

US EPA ARCHIVE DOCUMENT



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GOVERNOR

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RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

January 27, 2006

David Albright
Ground Water Office Manager
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street, Mail Code WTR-9
San Francisco, CA 94105

**Re: EPA's SDWA Determination, UIC Program
Determination of Indian Country Status for UIC Permitting**

Dear Mr. Albright:

This letter is in response to the Environmental Protection Agency's ("EPA") Federal Register Notice regarding the Safe Drinking Water Act's Determination; Underground Injection Control Program, Determination of Indian Country status for Purposes of Underground Injection Control Program Permitting 70 Fed. Reg. 66402 (2005).

The New Mexico Environment Department ("NMED") has previously outlined its position on this issue in letters to EPA and in filings to the Tenth Circuit Court of Appeals. In this response, NMED provides comments in the form of Executive Order 2005-056 recently signed by New Mexico Governor Bill Richardson. This Executive Order is a new initiative by New Mexico regarding Environmental Justice. New Mexico is dedicated to bringing environmental justice issues into its decision making processes.

In addition, Governor Richardson signed a Statement of Policy and Process with the Navajo Nation in May of 2003. This Statement provides that the "Governor desires to have an open-door policy with the Navajo Nation to voice concerns and discuss issues and to have the Nation's views seriously considered with respect to the formulation and execution of State policy." Further, the Statement provides a framework for consultation between the State and Nation on issues of concern and commits the State to consult with the Navajo Nation prior to taking any administrative action affecting the Nation.

Mr. David Albright
January 27, 2006
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Thank you for the opportunity to comment and for your consideration of this additional information.

Sincerely,



Ron Curry
Secretary of Environment

cc: Hilary Tompkins, Chief Counsel to Governor Richardson
Derrith Watchman-Moore, Deputy Secretary Environment Department
Bill Brancard, Division Director, Mining and Mineral Division, EMNRD
Stephen B. Etsitty, Executive Director Navajo EPA
Craig Bartels, President HRI
Louis Denetsosie, Navajo Nation Attorney General
Johnny Livingston, Churchrock Chapter President

Enclosures



State of New Mexico

Office of the Governor

Bill Richardson
Governor

EXECUTIVE ORDER 2005-056

ENVIRONMENTAL JUSTICE EXECUTIVE ORDER

WHEREAS, the State of New Mexico is committed to affording all of its residents, including communities of color and low-income communities, fair treatment and meaningful involvement in the development, implementation, and enforcement of environmental laws, regulations, and policies regardless of race, color, ethnicity, religion, income or education level;

WHEREAS, the State of New Mexico is further committed to promoting the protection of human health and the environment, empowerment via public involvement in the development, implementation, and enforcement of environmental laws, regulations, and policies, and the dissemination of information related to the environment to inform and educate, especially in people of color and low-income communities;

WHEREAS, environmental justice issues exist in New Mexico, as they do in other states, causing concern and creating problems for some communities, businesses and households that bear the impacts of air and water contamination, noise, crowding, reduced quality of life, and depressed land and housing values – many of which could be mitigated by better siting decisions and processes;

WHEREAS, the cumulative impact of multiple sources of exposure to environmental hazards in low-income and people of color communities, and the roles of multiple agencies in addressing the causes and factors that compromise environmental health and quality of life in these communities require an interagency response; and

WHEREAS, the Federal government has underscored the importance of Environmental Justice in Executive Order 12898 and created the National Environmental Justice Advisory Council to integrate environmental justice into federal policies, programs, initiatives and activities.

NOW, THEREFORE, I, Bill Richardson, Governor of the State of New Mexico, by the virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby **ORDER** and **DIRECT**:

1. All cabinet level departments and boards and commissions that are involved in decisions that may affect environmental quality and public health shall provide meaningful opportunities for involvement to all people regardless of race, color, ethnicity, religion, income, or education level. Programs and policies to protect and promote protection of human health and the environment shall be reviewed annually to ensure that program implementation and dissemination of information meet the needs of low-income and communities of color, and seek to address disproportionate exposure to environmental hazards and risks.

2. All cabinet level departments and boards and commissions shall recognize the need to communicate in writing and orally significant public health and environmental information in languages other than English by

ensuring that all publicly disseminated information, including websites, is available in Spanish and in English, at a minimum, and in tribal languages and dialects as appropriate for areas of the state where these languages are spoken.

3. All relevant cabinet level departments and boards and commissions shall utilize available environmental and public health data to address impacts in low-income communities and communities of color as well as in determining siting, permitting, compliance, enforcement, and remediation of existing and proposed industrial and commercial facilities.

4. There is hereby created a multi-agency task force, to be named the Environmental Justice Task Force, which shall include designees from the New Mexico Environment Department (NMED), State Engineer's Office, Department of Agriculture, Department of Health, New Mexico Department of Transportation, Energy, Minerals, and Natural Resources Department, Department of Public Safety, Department of Labor, and Department of Education. The NMED shall serve as the lead agency. The Task Force shall be an advisory body, the purpose of which is to make recommendations to State Agencies regarding actions to be taken to address environmental justice issues consistent with agencies' existing statutory and regulatory authority. The Task Force shall develop policies and procedures for communities to request the Task Force to address environmental justice issues in those communities. The Task Force is authorized to consult with, and expand its membership to, other agencies and stakeholders as needed to address concerns raised in affected communities. The Task Force shall meet not later than March 31, 2006 and shall report Task Force accomplishments to the Office of the Governor not later than December 31 of each year.

5. The NMED shall continue to work with the existing Environmental Justice Policy Committee, whose mission is to make recommendations regarding Environmental Justice issues in New Mexico to the Secretary and Deputy Secretary of NMED.

6. All state agencies shall assist as appropriate in implementing this Order and achieving its purposes. The actions mandated as a result of this Executive Order shall be accomplished within the bounds of, and consistent with, the relevant agency's existing statutory and regulatory authority.

7. Nothing in this Executive Order is intended to create a private right of action to enforce any provision of this Order or any Action Plan developed pursuant to this Order; nor is this Order intended to diminish any existing legal rights or remedies.

8. This Executive Order shall take effect immediately.

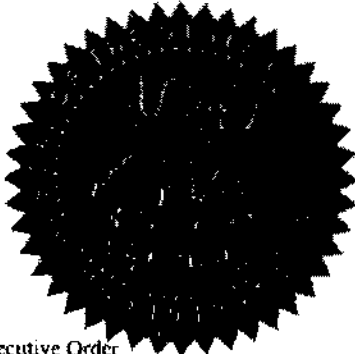
ATTEST:

REBECCA VIGIL-GIRON
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE THIS
18TH DAY OF NOVEMBER, 2005

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

BILL RICHARDSON
GOVERNOR OF NEW MEXICO



State of New Mexico
Office of the Governor

Bill Richardson
Governor

STATEMENT OF POLICY AND PROCESS

WHEREAS the Navajo Nation is a federally-recognized sovereign nation located within the State of New Mexico;

WHEREAS the Governor of the State of New Mexico ("Governor") recognizes and respects the sovereignty of the Navajo Nation;

WHEREAS the Navajo Nation recognizes and respects the sovereignty of the State of New Mexico ("State");

WHEREAS the Governor and the Navajo Nation want to encourage and promote government-to-government relationships between the Nation and the State based on mutual respect and open communications;

WHEREAS the State and the Navajo Nation recognize the importance of full and open communication and cooperation on issues of shared interest or concern, such as taxation, water rights, education, health care, economic development, law enforcement, and the provision of State services to tribal members, so as to avoid misunderstandings, disagreements and disputes and to facilitate coordinated and cooperative policy formulation and implementation;

WHEREAS the Governor desires to have an open-door policy with the Navajo Nation to voice concerns and discuss issues and to have the Nation's views seriously considered with respect to the formulation and execution of State policy;

WHEREAS, while the Navajo Nation is a sovereign government, the members of the Nation are also citizens of the State;

WHEREAS coordination and cooperation between the Navajo Nation and the Governor are in the best interests of the State, the Nation, and all the citizens of the State, and will promote the equitable and efficient allocation of governmental authority, services, and resources among all citizens of New Mexico;

WHEREAS the Governor and the Navajo Nation agree to establish procedures setting forth the framework to coordinate a cooperative and joint effort to address issues identified by the Governor and the Nation, to seek mutually beneficial solutions and outcomes, and to avoid litigation;

NOW THEREFORE THE UNDERSIGNED HEREBY COMMIT TO THE FOLLOWING PRINCIPLES AND PROCEDURES AND AGREE TO COMPLY WITH THEM TO THE GREATEST EXTENT FEASIBLE:

1. The Governor and the Navajo Nation will establish and promote a relationship of cooperation, coordination, open communication, and good will, and will work in good faith to amicably and fairly resolve issues and differences.

2. The Governor and the Nation's interactions shall be based on a government-to-government relationship. The Governor and Navajo Nation's governing bodies shall direct and cause all departments, agencies, units, and subdivisions of their respective governments under their supervision and control to respect the principle of government-to-government relations in all interactions between the State and Navajo Nation governments.

3. In order to establish a process for meaningful consultation on issues identified by the Governor or the Navajo Nation, issues of interest or concern identified by any of the governments that are parties to this Statement of Policy shall be addressed through the following framework:

A. The Governor or the Navajo Nation will notify the other party in writing that it has identified an issue or concern and desires consultation or negotiations on the same;

B. The Governor and the Navajo Nation will designate an appropriate person(s) to represent them in the conduct of such consultation or negotiation;

C. The representatives so designated will meet as soon as reasonably practicable to discuss the issue and exchange any relevant information or documentation.

D. Each representative shall timely inform the leadership of their respective party of the status or outcome of the consultation or negotiations and the leadership shall timely give direction as needed to address or resolve the issue.

E. If either party believes that further discussions or negotiations will be unproductive, they will promptly notify the other party.

4. The Governor and the Navajo Nation shall use their best efforts to facilitate an amicable resolution of any dispute prior to the filing of any litigation against the other;

5. The Governor and the Navajo Nation shall consult with each other prior to submitting or causing to be introduced legislation affecting or impacting the other.

6. The Governor and the Navajo Nation shall consult with each other prior to taking any executive or administrative action affecting or impacting the other.

7. The Governor and the Navajo Nation shall use their best efforts to ensure that the State and the Nation do not set forth or cause to be set forth internal or external communications inconsistent with this Statement of Policy.


8. The Governor and the Navajo Nation shall do all things necessary and proper to inform, direct, and cause their respective departments to implement the provisions and intent of this Statement of Policy. All consultations pursuant to this Statement of Policy shall be open and candid amongst the parties to this Policy so that all parties may evaluate for themselves and offer their views concerning the potential impacts and effects of the relevant proposals and pending actions.

9. The Governor and the Navajo Nation will meet together on a regular basis in order to insure that the terms, purpose, and intent of this Statement of Policy are carried out.

10. The Governor and the Navajo Nation will communicate the content of this Statement of Policy to each agency, department, division, or other official representative under the supervision of the Governor and the Nation, and direct and cause them to observe and comply with this Statement of Policy and Process.

Dated this 9th day of May, 2003.


Bill Richardson, Governor
STATE OF NEW MEXICO


Joe Shirley, President
NAVAJO NATION