

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

**October 18, 2004
Santa Fe**

The third meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:15 a.m. on Monday, October 18, 2004, by Representative John A. Heaton, chair.

PRESENT

Rep. John A. Heaton, chair
Sen. Richard C. Martinez, vice chair
Rep. Donald E. Bratton
Sen. Mary Jane M. Garcia
Rep. Antonio Lujan
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

ABSENT

Sen. Phil A. Griego
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Sen. Don Kidd
Sen. Carroll H. Leavell

Advisory Members

Rep. Thomas A. Anderson
Sen. William H. Payne
Sen. John Pinto

Sen. Clinton D. Harden, Jr.
Rep. Avon W. Wilson

Staff

Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Monday, October 18

Representative Heaton began by having committee members, staff and audience members introduce themselves.

NEW EPA STANDARDS' EFFECT ON NEW MEXICO

Ron Curry, secretary of environment, provided the committee with an overview of the Environmental Protection Agency's (EPA) new arsenic standard for drinking water. He explained that the EPA had recently lowered the arsenic maximum contaminant level from 50 parts per billion (ppb) to 10 ppb, and that the standard will apply to all community water systems and non-transient non-community water systems when it goes into effect in January 2006. Mr. Curry also noted that about 95 percent of the water systems in New Mexico have sampling results exceeding the 10 ppb standard. He explained that the new standards will mostly affect municipalities, and that many will likely need to put a waiver in place that allows them to exceed

the standards for a limited time period. Mr. Curry said that compliance with the new standards will be expensive for some communities. He also discussed the fact that several communities have background, or naturally occurring, arsenic above the 10 ppb standard, and that the New Mexico Department of Environment (NMED) is trying to work with the EPA office in Dallas to develop a course of action for those communities.

Questions and comments included:

- the deadline by which municipalities must adhere to the new standards;
- the nature of background arsenic levels;
- differences between ingesting arsenic through ground water versus surface water;
- the waiver program for communities with high levels of background arsenic;
- how arsenic gets into ground water;
- whether the EPA will grant long-term waivers;
- removal costs of arsenic from ground water;
- the nature of arsenic removal technology; and
- which New Mexico communities have high levels of arsenic.

Mr. Curry then introduced Sandra Ely of the NMED to discuss issues related to mercury pollution. She explained that while mercury is currently not a regulated pollutant, a draft of new EPA regulations is underway that will make it so. Ms. Ely went on to explain that New Mexico is among the states in the western U.S. with the highest levels of power plant mercury emissions. She pointed out that the emitted mercury settles in bodies of water, where it is ingested by fish, and that consumption of fish that have ingested mercury has been shown to cause health problems, particularly for pregnant women and their fetuses. Ms. Ely went on to note that while there are other sources of mercury emissions, such as incinerators, power plants account for about 80 percent of the mercury emissions in the area. She also pointed out that mercury emissions are more of a problem for the region as a whole than in any localized areas.

Mr. Curry completed his presentation by discussing the issue of the NMED seeking to assume primacy for enforcement of EPA standards regarding certain surface waters. He explained that New Mexico is one of only five states, and the only state in EPA Region 6, which includes Texas, Oklahoma, Arkansas and Louisiana, that does not currently have primacy for the EPA National Pollution Discharge Elimination System. Mr. Curry listed a number of advantages to New Mexico taking control of primacy, including having contractors who require permits being able to deal with offices in Santa Fe rather than Dallas. He went on to note that the program will cost between \$1.3 and \$1.4 million and will require about 15 new NMED employees.

Questions and comments included:

- the source of funding for the program;
- whether the program will require both statutory changes and budgetary appropriations;
- whether New Mexico will receive federal funding for taking over a federal program; and

- advantages of less time for permit approval versus paying more for permits in order to pay for the primacy program.

DE NOVO HEARINGS: PROPOSED REVISIONS

J.D. Bullington of the Association of Commerce and Industry and Luis Rose, an attorney with Montgomery and Andrews, provided the committee with some background regarding de novo air and water hearings. They explained that applicants from various industries must apply for permits to discharge pollutants into the air and/or water, and that an NMED division director makes the first decision on approval of the permit. Mr. Bullington and Mr. Rose went on to explain that after initial review of a permit application by NMED, the secretary may find that the application is significant enough to require a full public hearing. After the department action on the application, any objector may appeal that decision to the Water Quality Control Commission (WQCC) or the Environmental Improvement Board (EIB), which then must schedule another full public de novo hearing. A de novo hearing means that more information, testimony and discovery are allowed, as in any quasi-judicial proceeding, as if the first public hearing was never held. Most appeals under other state laws in regulatory matters are based only on the record of a first public hearing. A second de novo hearing can involve costly legal fees for both NMED and the industry seeking the permit. The witnesses asked that the legislature amend the law to make the appeal to the EIB or the WQCC based on the record and not de novo.

Mr. Bullington and Mr. Rose explained that negotiations are underway to try to eliminate de novo air and water hearings; an agreement was reached last year on water and a bill proceeded through the house and into the senate, where it died before the end of session. They explained that while negotiations regarding air hearings have stalled, a renewed agreement regarding water hearings could be forthcoming. Mr. Bullington and Mr. Rose discussed several of the issues that have arisen during negotiation of an agreement regarding water hearings, most notably the issue of how to provide adequate notice to interested parties before the first meeting between an applicant and the NMED and how best to disseminate that notice.

Joni Ahrends of Concerned Citizens for Nuclear Safety stated that members of the environmental community would prefer to negotiate on proposed legislation first, then on regulations that come as a result of legislation. She noted that with regard to the water de novo hearings, several of the loopholes that existed in the bill that was introduced during the 2004 legislative session had been addressed but that more robust notification requirements are still necessary.

Sophia Martinez of Concerned Citizens of Wagon Mound and Mora County noted that the issue of de novo hearings is very important to small communities, and that while only five or six de novo hearings have ever been held, they remain an effective way for small communities to be heard. She also suggested that notice through newspapers would not reach many citizens in counties such as Mora, where few citizens receive Albuquerque or Santa Fe newspapers.

Questions and comments included:

- the ability of small communities to receive notice and get experts together to testify at a hearing;
- the legal resources available for small communities from the New Mexico Municipal League and the Environmental Law Center;
- the possibility of local elected officials notifying citizens in small communities; and
- the costs of de novo hearings.

VOLUNTARY EMISSIONS REDUCTIONS

Sonia Phillips and Frank Pruger of Xcel Energy Corporation provided the committee with a brief discussion about Xcel Energy, which they noted has power plants in the Minneapolis-St. Paul area, Denver, New Mexico and Texas. They also provided the committee with an overview of their proposal for voluntary emissions reductions legislation, which they indicated has had success in Minneapolis and Denver. Mr. Pruger explained that his company has found that it is faster and less expensive for power plants to voluntarily reduce their emissions instead of waiting for the EPA to force them to do so, and that the savings can ultimately be passed on to customers. He went on to note that Southwest Public Service Company, a subsidiary of Xcel, has developed technology that would also help control mercury emissions from their plants. Finally, Mr. Pruger explained that Xcel plans to introduce legislation in both Texas and New Mexico to allow his company to move forward with voluntary emissions reductions, adding that if Texas does not approve its proposal, Xcel would not pursue its plans in New Mexico.

Questions and comments included:

- whether New Mexico consumers would wind up paying for improvements made to power plants in western Texas;
- customer involvement in Xcel's decision-making process; and
- why costs are lower if power plants make voluntary changes as opposed to being forced to do so by the EPA.

John Bartlit of New Mexico Citizens for Clean Air and Water noted that his group is interested in working with Xcel to improve emissions from power plants in the region.

ON-SITE LIQUID WASTE ISSUES

Anna Marie Ortiz and Dennis McQuillan of NMED provided the committee with an overview of liquid waste issues in New Mexico. They explained that septic systems across New Mexico are contaminating ground water and provided the committee with a summary of NMED's program to address the contamination. Ms. Ortiz and Mr. McQuillan noted that one of the major facets of NMED's program to address liquid waste is a proposed rewrite of the regulations regarding it. They provided the committee with a brief overview of the proposed rewrite, noting that it would require new home builders to install advanced septic systems in homes that meet certain criteria.

Ms. Ortiz and Mr. McQuillan also provided the committee with maps showing where ground water and surface water have been contaminated by septic systems in New Mexico, as well as where aquifers are most sensitive to contamination on a county-by-county basis.

Questions and comments included:

- how soil types figure into criteria for which new homes will require advanced septic systems;
- the cost of advanced septic systems;
- the ability of NMED to find permits for homes with septic tanks; and
- grandfathering older septic systems.

Ryan Smith of Las Cruces Environmental Systems, Inc. told the committee about his company's superior liquid waste disposal system and said that although the system has been certified by NMED to meet all requirements for treating liquid waste, some NMED employees are directing customers away from his product to other businesses. Committee members commented that it is inappropriate for NMED to favor any business over another as long as the business meets legal requirements and that the secretary will be expected to correct any problems in his agency relative to favoritism.

Fernando Martinez of NMED provided the committee with information requested earlier in the day regarding arsenic contamination in New Mexico's ground water. He produced a time line for public water system compliance with the EPA standards; discussed exemptions and variances that public water systems may apply for; and provided the committee with a list of the municipalities and public water systems in the state that have arsenic sampling results equal to or greater than the 10 ppb standard.

Questions and comments included:

- the costs of compliance with arsenic standards; and
- the viability of point-of-use water filtration systems versus cleanup of entire water systems.

PIPELINE SAFETY PROGRAM STATUS REPORT

Bruno Carrera, general manager of the Pipeline Safety Bureau of the Public Regulation Commission, provided the committee with a report on the progress made since the implementation of the Pipeline Safety Fund. He explained that a bill passed during the 2004 legislative session created the fund, which helps pay for the operations of the Pipeline Safety Bureau by collecting fees on intrastate pipeline system use. Mr. Carrera noted that hearings have been held across the state and rules have been adopted on how to implement the fund; the pipeline inspector job description has been rewritten; and pipeline safety engineer candidates are in the process of being interviewed. He also outlined programs that have allowed underground pipeline locating equipment to be purchased and that have improved public education and outreach.

Questions and comments included the required educational background of pipeline inspector candidates.

The minutes from the July 6, 2004 meeting were approved as submitted.

BELEN NATIONAL GUARD ARMORY CLEANUP

Delano Garcia of the Department of Military Affairs provided the committee with a brief summary of the situation regarding cleanup of manganese at the Belen National Guard Armory. He explained that a NMED requirement to remove manganese from the ground beneath the armory has resulted in the Department of Military Affairs being unable to transfer the land the armory is on to the city of Belen, as well as costing the department close to \$500,000 in attempts to remove the manganese. Mr. Garcia went on to explain that the manganese exists in the ground water as a result of remediation of leaks from underground petroleum storage tanks. The cleanup process resulted in chemical reactions that precipitated manganese from the solution in the soil. However, he noted that manganese is difficult for humans to ingest and cited studies that show it is not a health hazard and that EPA does not regulate the substance or require the state to regulate it.

Tracy Hughes and Jim Davis of NMED discussed the manganese standards with the committee. They also noted that they have been working with the Department of Military Affairs to try to reach an agreement on how to approach the WQCC to eventually revise the standard.

Questions and comments included:

- the need for risk-based decisions;
- how manganese is not a health risk;
- the authority of the WQCC;
- the occupational hazard of manganese from inhalation only;
- New Mexico exceeding EPA standards for manganese;
- trace amounts of manganese required in the human diet; and
- the naturally occurring presence of manganese in soil.

The committee adjourned at 5:05 p.m.