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July 28, 2014

TO: Ms. Jami Bailey, Director
NMOCD
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FROM: Heidel, Samberson, Newell, Cox & McMahon
Post Office Drawer 1599
Lovington, New Mexico 88260
on behalf of Concho Land, LLC and Angell #2 Family Limited Partnership

RE: DNCS Properties, LLC
Application for Permit for Surface Waste Management Facility
Located in Section 31, Township 17 South, Range 33 East, and Section 6, Township
18 South, Range 33 East, N.M.P.M., Lea County, New Mexico

DATE: Notice mailed to Protestants on June 26, 2014
re: Application submitted to OCD on June 16, 2014

Concho Land, LLC (hereinafter "Concho") and Angell #2 Family Limited Partnership (hereinafter "Angell") hereby submit their objection and comments to the Surface Waste Management Facility proposed by DNCS. Concho and Angell object to the proposal on three basic premises. These areas concern Concho and Angell directly and as a matter of public health, safety and the environment, and detriment to fresh water. Concho and Angell have standing to submit the comments because both are property owners whose land abuts or is adjacent to the proposed facility. (See Table I. A-1 to Vol. I of Application).

The first area of concern for Concho and Angell is the potential for detriment to fresh water which would be caused by the proposed facility. DNCS alleged that the closest water bearing zone is at or greater than 550 feet below the surface (Notice of Application; Application, Vol. I, pages I-19 and I-20, et. seq.). DNCS' claim ignores its own empirical evidence of ground water much closer to the surface in the vicinity of the proposed site. In Vol. II, pages 343 through 516 of the Application, DNCS includes multiple well records abstracted from the files of the State Engineer. An examination of these records reveals that wells drilled in the areas surrounding the proposed site hit water bearing sands at depths ranging from 55 feet to 200 feet, much shallower than DNCS' reported depth of 550 feet.

For example, the records show numerous wells in Township 17 South, Range 33 East at depths ranging from 204 feet to 70 feet. The records for wells in Township 18 South, Range 33 East reveal numerous wells where water bearing sands were reached at depths less than 100 feet.

Also, Concho and Angell are concerned that the containment proposal has no concrete evidence of long lasting barriers. Volume III of the Application contains a proposal to create migration containment barriers using HDPE liners. However, none of the information provided by DNCS appears to have examples of actual use of these liners for a period exceeding thirty (30) years. DNCS provides as part of its material an article on the lifetime expectancy of the HDPE membrane (Attachment III.1.B). Unfortunately, although the material submitted by DNCS contains many estimates of the estimated life of the liner, the material contains no actual examples of a service life beyond thirty (30) years.

Concho and Angell submit that the material submitted by DNCS is not sufficient. DNCS submitted information that reveals water at depths less than 100 feet in the vicinity. DNCS fails to provide any concrete evidence that the migration barriers proposed to be utilized will protect these ground water sources in the long term.

Concho and Angell submit that these reasons are sufficient to cause the Application to be denied. At the least, DNCS should be required to make further and more exhaustive investigation, to determine the potential detriment to ground water.

In addition to the fresh water issues, Concho and Angell are concerned about the potential adverse impact on the public health, safety and environment. DNCS proposes to accept produced water and contaminated soils. The site is proposed to include both landfill sites for solid waste and evaporation ponds for produced water (See, Vol. I, pages I-3 and I-6). DNCS proposes to have the capacity of evaporating up to 3,000 barrels of liquid per day. DNCS alleges that the prevailing winds are from the South and Southeast. (Vol. I, page I-45). Concho and Angell submit that this statement is in error.

The winds in Southeast New Mexico blow from the Southwest and the South. The lands owned by protestants are located North, Northeast, East and Southeast of the proposed site. Either Concho lands, or Angell lands will be in the path of any wind blown contaminants the majority of the time. The owners and employees of Concho and Angell are on the adjacent lands on a regular basis. Concho and Angell submit that the DNCS proposal for containment of wind blown materials caused by the facility operations is not sufficient to prevent these materials from adversely impacting the operation on protestants neighboring land, from impacting those persons traveling on 529 and the public at large.

Therefore, for all the forgoing reasons, Concho and Angell request that the OCD deny the application submitted by DNCS. Alternately, Concho and Angell request that DNCS be required to conduct a much more thorough investigation of the potential detrimental impacts cited in these comments.

Concho and Angell reserve the right to modify any of these comments, to withdraw any of these comments, and to make additional comments as information becomes available. Concho and Angell request a hearing on this matter.

Respectfully Submitted,

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By: 

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