within it 3 or more regulated facilities?

The EJ communities had problems with the definition of an “economically stressed household” which NMED defined as “...means a household that reports less than \$20,000 per year household income based on the most recent actual United States census data.” This was unacceptable to the EJ communities who preferred to use the more standard calculation of poverty used by social service agencies, eliminating the \$20,000 limit.

Some EJ communities felt that a four-mile radius was not far enough and that a provision to control for over-concentration of regulated facilities in certain communities was ambiguous and without power if over-concentration is allowed by local zoning. Absent from these provisions, and in stark contrast to language in other sections of the regulations, was language directing the Secretary to deny a permit if environmental justice provisions were not met. Industry and government response to this was consistent, that in their opinion the Secretary needed discretion. In our experience as poor and communities of color, government discretion has not been a source of comfort and trust..

Other issues for industry were encroachment. In their mind they locate away from communities, yet build infrastructure which encourages encroachment. Although true in some cases, some community stories challenge this issue. Just as important to the EJ communities were lengthening the time for response and commentary and improving the process for notice and hearings to facilitate “meaningful participation” as mandated by the Colonias Development Council v. Rhino decision. At the end of the day, or shall I say at the end of a long week, we will get environmental justice provisions in the New Mexico Solid Waste Regulations. They will not be all that we wanted, but yes, NMED did open up the process a bit. However, poor and communities of color are still not equitably at the table. But I can say that no, we will not continue to be dumped on just because we are poor and racialized.

– *Sofia Martinez*

Voices from the Earth:
Current Issue

SRIC Friends
