

**MINUTES
of the
FIRST MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**June 26, 2017
State Capitol, Room 311
Santa Fe**

The first meeting of the Radioactive and Hazardous Materials Committee was called to order by Senator Jeff Steinborn, chair, on Monday, June 26, 2017, at 9:40 a.m. in Room 311 of the State Capitol.

Present

Sen. Jeff Steinborn, Chair
Rep. Carl Trujillo, Vice Chair
Sen. Ron Griggs
Sen. Richard C. Martinez
Rep. Angelica Rubio
Rep. Debra M. Sariñana
Rep. Larry R. Scott

Absent

Rep. Cathrynn N. Brown
Sen. Carlos R. Cisneros
Rep. David M. Gallegos
Sen. Gay G. Kernan
Sen. Carroll H. Leavell

Advisory Members

Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Sen. Clemente Sanchez
Rep. James E. Smith

Sen. Gregory A. Baca
Sen. William F. Burt
Rep. Stephanie Garcia Richard
Sen. William H. Payne
Rep. Nick L. Salazar
Rep. Jim R. Trujillo

Staff

Shawna Casebier, Staff Attorney, Legislative Council Service (LCS)
Monica Ewing, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, June 26

Call to Order and Introductions

Senator Steinborn welcomed members of the committee and guests to the meeting. Committee members and staff introduced themselves.

Department of Environment (NMED) Update

Secretary of Environment Butch Tongate introduced the following NMED representatives who attended the meeting: J.C. Borrego, deputy secretary; Donna Bahar; Dennis McQuillan; John Kieling; Kurt Vollbrecht; Annie Maxfield; Michelle Hunter; Bruce Yurdin; and Michaelene Kyrala.

Secretary Tongate described the department's organization and the several issues on which the department focuses its work, including hazardous material spills. He said that states are required to implement financial assurance measures pursuant to the federal Resource Conservation and Recovery Act of 1976, and the state's Corrective Action Fund (CAF), managed by the NMED, is how New Mexico meets that requirement. Under the CAF program, a \$150 fee is charged to petroleum distributors at retail outlets, and \$110 of that fee is deposited in the CAF to help defray the cost of spill and leak cleanup.

Regarding the department's budget, Secretary Tongate said that the NMED has experienced significant funding reductions over the past 10 years, during which time legislation was signed into law to allow 30% of money in the CAF to be used for salaries and operations expenses of the NMED each year. The fund generates approximately \$19 million each year for department operations, and approximately \$12 million from the fund is used for cleanup corrective actions. Several bills were introduced during the 2017 regular and special sessions that would have diverted income from the CAF for other purposes, which would have impaired remediation work, created threats to water wells and human health and caused layoffs among the approximately 150 department positions funded by the CAF. Finally, he noted that the fund's annual obligations dropped in fiscal years 2016 and 2017 primarily because of sweeps of many of the state's funds and remediation efforts were slowed as a result of those sweeps.

Discussing per capita CAF obligations throughout the state over the past 10 years, Secretary Tongate explained that smaller rural counties, and those with many instances of hazardous material leaks and small populations, have the highest per capita obligations. He added that areas of the state that have major roadways tend to have a greater number of gas stations and more hazardous material leaks.

Secretary Tongate explained that the cost of remediation varies, with the average project costing about \$112,000, and an average of \$500,000 if the project is complex and presents a threat to public health. He noted that there are 21 "Priority 1" cleanup sites in the state, which are sites at which released hazardous material poses an actual or potential imminent threat to human health. The remediation process is also time consuming and can take up to 15 years to

complete assessment and full remediation. Factors that influence the cost and duration of remediation work include the type of leaked material, the type of soil into which the material leaked, the depth of nearby ground water and how the leak is prioritized. Despite concerns about longer-term effects of petroleum leaks, Secretary Tongate showed the members examples of many sites that were successfully redeveloped following remediation.

The department has been very involved in the aftermath of the Gold King Mine (GKM) wastewater spill in 2015 near Silverton, Colorado. Secretary Tongate said that following the spill, the department has monitored plants and wildlife and tested samples of water and sediment in affected areas, and the test results have been fairly good. The department's analysis shows that the increased concentrations of minerals and metals released in the spill do not appear to have harmed livestock or crops. He noted that when turbidity in affected rivers increases, sediment is stirred up, which could have an effect on drinking water systems; however, there is no evidence that the spill impacted private wells located near those rivers. Sediment surveys in Colorado, New Mexico and the Navajo Nation show that concentrations of heavy metals in the affected rivers have reduced significantly.

Secretary Tongate reported that GKM stakeholder outreach efforts include the creation of a risk dashboard, a tool available on the NMED's website that helps community members quickly identify concerns related to the spill. Some residents in affected areas use the river as a source of drinking water, and while the department advises against that, the dashboard includes a category of information related to domestic use of river water, which could help residents make informed decisions.

Shortly after the GKM spill, the federal Environmental Protection Agency (EPA) provided residents in San Juan County with forms on which to indicate any economic impact the residents experienced as a result of the spill. Secretary Tongate said that many residents were disappointed to learn that losses reported on those forms will not be reimbursed despite the fact that an administrator with the EPA acknowledged responsibility for the spill in a hearing before the U.S. Congress. The federal government's sovereign immunity was cited as the reason for nonpayment of GKM spill claims. He added that Region 6 of the EPA has been very cooperative with the NMED's efforts following the spill.

Secretary Tongate said that several lawsuits were filed in connection with the GKM spill, including those filed by New Mexico and the Navajo Nation against the EPA. Defendants in those lawsuits have filed motions to dismiss the cases, and the parties are awaiting decisions on those motions. After efforts to collaborate with Colorado following the GKM spill were ineffective, New Mexico sought permission from the United States Supreme Court (USSC) to file claims against Colorado. While the United States solicitor general recommended that the USSC deny permission, Secretary Tongate said that the department is still awaiting a final decision.

Secretary Tongate reviewed the status of work to address the bulk fuel spill at Kirtland Air Force Base. The primary contaminant in that spill is ethylene dibromide. He said that Governor Susana Martinez made the issue a priority and the NMED has approached the United States Air Force to collaborate on addressing the spill. The department has placed monitoring wells in several places around the spill site to monitor how fast the contaminant plume is moving toward drinking water production wells. The monitoring wells are tested monthly, and thus far, test results show no evidence of the presence of the contaminant near drinking water sources.

Secretary Tongate described two other efforts being used to address the spill at Kirtland Air Force Base, including the in-situ bioremediation pilot test under development and the ground water treatment system. The ground water in the affected area is being extracted and treated, and 62.88 grams of ethylene dibromide have been removed from the hundreds of millions of gallons of water removed and treated so far. He noted that images of the plume show that the extraction and treatment of the water is helping to reduce the size of the plume.

Public outreach efforts around the Kirtland Air Force Base spill include quarterly public meetings attended by representatives of the United States Air Force, Bernalillo County, the NMED and other partners and neighborhood associations.

Secretary Tongate said that in 2014, an accidental chemical reaction occurred with a drum containing radioactive waste from Los Alamos National Laboratory (LANL), which caused a radiological release and the suspension of operation at the Waste Isolation Pilot Plant (WIPP). In response to the release, the NMED issued administrative and compliance orders that were ultimately settled with the WIPP in early 2016. That settlement agreement includes several environmental projects to be completed by LANL.

Secretary Tongate reported that over the past three years, WIPP has undertaken efforts to ensure a safe work environment. These efforts include inspections of the site and the implementation of new training and procedures. The NMED conducted an inspection of WIPP and determined that it had taken all necessary steps to allow it to resume operations following the radiological release.

WIPP has submitted a permit modification for the NMED's review. Two of WIPP's requested modifications are considered highest priority. These requested modifications concern changes to the panel closure design, which are necessary following structural damage related to the release of contaminants in 2014. An additional modification concerns WIPP's ability to store waste above ground before it is moved underground, which he said the NMED considers a lower priority.

Secretary Tongate referred to the LANL compliance order on consent, an agreement among the NMED, the federal Department of Energy (DOE) and the DOE's contractor at LANL, that addresses cleanup of legacy contamination at the Los Alamos site. He said that the

remaining legacy sites range in size from very small to several acres and cleanup at 300 of those sites has been completed. The order includes a schedule for cleanup of the remaining sites.

Secretary Tongate informed the committee of the NMED's proposal to make significant changes to the state's ground water regulations, which have not been revised for approximately 15 years, despite scientific advances during that time period. He said that among other changes, the proposed revisions will clarify language and add oversight of geothermal regulation. The department also proposes to make changes in how it addresses the contamination of buildings through vapors, particularly those used in laundries and dry cleaning facilities, referred to as vapor intrusion.

Secretary Tongate recalled ground water and soil contamination identified at the Burlington Northern and Santa Fe Railway Company fueling facility in Belen and said that some remediation work has been completed at the site and that work will continue.

At the site of the Laun-Dry Supply Company in Albuquerque, actions to identify the scope of and to abate ground water contamination have been taken. The NMED is working with the company to reduce ground water and soil vapor contamination.

Following Secretary Tongate's presentation, the members of the committee and representatives from the NMED discussed the following:

- the legislature's decision not to divert additional money from the CAF and the detrimental impact such a diversion would have on the NMED's ability to protect public safety through remediation work;
- the various phases of remediation projects and how contracts are awarded to perform work for each phase;
- the maximum allowable level of ethylene dibromide in drinking water, which is 50 parts per trillion;
- a study by the federal Centers for Disease Control and Prevention in the area of the Kirtland Air Force Base that identified hydrocarbon vapors in a fuel facility but did not identify the presence of contaminants in soil or drinking water wells;
- the depletion of ground water in the state and the potential for desalinization of brackish waters to supplement ground water supplies;
- a federal requirement implemented in 2008 that requires tanks used to store petroleum products to be double walled;
- the NMED's rule changes to align ground water standards with federally mandated drinking water standards, which provide more protection and will lower allowable levels of organic substances such as trichloroethylene and tetrachloroethylene;
- the NMED's working relationship and monthly meetings with the DOE;
- the geographic distribution and length of remediation for Priority 1 sites in the state;

- the \$10,000 deductible required from an entity that experiences a leak or spill of contaminants and applications for waivers of that deductible, and whether additional sureties should be required from facilities;
- much of the suspended contaminants from the GKM spill have settled in Lake Powell, but Farmington continues to monitor for spikes in lead in its water;
- the designation of the GKM spill site as a Superfund site by the EPA;
- the deadline for filing lawsuits related to the GKM spill is in July 2017;
- sampling and monitoring following the GKM spill performed by the EPA, the State of Colorado, the Southern Ute Indian Tribe, the State of New Mexico, the Navajo Nation and the State of Utah; and
- the challenge of determining whether the presence of substances is attributable to an area's geography, the effects of mining or the GKM spill.

2017 Interim Work Plan and Meeting Schedule

Ms. Casebier reviewed the proposed work plan and meeting schedule, and the committee discussed additional topics and potential meeting locations for its July and September meetings. The committee decided to hold its July meeting in Carlsbad and its September meeting in Los Alamos. The committee also agreed to request a joint meeting with the Indian Affairs Committee on August 22, 2017 to discuss the GKM spill. The committee approved the work plan and meeting schedule as discussed, without objection.

Adjournment

There being no further business before the committee, the committee adjourned at 11:55 a.m.