

October 10, 2022

James Kenney, Secretary
New Mexico Environment Department
PO Box 5469
Santa Fe, NM 87502-5469

Sent via email to: James.Kenney@state.nm.us

Dear Secretary Kenney,

As you are no doubt painfully aware, a tanker truck operated by NMDOT contractor R. Marley, LLC overturned on State Route 15 on September 26, eventually resulting in the release of hundreds or thousands of gallons of HFE-100P asphalt emulsion into Jaybird Canyon in the Gila National Forest. The canyon feeds into Sapillo Creek which is part of the Gila River Watershed and is home to threatened Gila Trout. It is also an area of unusually dense plant and animal biodiversity.

We want first to express our appreciation for your agency's rapid response to being notified of this spill. Unfortunately, as you are also painfully aware, that notification did not happen in a timely manner. As a consequence of the eleven-day period between the accident and the first arrival of a cleanup crew, and probably exacerbated by significant rainfall during that time, a significant portion of the spilled material found its way into a creek that flows to Meadow Creek, a tributary to Sapillo Creek.

Because of the ecological sensitivity of this riparian area and the potential impact on at least one protected species, we urge you to take the following steps immediately:

- 1) Verify the chemical composition of the material. R. Marley's cleanup consultant, Mr. James Bearzi, has informed us that it is HFE-100P, and that it contains zero petroleum products. The Technical Data Sheet for HFE-100P, however, indicates that it contains 3 percent petroleum distillates. And the Safety Data Sheet for the material indicates that it contains 55 percent asphalt, which as far as we are aware is itself manufactured from petroleum.
- 2) Ensure that health and safety procedures are in place for safe handling and disposal of the spilled material.
- 3) Ensure corrective action and long-term restoration plans are developed, approved, and implemented in consultation with appropriate U.S. Forest Service, U.S. Fish and Wildlife Service and New Mexico Department of Game and Fish biologists in order to protect downstream Gila trout habitat.
- 4) Ensure any hay, straw, or mulch used for containment, absorption, or revegetation be guaranteed free of weed seeds.
- 5) Ensure all machinery used in the cleanup, if any, will not damage stream banks or soils in a way that would cause excessive erosion, sedimentation, or channelization of creeks and streams.
- 6) Establish water quality monitoring sites at sufficient locations to ensure that no waterborne contamination remains when cleanup concludes.

In addition to these steps, we hope that you will take appropriate enforcement action under the New Mexico Water Quality Act notification of discharge-removal requirements in NMAC 20.6.2.1203 once the state's investigations are complete.

We appreciate your expedited attention to this serious situation and look forward to hearing back from you on the results of your investigation.

Sincerely,

Allyson Siwik, Executive Director
Gila Resources Information Project

Patrice Mutchnick, Director
Heart of the Gila

Donna Stevens, Executive Director
Upper Gila Watershed Alliance

Todd Schulke, Co-founder
Center for Biological Diversity

Cc: Senator Siah Correa Hemphill
Lieutenant Governor Howie Morales
Grant County Commission
Silver City Town Council
Stephen Connelly, NMED Incidence Response Coordinator
John Rhoderick, NMED Water Protection Division
Camille Howes, Supervisor, U.S. Forest Service – Gila National Forest