

October 31, 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,

We are writing in response to the NM Environment Department (NMED) October 21 press release and issuance of a notice of noncompliance with the New Mexico Water Quality Act to R. Marley Trucking for its unreported September 26 discharge of approximately 2,000 gallons of asphalt emulsion into Jaybird Canyon in the upper Gila River watershed.

We are in full support of the Department's letter of noncompliance. The lack of action by the trucking company, state police, and NM Department of Transportation, led to an 11-day gap before any official on-the-ground action was taken. Had the spill been reported within 24 hours as the law requires, the asphalt emulsion material could have been contained.

We encourage NMED to pursue penalties against the company and any other responsible parties to the maximum extent permitted by law given the serious harm to the environment caused by the spill.

We remain concerned with reliance on R. Marley Trucking for remediation given their inability to follow the law and their lack of experience with cleanup efforts. The public expected a professional cleanup crew to be employed, yet there are reports of worker safety issues and low wages given to untrained agricultural crews. During this initial clean-up phase, there are continuing reporting discrepancies in the number of workers and amount of time the trucking company has been on site cleaning up. Additionally, the company has carried out sloppy housekeeping of the cleanup site increasing the potential for reintroduction of asphalt material to the environment. Finally, there are documented reports of additional emulsion contamination in the creek below the terminus of R. Marley's efforts (See Photo 1 below).

There are a number of issues that still need to be addressed by the Department:

- The public has not yet received confirmation from NMED about the **nature of the asphalt emulsion contamination**. The material coated the stream bed in Jaybird Canyon from bank to bank and the remaining thick, gooey material may still pose a threat to aquatic species and other wildlife. If animals or birds get the material on their feet or bodies, they may ingest this harmful substance, likely leading to death. Reports of dead snakes, squirrels, and invertebrates have emerged. (See Photo 2 and location data for a dead squirrel found in Jaybird Canyon by our surveyor.) What are the specific chemical constituents and their toxicity that were released to the environment? What is the long-term ecological risk of the discharge of asphalt emulsion in the environment?

- The public has not received confirmation from NMED about the **extent of the contamination**. On October 21st, we sent a trained surveyor to the confluence of Meadow Creek and Jaybird Canyon to assess the extent of the spill material. We collected photo documentation of asphalt emulsion material found approximately 1.6 miles down Jaybird Canyon from the spill site, well downstream of R. Marley's clean-up efforts. Water levels on that date precluded a definitive determination of the full extent of the spill. See the full track and associated photos at <https://tinyurl.com/Spill-Survey-10-21-22>. Has NMED independently verified the downstream terminus of asphalt emulsion contamination?
- Have the results of water quality, soil and sediment sampling outlined in R. Marley's Sampling and Analysis Plan dated October 17, 2022 been received? What do the sampling results tell us about the impacts of the spill on the environment in Jaybird Canyon? Has NMED independently verified these results? How will NMED share these results with the public?
- Only in the last days of this phase of cleanup has R. Marley put any effort into cleaning up contaminated media below their stated 900-yard spill distance. Until a more concerted effort is done to remove this material, cleanup is incomplete. Even if given specific direction by the EPA in the next phases of the cleanup, the public rightly lacks confidence that R. Marley will complete the effort, nor report on those efforts honestly.

Going forward, we strongly recommend that NMED take over future phases of the cleanup, with close attention paid to minimizing additional damage to the site and onsite housekeeping. Check dams and booms should be strengthened and expanded from bank to bank in places to capture the asphalt material, including close, ongoing monitoring to ensure proper function and regular disposal of trapped material. We also request that additional soil, sediment, and water monitoring sites be established beyond the few that are mandated by the Sampling and Analysis Plan submitted by R. Marley.

While we understand that the EPA is on scene to provide additional expertise and oversight, we expect the NMED to continue to be accountable for evaluation of the effectiveness of each clean-up phase with rigorous sampling at various water levels, as well as restoration of the watershed.

Once cleanup is complete, a well-thought-out restoration plan must be a priority. Bringing the watershed back to full ecological integrity must be the goal. Areas of the canyon damaged during the cleanup and trails created by work crews will need to be addressed to prevent erosion and further degradation of the streambanks. Long-term restoration plans should be 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.

Finally, we are pleased that NMED will be holding a public meeting on November 3rd as we believe transparency and frequent public communications of site conditions, progress made, and the long-term effects of the spill are critical.

Please direct any questions to Allyson Siwik at 575.590.7619 or allysonsiwik@gmail.com.

Thank you for your attention to this ongoing situation.

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
John Moeny, NMED Surface Water Quality Bureau
Elizabeth Toney, District Ranger, U.S. Forest Service – Gila National Forest
Camille Howes, Supervisor, U.S. Forest Service – Gila National Forest

Attachments: Photos



Photo 1- Downstream terminus of contamination found by our surveyor on 10/21/22 at 32.96978, -108.20096. See full track at: <https://tinyurl.com/Spill-Survey-10-21-22>



Photo 2 - Dead squirrel found in Jaybird Canyon on 10/21/22 at 32.96492, -108.20122. See full track at: <https://tinyurl.com/Spill-Survey-10-21-22>