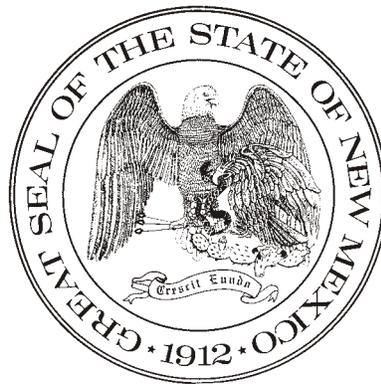


**NEW MEXICO STATE LEGISLATURE
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**2005
INTERIM REPORT**



December 2005

New Mexico Legislative Council Service
411 State Capitol
Santa Fe, New Mexico

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2005 WORK SUMMARY
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

During the 2005 interim, the Radioactive and Hazardous Materials Committee (RHMC) gathered information and heard testimony on numerous environmental and regulatory issues. In July, the committee traveled to Carlsbad and received an update on the status of the Waste Isolation Pilot Plant (WIPP), its permit modifications and hazardous waste shipments and storage. The committee also heard testimony from Louisiana Energy Services and the New Mexico Department of Environment (NMED) regarding the proposed construction of a uranium enrichment plant near Hobbs. During the summer, the committee also considered the impact of mercury emissions in New Mexico.

In the fall, RHMC examined issues concerning the NMED's assumption of primacy over the National Pollution Discharge Elimination System, receiving testimony from numerous industry groups as well as NMED. Additionally, RHMC reviewed the current state of mining in New Mexico, including various mining reclamation projects.

In November, RHMC held a joint meeting with the Los Alamos National Laboratory (LANL) Oversight Committee to gather information on the LANL consent order for environmental remediation and cleanup, LANL's environmental programs, the status of hazardous waste shipments to WIPP from LANL and concerns regarding the change in management contractors at LANL. Also in November, RHMC received testimony from concerned citizens and NMED officials on NMED's revised rules for septic tanks and other sewage treatment and disposal systems.

RHMC endorsed two pieces of legislation for the upcoming 2006 session:

- 1) **The Uniform Environmental Covenants Act (UECA)**
 - UECA provides for enforcement of use limitations on real property due to adverse environmental conditions.
 - UECA helps to return previously contaminated property to the stream of commerce by allowing the owners of that property to engage in responsible cleanups and then transfer or sell the property, subject to approved controls on its use.

- 2) **An Amendment to the Hazardous Waste Act to Allow NMED and a Business that Generates Hazardous Waste or Conducts Hazardous Waste Activities to Enter into a Voluntary Fee Agreement**
 - This bill would allow NMED to enter into a voluntary fee agreement with a business. The agreement would be a substitute for all or some of the fees included in the fee schedule that is set by the Environmental Improvement Board under the act.
 - This amendment arises out of NMED's voluntary fee agreement with LANL for cleanup under the consent order.

Work Plan, Meeting Schedule & Budget

**2005 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

Membership

Sen. Phil A. Griego, Chair
Rep. John A. Heaton, Vice Chair
Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Sen. John T.L. Grubestic
Rep. Manuel G. Herrera
Sen. Gay G. Kernan

Sen. Carroll H. Leavell
Rep. Antonio Lujan
Sen. Richard C. Martinez
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

Advisory Members

Rep. Thomas A. Anderson
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.

Sen. William H. Payne
Sen. John Pinto
Rep. Avon W. Wilson

History

The Radioactive and Hazardous Materials Committee was created in 1979 by Section 74-4A-9 NMSA 1978 to provide a means of coordinating information exchange and developing appropriate state actions in relation to the Waste Isolation Pilot Plant (WIPP) near Carlsbad. The name of the committee was changed in 1983 and again in 1986 to more accurately reflect the scope of the committee's work, which was broadened by the legislature in 1981, 1986 and 1991. Over the years, the committee has continued to receive extensive testimony on a variety of subject matter relating to the environment. For example, in addition to the committee hearing testimony on the progress of WIPP, it has received testimony on air and water quality, solid waste, ground water quality, mining, pipeline safety and other issues that require attention from the legislature in its deliberation of proposed environmental regulation.

Proposed Work Plan

During the 2005 interim, the Radioactive and Hazardous Materials Committee proposes to gather information and hear testimony on numerous environmental issues. With regard to issues relating to waste plants and cleanup, the committee plans to review the status of WIPP and its federal Resource Conservation and Recovery Act of 1976 permit modifications, hear a report from waste control specialists on its waste disposal plant, examine the proposed construction of an uranium enrichment plant near Hobbs and assess the state's recent agreement with Louisiana Energy Services. Furthermore, the committee intends to receive an update on Los Alamos National Laboratory's environmental compliance and federal Department of Energy settlement with the state concerning legacy waste cleanup.

Additionally, the committee proposes to review the organization, structure, budget and

legislative and regulatory initiatives of the New Mexico Department of Environment. The committee plans to hear testimony from various industries throughout New Mexico, including manufacturing, mining, oil and gas and agriculture, and from cities and counties on their interaction with the Department of Environment, the permitting process, oversight issues and environmental impacts. In particular, the committee proposes to consider issues related to the Department of Environment's intention to assume primacy over the federal Environmental Protection Agency's national pollutant discharge elimination system and its implementation and enforcement of newly approved septic tank regulations.

Finally, during its interim meetings the committee also intends to consider the status of Superfund sites in New Mexico under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the environmental impacts of mercury emissions and the use of nuclear and renewable energies. If needed, the committee proposes to develop appropriate legislation for the 2006 legislative session.

2005 APPROVED MEETING SCHEDULE

<u>Date</u>	<u>Location</u>
June 20	Santa Fe
July 21-22	Carlsbad/Hobbs
September 20	Los Alamos
October 11	Santa Fe
November 21	Santa Fe

Agendas

Revised: June 20, 2005

TENTATIVE AGENDA
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

June 20, 2005
Room 317, State Capitol

Monday, June 20

- 9:30 a.m. **Call to Order**
 —Senator Phil A. Griego, Chair
- 9:45 a.m. **Development of 2005 Interim Work Plan, Meeting Schedule and Budget**
- 10:45 a.m. **Public Comment**
- 11:00 a.m. **Adjourn**

Revised: July 13, 2005

TENTATIVE AGENDA
for the
SECOND MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

July 21 and 22, 2005
Pecos River Village Conference Center, Room #5
711 Muscatel Avenue, Carlsbad
and
Moran Multipurpose Room, New Mexico Junior College
5317 Lovington Highway, Hobbs

Thursday, July 21 - Pecos River Village Conference Center, Carlsbad

- 10:00 a.m. **Call to Order**
 —Senator Phil A. Griego, Chair
- Waste Isolation Pilot Project (WIPP): Status, Permits, Updates**
 —Roger Nelson, Chief Scientist
- 11:00 a.m. **New Mexico Department of Environment: WIPP Status, Permits, Updates**
 —Ron Curry, Secretary of Environment/Designee
- 12:00 noon **Lunch**
- 1:30 p.m. **Carlsbad Environmental Monitoring and Research Center Report**
 —Jim Conca, Director
- 2:00 p.m. **Center for Excellence for Hazardous Materials Management Report**
 —William T. Bartlett, Executive Director
- 2:30 p.m. **Potash Mining in Carlsbad: Overview, Solution Mining and Environmental Impacts**
 —Scott Vail, Manager of Safety and Environment, Mosaic Potash Carlsbad, Inc.
 —Randy Foote, General Manager, Intrepid Mining NM, LLC
 —Steve McCutcheon, Potash Association of New Mexico
- 3:30 p.m. **Mercury Emissions Standards in New Mexico**
 —Ron Curry, Secretary of Environment/Designee

4:30 p.m. **Recess**

Friday, July 22 - New Mexico Junior College, Hobbs

9:00 a.m. **National Enrichment Facility Status: Report from Louisiana Energy Services (LES)**
—Marshall Cohen, Vice President, LES

10:00 a.m. **New Mexico Department of Environment: New Mexico's Agreement with LES**
—Ron Curry, Secretary of Environment/Designee

11:00 a.m. **Waste Control Specialists Report**
—Dean Kunihiro, Senior Vice President for Licensing and Regulatory Affairs

12:00 noon **Adjourn**

- 3:00 p.m. **Airborne Spectral Photometric Environmental Collection Technology
and Other LANL Support to the Hurricane Katrina Response**
—Dr. J. Wiley Davidson, Director, Center for Homeland Security, LANL
- 4:00 p.m. **Coalition for LANL Excellence**
—Joe Ladish
—Robert Gibson
- 4:30 p.m. **Adjourn**

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**November 21, 2005
Room 307, State Capitol**

Monday, November 21

- 10:00 a.m. **Call to Order**
—Senator Phil A. Griego, Chair
- New Mexico Department of Environment: Budget Overview**
—Ron Curry, Secretary of Environment
- 11:30 a.m. **Recycling and Disposal of Electronic Waste: Task Force Report**
—E. Gifford Stack, Manager, Outreach, Solid Waste Bureau
- 12:00 noon **Lunch**
- 1:30 p.m. **New Mexico Department of Environment: Overview of Revised Rules
for Septic Tanks and Other Sewage Treatment and Disposal Systems**
—Ron Curry, Secretary of Environment
- 2:30 p.m. **Consent Order on Environmental Remediation for Sandia National
Laboratories**
—James Bearzi, Bureau Chief, Hazardous Waste Bureau
—Fran Nimick, Environmental Restoration Project Manager, Sandia
National Laboratories
- 3:15 p.m. **Climate Change in New Mexico**
—Jim Norton, Director, Environmental Protection Division
- 4:00 p.m. **Consideration of Legislation**
- 4:50 p.m. **Public Comment**
- 5:00 p.m. **Adjourn**

Minutes

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

**June 20, 2005
Room 317, State Capitol
Santa Fe**

The first meeting of the Radioactive and Hazardous Materials Committee was called to order by Senator Phil A. Griego, Chair, on Monday, June 20, 2005, at 9:50 a.m. in Room 317 at the State Capitol in Santa Fe.

PRESENT

Sen. Phil A. Griego, Chair
Rep. John A. Heaton, Vice Chair
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Richard C. Martinez
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

ABSENT

Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Sen. John T.L. Grubestic
Rep. Antonio Lujan

Advisory Members

Rep. Thomas A. Anderson
Sen. John Pinto

Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Rep. Avon W. Wilson

Staff

Evan Blackstone
Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Committee Business

Senator Griego welcomed committee members and guests and asked the members of the committee to introduce themselves.

Development of 2005 Interim Work Plan, Meeting Schedule and Budget

Staff informed the committee that the Los Alamos National Laboratory Oversight Committee requested a joint meeting with the Radioactive and Hazardous Materials Committee to be held in September in Los Alamos.

The committee selected the following meeting dates and locations:

July 21-22	Carlsbad/Hobbs
September 20	Los Alamos (joint meeting with the Los Alamos National Laboratory Oversight Committee)
November 21-22	Santa Fe

The committee then developed a work plan. Members of the committee requested that certain topics be placed on the agenda. The committee also had input from guests present in the audience. Senator Griego noted that the work plan contained a large number of items and suggested that the committee request meeting dates in October from the Legislative Council.

The committee adjourned at 11:10 a.m.

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

**July 21, 2005
Pecos River Village Conference Center
Carlsbad**

**July 22, 2005
New Mexico Junior College
Hobbs**

The second meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:05 a.m. on Thursday, July 21, 2005, by Representative John A. Heaton, vice chair.

Present

Rep. John A. Heaton, Vice Chair
Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Rep. Richard C. Martinez
Rep. Jim R. Trujillo

Absent

Sen. Phil A. Griego, Chair
Sen. John T.L. Grubestic
Rep. Jeannette O. Wallace

Advisory Members:

Rep. Thomas A. Anderson
Sen. Mary Jane M. Garcia

Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto
Rep. Avon W. Wilson

Staff

Evan Blackstone
Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Thursday, July 21- Pecos River Village Conference Center, Carlsbad

Representative Heaton began by providing members of the committee and the audience with a brief history of the committee and asked the members of the committee and staff to introduce themselves.

Waste Isolation Pilot Project (WIPP): Status, Permits, Upgrades

Roger Nelson, chief scientist at WIPP, provided the committee with an update on the workings of the facility. He discussed waste shipments received and placed in storage by WIPP in underground disposal panels. Mr. Nelson described that once a panel is halfway full, WIPP begins to mine a new panel and seals a panel when it is completely full. WIPP currently is conducting activities in four disposal panels, and Mr. Nelson updated the committee on the fill status of the panels.

Mr. Nelson explained that under WIPP's current permits, it can only manage, store and dispose of contact-handled transuranic mixed waste. However, he noted that WIPP has a permit modification request pending with the New Mexico Department of Environment (NMED) for approval to accept and store shipments of remote-handled waste, which requires significantly more care in handling. Mr. Nelson clarified that waste storage plans dictate that remote-handled waste must be placed at the back of a storage room and that contact-handled waste is then placed in front of it. He also pointed out that it would be helpful if the application to receive remote-handled waste is approved by NMED in the near future to allow WIPP staff to place the remote-handled waste in the rooms of the panel they are currently mining. Mr. Nelson also stated that WIPP has also applied for a number of other permit modifications, including modification requests for hazardous waste disposal units and air monitoring systems.

Finally, Mr. Nelson discussed incoming shipments to the facility from other sites. He stated that the Department of Energy (DOE) facility in Idaho currently sends the largest number of shipments. He also specified that since shipments from the Idaho facility require the use of most of the trucks designed to transport WIPP shipments, transportation resources are scarce to make shipments from other sites such as Los Alamos National Laboratory (LANL).

Questions and comments focused on:

- the definition of "planned exposure to radiation";
- the security plan in place for the WIPP facility;
- high-level waste at LANL, which will never find its way to WIPP;
- the differences between high- and low-level waste;
- the reason for empty drums stacked on top of drums full of waste; and
- the safety of the facility from natural disasters.

NMED: WIPP Status, Permits, Upgrades

Ron Curry, secretary of environment, Cindy Padilla, NMED Water and Waste Management Division director, and James Bearzi, NMED Hazardous Waste Bureau chief, provided the committee with a summary of the status of WIPP's request for permit modifications.

They explained that WIPP must obtain permits from many separate NMED bureaus and that WIPP has submitted 78 separate permit modification requests (PMRs). Secretary Curry stated that NMED dedicates a significant amount of time and resources to the WIPP project on an annual basis.

Mr. Bearzi gave an overview of the NMED hazardous waste permitting process and discussed several of the PMRs received from the DOE regarding WIPP. He noted that a number of the PMRs for remote-handled waste that had been returned by NMED to the DOE for deficiencies has been consolidated into one large PMR that is currently in the public comment period of the permitting process. He also explained that NMED is not directly involved with the facilities sending shipments to WIPP. Instead, WIPP conducts audits at the waste production sites and NMED observes those audits. Mr. Bearzi went on to explain that most of WIPP's PMRs have been addressed in an attempt to devote more resources to Section 311 of the WIPP permit, which would allow the facility to receive remote-handled waste.

Finally, NMED staff discussed waste issues at LANL, noting that some high-level waste in old dumps still exists at the laboratory, as well as a significant amount of low-level waste.

Questions and comments included:

- whether consolidating PMRs expedites the process; and
- the nature of state authority over WIPP and LANL.

Carlsbad Environmental Monitoring and Research Center Report

Jim Conca, director of the Carlsbad Environmental Monitoring and Research Center (CEMRC), provided the committee with an overview of the programs and goals of the center. He explained that the CEMRC mission was originally to implement an independent health and environmental monitoring program in the WIPP vicinity. The goals of the program are to detect releases from WIPP that are below compliance levels and to evaluate potential sources of exposure to the public. Mr. Conca stated that from the scientific data of the program, the CEMRC has concluded that there has been no detectable radiological effects or detrimental public health impact from the WIPP project.

Mr. Conca also gave the committee an overview of the CEMRC's current homeland security program that researches the effects of "dirty bombs" and the need for emergency response. He noted that the CEMRC is ideally suited to handle the scientific and training issues associated with dirty bombs. The CEMRC provides dirty bomb training for military and civilian first responders and has a dirty bomb test center.

Questions and comments focused on:

- which entities pay for first responder training;
- whether materials from WIPP could ever be used to construct a dirty bomb;
- the relationship of CEMRC to New Mexico State University; and
- the emotional issues associated with dirty bombs and radioactivity in general.

Center for Excellence for Hazardous Materials Management Report

William T. Bartlett, executive director of the Center for Excellence for Hazardous Materials Management (CEHMM), provided the committee with an update on the center. He explained that the CEHMM was founded with the intention of becoming a national and international leader in the field of managing hazardous waste, but that CEHMM also conducts various other kinds of research projects. Mr. Barlett discussed the objectives and funding and gave an overview of some of CEHMM's current projects, such as a captive breeding program for the lesser prairie chicken that is intended to help keep the bird off the endangered species list. Finally, Mr. Bartlett discussed a number of proposed projects involving the CEHMM in the fields of education, information technology, air monitoring standards, environmental and occupational toxicology and water.

Questions and comments focused on:

- how the community of Carlsbad has used cluster-based economic development and the presence of the WIPP site to build an industry based on hazardous material management.

Potash Mining in Carlsbad: Overview, Solution Mining and Environmental Impacts

Scott Vail, manager of safety and environment at Mosaic Potash Carlsbad, Inc., and David Waugh, also a representative of Mosaic Potash, provided the committee with an overview of potash mining in southeastern New Mexico. Mr. Waugh emphasized the importance of potash mining as providing a valuable mined commodity as well as an industry that employs a large number of people in southeastern New Mexico. He also pointed out that New Mexico accounts for more than 70 percent of the potash production in the United States. Mr. Waugh noted that a concern is that increased oil and gas drilling has made potash mining in rapidly expanding areas impossible. He stated that potash must be mined before oil and gas holes can be drilled and the potash industry faces a challenge because of this conflict.

Mr. Vail also commented on the importance of the potash mining industry as a producer of a valuable commodity, as an employer of a large work force and as a good corporate citizen of New Mexico. He also discussed the potential assumption of primacy by NMED over the federal Clean Water Act. He emphasized that if the legislature were to consider allowing NMED primacy over the enforcement of the federal Clean Water Act, close attention would have to be paid to the wording of such legislation to ensure that industries such as potash mining would not be adversely affected.

Randy Foote, general manager of Intrepid Mining NM, LLC, Hugh Harvey, also with Intrepid, and Steve McCutcheon, Potash Association of New Mexico, discussed the benefits of solution mining for potash in New Mexico. He explained that conventional mining techniques require that large deposits of potash remain in the mine to prevent it from collapsing and that solution mining consists of flooding old mines with water to dissolve those deposits and pumping the water into shallow lakes and allowing it to evaporate, leaving behind potash that would otherwise be unreachable.

Questions and comments focused on:

- the value of potash mining to the Carlsbad community;
- the economics of conventional versus solution mining;
- the compatibility of solution mining with the oil and gas industry;
- byproducts of solution mining;
- whether the legislature can help with the conflict between the potash mining industry and the oil and gas industry;
- types of NMED permits required for solution mining; and
- whether produced water from oil and gas mining can be used for solution mining.

Mercury Emissions Standards in New Mexico

Jim Norton, director of NMED's Environmental Protection Division, provided the committee with an overview of levels of mercury emissions in New Mexico and public health concerns. He explained that coal-fired power plants in New Mexico emit more mercury than those in any other western state and that those emissions could lead to increased mercury levels in New Mexico's waterways. Mr. Norton pointed out the amount of mercury in fish in New Mexico's lakes can be an indicator of levels of mercury in the air. To illustrate, he presented graphs showing the mercury levels in various species of fish caught in a number of lakes across the state, many of which are significantly higher than the Environmental Protection Agency's (EPA) health threshold for mercury. Mr. Norton also informed the committee that coal-fired power plants in New Mexico are not the only ones emitting high levels of mercury. He also stated that while power plants in the Navajo Nation also emit very high levels of mercury, emissions from power plants in China can also find their way to New Mexico.

Mr. Norton went on to discuss plans to address high mercury emissions, particularly the EPA's cap and trade process, which would allow plants with low mercury emissions to sell credits to those with higher ones. He noted that the cap and trade process has been heavily criticized and that some states have sued the EPA over the cap and trade issue.

Finally, Mr. Norton pointed out that the Public Service Company of New Mexico (PNM) has voluntarily placed state-of-the-art mercury controls on its San Juan generating plant, which could result in an 85 percent reduction in that plant's mercury emissions.

Questions and comments focused on:

- ways of forcing the power plants on the Navajo Nation to lower their mercury emissions;
- health effects of mercury on children; and
- sources of mercury other than power plants.

Friday, July 22 - New Mexico Junior College, Hobbs

National Enrichment Facility Status: Report from Louisiana Energy Services

Marshall Cohen, vice president of Louisiana Energy Services (LES), provided the committee with an update on the proposed national uranium enrichment facility to be built

outside of Eunice, New Mexico. He explained that enriched uranium is an essential component of commercial nuclear power plants and gave the committee a brief overview of how the uranium enrichment process works.

Mr. Cohen went on to discuss the proposed National Enrichment Facility (NEF), an 80,000-square-foot structure that will cost \$1.4 billion to construct. He stated that Lea County provides the stable seismic environment, property size, moderate climate, power supply access and skilled work force that construction of the site would require. Mr. Cohen also discussed regulation of the NEF, explaining that while the United States Nuclear Regulatory Commission (NRC) would be responsible for licensing the NEF, NMED would also play a significant role in providing the facility with several required permits, such as ones for ground water, X-rays, hazardous materials and storm water pollution prevention. He pointed out that LES had submitted its application to NMED to operate the NEF in December 2003 and is hopeful it will obtain its license by spring 2006.

Mr. Cohen also discussed the estimated time line for construction of the facility, noting that architects were currently designing plans for the facility, with actual construction to begin in August 2006 and enrichment to begin near the end of 2008. He noted that, by 2013, the facility should reach its capacity for centrifuges. Mr. Cohen further explained that the recently released final environmental impact statement for the facility concluded that the NEF would have minimal environmental impact on the region. Mr. Cohen also informed the committee that a safety evaluation report for the NEF concluded that facility operations will not pose a risk to worker safety. Mr. Cohen emphasized that a large number of various construction jobs would be available to local citizens during the construction of the NEF and that the facility would also require operators once it was completed and functional.

Finally, Mr. Cohen discussed elements of a settlement agreement between LES and NMED regarding the on-site storage of cylinders containing uranium byproduct. He explained that the settlement agreement contains the number of cylinders that LES can store at the facility, the length of time the cylinders can remain at the site and the method of disposal.

NMED: New Mexico's Agreement with LES

Secretary Curry, Cindy Padilla, Bill Olsen, bureau chief of NMED's Ground Water Quality Bureau, and Tannis Fox, NMED's Office of General Counsel, participated in NMED's presentation to the committee regarding the NEF. Secretary Curry emphasized that the NMED has continued to request that LES be transparent during the permitting process and that LES be committed to the state of New Mexico.

Mr. Olsen stated that numerous NMED permits would be required for LES to operate its facility, and he provided the committee with a brief overview of the NMED permitting process. He informed the committee that a permit is pending with NMED for ground water discharge. That permit has four major components that include a storm water detention basin, a uranium byproduct cylinder, a treated effluent evaporated basin and six septic tank leachfields. He also pointed out that without NMED primacy over some permits, such as storm water runoff permits

for construction and discharge permits, LES would have to also seek permits from the EPA Region 6 Office in Dallas.

Secretary Curry also stated that there are remaining issues that have not been settled between NMED and LES regarding the NEF. He explained that there is some disagreement regarding how many uranium byproduct cylinders would be stored at the facility and how long those cylinders would be stored. Secretary Curry again emphasized the need for LES to be transparent during the negotiating process.

Questions and comments focused on:

- EPA Region 6 permitting for surface water;
- acreage of ponds located at the NEF facility;
- public notice periods for NMED permitting and public hearings;
- New Mexico's involvement in the Rocky Mountain Low-Level Waste Compact;
- issues regarding disposal of LES waste;
- NRC approval required of the agreement between New Mexico and LES;
- the ability of NRC to enforce provisions in the agreement;
- the definition of "significant public interest"; and
- the importance of the LES facility to southeastern New Mexico.

Waste Control Specialists Report

Dean Kunihiro, senior vice president for licensing and regulatory affairs at Waste Control Specialists (WCS), provided the committee with an overview of WCS's operation. He explained that the WCS facility is located in Texas close to the New Mexico border. He stated that permits obtained by the company from the state of Texas and the EPA allow it to store, treat and dispose of radioactive materials. Mr. Kunihiro noted that while WCS is not currently permitted to handle low-level radioactive materials, the permitting process to do so is underway and the facility is already receiving some shipments from a DOE facility in Ohio.

Mr. Kunihiro went on to discuss the WCS facility itself, noting that the region's climate, geology and location make it well-suited for its purpose. He also pointed out that the WCS facility receives a tremendous amount of community support.

Questions and comments focused on:

- low-level waste storage at the WIPP site and the WCS facility;
- the difference between low-level waste and transuranic waste; and
- the possibility of the WCS facility handling deconverted waste from the LES site.

There being no further business, the committee adjourned at 11:35 a.m.

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

**September 20, 2005
Santa Fe**

The third meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:05 a.m. on Tuesday, September 20, 2005, by Senator Phil A. Griego, chair.

PRESENT

Sen. Phil A. Griego, Chair
Rep. John A. Heaton, Vice Chair
Rep. Donald E. Bratton
Sen. John T.L. Grubestic
Rep. Manuel G. Herrera
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Richard C. Martinez
Rep. Jeannette O. Wallace

ABSENT

Sen. Vernon D. Asbill
Rep. Antonio Lujan
Rep. Jim R. Trujillo

Advisory Members

Rep. Thomas A. Anderson
Sen. Mary Jane M. Garcia
Rep. Nick L. Salazar

Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto
Rep. Avon W. Wilson

Staff

Evan Blackstone
Gordon Meeks
Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Issues Concerning the New Mexico Department of Environment's Assumption of Primacy over the National Pollution Discharge Elimination System (NPDES)

Randy Traynor, a lobbyist with the New Mexico Home Builders Association and the National Association of Industrial and Office Properties, began his presentation by explaining that numerous industry groups have been meeting over the past 18 months to discuss the complex primacy issue and how it affects their interests. He provided the committee with an overview of the NPDES program and how it is structured. He explained that the system is contained within the federal Clean Water Act and that NPDES permits cover industrial and municipal water discharges, discharges from storm sewer systems in larger cities, storm water

associated with numerous kinds of industrial activity and runoff from construction sites, mining operations and animal feedlots. Mr. Traynor also pointed out the differences between individual and general permits issued under NPDES. He emphasized that while the federal Environmental Protection Agency (EPA) currently handles permit requests for New Mexico out of its Region 6 office in Dallas, Texas, the New Mexico Environment Department (NMED) is seeking authorization from the federal government to issue NPDES permits. If the federal government delegates this permitting authority to NMED, the department would have primacy over the NPDES. Currently, 45 out of 50 states are authorized to administer their own NPDES program.

Next, Mr. Traynor described some of the changes NMED primacy over the NPDES would bring to New Mexico business and industry groups. He explained that NMED must be authorized by the state legislature through a statute to administer the program and the department must promulgate regulations at least as stringent as the federal program. He clarified that NMED plans to phase in primacy over several years and that the department will likely seek statutory authorization to begin phase one from the legislature during the upcoming legislative session. However, Mr. Traynor warned that a number of concerns expressed by New Mexico businesses and industries over how NMED plans to operate the NPDES permitting program have gone unaddressed. He went on to list several of those concerns, including how the state program will be budgeted, how NMED primacy will improve on the federal program and how primacy will influence the daily operations of the New Mexico business and industry groups affected. Mr. Traynor also stated that the EPA does not currently charge for permits and NMED will likely institute permitting fees.

Mike Bowen, executive director of the New Mexico Mining Association, summarized for the committee the mining industry's concerns with NMED assuming NPDES primacy. He echoed Mr. Traynor's concern that NMED may charge permitting fees under a primacy regime while the EPA currently does not charge for permits. However, Mr. Bowen indicated that the mining industry has been invited to work on NPDES primacy issues as part of a working group set up by NMED and continues to work in good faith to resolve problems before enabling legislation is brought.

John Horton, government affairs director for Associated General Contractors, also discussed concerns over NMED assuming primacy over NPDES permitting. He pointed out that the current system, in which contractors file storm water pollution plans for their construction sites with the EPA, seems to work well. Mr. Horton also discussed court decisions from two federal circuits that cited violations of the federal Endangered Species Act in requiring primacy to be transferred back from Louisiana and Arizona to the federal government. Finally, he cautioned the legislature to proceed slowly when considering legislation enabling NMED to take over NPDES primacy from the EPA.

Sharon Lombardi, executive director of the Dairy Producers of New Mexico, discussed the relationship of New Mexico dairy producers to the NPDES permitting process. She explained that some dairy producers are required to have certain permits under NPDES, including concentrated animal feed operation (CAFO) permits and ground water discharge plans. She noted that most producers are applying for a general CAFO permit to cover their operations. However, because the CAFO permit for producers expired in 1998 and the process to obtain a

new CAFO is still ongoing with the EPA, confusion over the waiting period and NMED's intention to gain NPDES primacy has caused several dairies to obtain individual permits.

Walter Bradley, representing the Dairy Farmers of America, expressed to the committee the concern that New Mexico does not have a clear definition of what surface waters of the state are subject to regulation. Mr. Bradley explained the differences between the definition of surface waters under the federal Clean Water Act and the New Mexico Water Quality Act. He stated that while NMED had initially agreed to keep its NPDES regulations as stringent as the federal ones, the state regulatory definition of surface waters is vague and presumably is much more stringent than the federal regulations. Mr. Bradley pointed out that some of the regulatory surface water definition is so broad that it could apply to golf course water hazards and possibly a depression in the middle of the desert that holds rainwater. He emphasized that the dairy farmers and producers he represents will not support NMED primacy over the NPDES system at this time. He urged the committee to consider issues regarding the potential financial and legal liability to the state that could result if there are difficulties in maintaining the program. Mr. Bradley noted that primacy will likely be expensive for New Mexico with a cost of the first phase of the program estimated at between \$700,000 and \$1.4 million.

Mr. Traynor summarized the comments of the previous speakers and emphasized that the legislature should proceed slowly in considering enabling legislation for primacy. He recognized that NMED has been diligent in posting the progress and work of the working group on the internet and thanked NMED for including business and industry in the process. However, he reiterated that the process is cumbersome and more work needs to be done to account for the concerns of the business and industry community.

Questions and comments included:

- whether NMED has the administrative capability to administer the NPDES program;
- intent of primacy and the concerns of the business and industry community;
- whether a need exists for New Mexico to assume primacy;
- whether the EPA is currently meeting the needs of the business and industry community under the current program;
- how New Mexico assuming primacy will improve on the program;
- the time frame for phasing in primacy;
- New Mexico taking more control over surface water as the reason for seeking to assume primacy;
- whether there is a dispute resolution process in EPA Region 6; and
- the need to look at other states' models who have assumed primacy over NPDES.

NMED: NPDES Primacy

Ron Curry, secretary of environment, Cindy Padilla, NMED Water and Waste Management Division director, Brent Moore, NMED Office of General Counsel, and Marcy Leavitt, NMED Surface Water Quality Bureau, provided the committee with further information regarding NMED's intention to assume primacy. They explained the NPDES program and NMED's motive for seeking assumption of primacy. Secretary Curry explained that NMED has been delegated primacy by the EPA for all other areas except for surface water. He emphasized that the issue is simply about providing better protection for New Mexico's surface water.

Secretary Curry clarified that while taking over the NPDES program will require several new full-time positions, resources such as corrective action funds and permit fees will help offset the cost. He also discussed the formation of the NPDES stakeholder work group, which was set up to address concerns such as those expressed by the business community over primacy. Finally, he outlined the potential benefits of NPDES primacy, including improved oversight of New Mexico's surface water resources, increased flexibility in permitting and fines and local oversight over NPDES programs. Furthermore, permit holders would be able to communicate with the NMED office in New Mexico as opposed to having to communicate with the EPA office in Dallas. Secretary Curry pointed out that in the long run, New Mexicans will be better off because NMED will be able to issue permits to fit its needs. Additionally, EPA Region 6 must devote a large number of its resources to Louisiana following the devastation caused by Hurricane Katrina. Secretary Curry concluded by maintaining that NMED has demonstrated it has operated efficiently in other areas where it has primacy and this is a strong reason for NPDES primacy.

Questions and comments included:

- whether NMED's proposed NPDES regulations will be clearly drafted before the legislature is asked to decide on primacy;
- the proposed fee schedule for NPDES permits to be issued by NMED;
- the fact that the Water Quality Commission, which would handle appeals of NMED fines for NPDES violations, is chaired by the secretary of environment and is therefore potentially biased toward the NMED;
- whether New Mexico would receive federal money for assuming primacy; and
- closed surface water basins in New Mexico.

On a motion made, seconded and unanimously approved, the minutes of the July 22-23 meeting were approved as submitted.

Mining Issues in New Mexico

Mike Bowen, executive director of the New Mexico Mining Association, provided an overview for the committee of the various mining operations in New Mexico. He explained that over 11 different minerals are mined in New Mexico, including copper, gold, molybdenum, potash, silver and uranium. Mr. Bowen also provided information regarding the locations of major mining operations in the state and the major mine operators. Finally, Mr. Bowen noted the various taxes paid to the state by the major mine operators in 2004.

Terrell Baker, also of the New Mexico Mining Association, gave the committee an update on the mining reclamation projects and initiatives currently being performed by Phelps Dodge Corporation and Molycorp. He explained that reclamation projects are undertaken by the mining industry pursuant to both the New Mexico Mining Act and other state and federal laws. He highlighted several of the larger mining reclamation efforts underway in the state, including those at Phelps Dodge's Tyrone and Chino mines and Molycorp's Goathill North Rockpile mitigation project.

Tony Trujillo, a lobbyist for Phelps Dodge, discussed several likely legislative issues regarding the mining industry. He pointed out the importance of mining to rural New Mexico and noted that while prices are relatively high for many of the minerals mined in the state, the regulatory climate in New Mexico does not encourage expanded production by the mining industry. Mr. Trujillo went on to discuss legislation likely to be introduced in upcoming legislative sessions that would impact the mining industry, such as the Air Quality Act and Hazardous Waste Act stringency restrictions, NPDES primacy, water use fees, the Accountability in Government Act, tax legislation and the Uniform Environmental Covenants Act.

Questions and comments included:

- reclamation efforts at the Cobre Mine;
- potash mining issues;
- uranium mining and reclamation issues;
- permit processing times; and
- community college training for mining engineers.

Rubber Recycling Solutions

Jerry Woosley, vice president of State Rubber Environmental Solutions, and Darrell Wells, technical representative for Wright Asphalt, described how rubber from recycled car tires can be converted into asphalt. They also noted a number of other uses for recycled rubber, including athletic fields, running tracks and flooring. Mr. Woosley and Mr. Wells also provided the committee with an overview of the rubber recycling process and discussed a number of technical reports detailing how asphalt manufactured with recycled rubber tends to outperform asphalt without rubber in its composition. Finally, they noted that although their respective companies are located in Texas, they are interested in using rubber tires from New Mexico in their products.

Questions and comments included:

- the amount of money in the Tire Recycling Fund and its distribution;
- fees paid by tire dealers to have tires removed from their businesses and whether those fees are passed on to the consumer;
- improvements made in rubberized asphalt; and
- the availability of technical data on the web sites of State Rubber Environmental Solutions and Wright Asphalt.

NMED: Update on Superfund Sites

Cindy Padilla and Bill Olsen, bureau chief of NMED's Ground Water Quality Bureau, updated the committee on the Superfund program activities in New Mexico. They began by providing an overview of the Superfund program, noting that Superfund generally refers to a federal environmental cleanup program to address hazardous substances that have been released into the environment. Mr. Olsen pointed out that although the program is not delegated to the states and is implemented by the EPA, NMED plays a key role in the program by performing site assessment and management assistance. Currently, New Mexico has 12 sites on the Superfund National Priorities List and one that is being considered for proposal to that list. Mr. Olsen provided the committee with a map detailing the location of those sites.

Mr. Olsen then discussed the successes, benefits and challenges regarding the cleanup of Superfund sites in New Mexico. NMED has cleanup activities completed entirely at four sites and partially completed at two sites. Additionally, one of the benefits of the Superfund program is that the availability of federal funds offsets cleanup costs that would otherwise be borne by states or municipalities. However, one of the challenges is that present federal funding levels are insufficient to meet program needs. To illustrate, they provided the committee with examples of the funding requirements for cleanup of several Superfund sites. Finally, Ms. Padilla and Mr. Olsen discussed the status of each of the 12 Superfund sites in New Mexico.

Questions and comments included:

- acronym definitions;
- duties of the Natural Resources Trustee; and
- the origin of contaminants at several specific sites.

There being no further business, the committee adjourned at 5:00 p.m.

**MINUTES
of the
JOINT MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE
and the
LOS ALAMOS NATIONAL LABORATORY OVERSIGHT COMMITTEE**

**November 4, 2005
Conference Center (Room 203AB), Los Alamos Research Park
Los Alamos**

The joint meeting of the Radioactive and Hazardous Materials Committee and the Los Alamos National Laboratory Oversight Committee was called to order at 10:05 a.m. on Friday, November 4, 2005, by Representative Roberto "Bobby" J. Gonzales, co-chair, Los Alamos National Laboratory (LANL) Oversight Committee.

Radioactive and Hazardous Materials Committee

PRESENT

Rep. John A. Heaton, Vice Chair
Rep. Donald E. Bratton
Rep. Manuel G. Herrera
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Sen. Richard C. Martinez
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

ABSENT

Sen. Phil A. Griego, Chair
Sen. Vernon D. Asbill
Sen. John T.L. Grubestic
Sen. Gay G. Kernan

Advisory Members

Rep. Thomas A. Anderson
Rep. Nick L. Salazar

Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto
Rep. Avon W. Wilson

LANL Oversight Committee

PRESENT

Rep. Roberto "Bobby" J. Gonzales, Co-Chair
Rep. Thomas A. Anderson
Sen. Richard C. Martinez
Rep. Jane E. Powdrell-Culbert
Rep. Debbie A. Rodella
Rep. Nick L. Salazar
Sen. William E. Sharer

ABSENT

Sen. Phil A. Griego, Co-Chair
Sen. John T.L. Grubestic
Sen. William H. Payne

Advisory Members

Rep. Ben Lujan

Sen. Ben D. Altamirano

Rep. Jeannette O. Wallace

Sen. Mary Jane M. Garcia
Sen. Stuart Ingle

Staff

Evan Blackstone
Cleo Griffith
Tim Crawford

Guests

The guest list is in the meeting file.

Copies of all the handouts and written testimony are in the meeting file.

Friday, November 4

Welcome

Fran Berting, chair of the Los Alamos County Council, welcomed the committees to Los Alamos and LANL.

Consent Order on Environmental Remediation and Cleanup

Dave McNroy, deputy program director for LANL Environmental Remediation and Surveillance, presented overviews of LANL's environmental remediation program and the LANL consent order. He discussed the major responsibilities of LANL Environmental Remediation and Surveillance, which include investigating and completing remediation of historically contaminated sites and working closely with the Department of Energy (DOE) and the New Mexico Department of Environment (NMED) to ensure that appropriate priorities and approaches are being addressed. LANL has over 800 sites to investigate and remediate, while about 200 sites are still actively being used and will not be remediated. Pursuant to the LANL consent order, cleanup on the sites must be completed by 2015.

Turning to the LANL consent order, Mr. McNroy explained that LANL worked with NMED for three years on the order, beginning in November 2002. After a lengthy negotiation process, the order was finally signed and issued in March 2005. He stated that the purpose of the consent order is to prioritize contamination investigation activities, provide minimum investigation requirements and prescribe cleanup levels and schedules for work plan submittals, reporting and remedy completions. The order contains 100 major milestones that are to be completed by 2015, including deadlines for completion reports at major material disposal areas and aggregate areas. Mr. McNroy pointed out that NMED has already proposed the slippage for some of these milestones. He also informed the committees that the consent order contains standard legal provisions for dispute resolution and covenants not to sue. Mr. McNroy went on

to explain the cost estimates and budget allocations for the LANL consent order. Ninety-three percent of the Environmental Remediation and Surveillance annual budget is devoted to implementation of the order.

Finally, Mr. McInroy reviewed LANL's 2005 accomplishments regarding the consent order and the planned work for 2006. He stated that for 2005, all the consent order milestones for deliverables were achieved on or before their due date, 14 areas of concern were remediated, a high volume of characterization activities were completed and 1,055 inspections were completed at 294 sites. In 2006, LANL plans to execute its fieldwork and reporting as required to meet all the consent order deliverables.

James Bearzi, bureau chief of NMED's Hazardous Waste Bureau, also presented the committees with information on the LANL consent order. According to Mr. Bearzi, NMED's approach to cleanup at LANL is how it can be accomplished in the best interest of the public. He explained that the consent order primarily came about due to the frustration of many entities with the pace of corrective action at LANL. The order accelerates that pace and establishes a framework within which LANL can conduct and report on its investigation and cleanup activities.

Mr. Bearzi also discussed NMED's sources of legal authority under the LANL consent order. These include the New Mexico Hazardous Waste Act (HWA) and the New Mexico Solid Waste Act (SWA). While the consent order relates to corrective action pursuant to the HWA and SWA from LANL's past contamination activities, Mr. Bearzi pointed out that LANL must also take corrective action for its current hazardous waste activities pursuant to its Resource Conservation and Recovery Act (RCRA) permit issued by NMED. Mr. Bearzi went on to review some of the LANL consent order's highlights for the committees. He discussed the order's provisions on ground water contamination investigations and monitoring, cleanup of material disposal areas, the process for investigation and corrective measures and the schedule for completion. Additionally, Mr. Bearzi stated that allowing for public participation in the process is an important part of the order.

Finally, Mr. Bearzi discussed the challenges NMED faces in implementing the consent order. These challenges include the complexity of the order and the LANL facility, unforeseen circumstances and public involvement. Mr. Bearzi emphasized that the primary challenge is the lack of resources in NMED. The Hazardous Waste Bureau does not have enough staff, contractors and funding in its budget for implementation of the order. Because of this problem, NMED and the National Nuclear Security Administration (NNSA) that oversees LANL entered into a memorandum of agreement (MOA) in September 2005 that sets up a funding mechanism for fiscal year 2006 to help the state carry out its regulatory duties. The MOA contains \$1.3 million, which will be deposited in the state's Hazardous Waste Fund for additional personnel and operating costs for NMED. Mr. Bearzi urged the committee to support legislation that codifies these types of agreements.

Questions and comments included:

- the number of deliverables per site and the characterization of sites under the consent order;
- which entity sets the priorities for cleanup under the order;
- what role the Northern New Mexico Citizens Advisory Board plays in the consent order process;
- what type of corrective action LANL takes when contamination migrates to an aquifer;
- how members of the public who are upset with the LANL cleanup can be appeased;
- how much funding NMED needs to keep on track with its regulatory duties under the consent order;
- how much of the cleanup duties has been subcontracted to local small businesses;
- the need of the legislature to review the qualifications of NMED employees working on LANL cleanup;
- discussion of a letter from the committees to the Legislative Finance Committee and the executive, supporting the MOA and the creation of additional full-time employees for the Hazardous Waste Bureau; and
- how much money LANL has spent on cleanup in fiscal year 2006, as opposed to previous years.

Environmental Stewardship Overview

An overview of LANL's environmental stewardship was presented to the committees by Ken Hargis, acting division leader of LANL's Environmental Stewardship Division. He began by discussing LANL's top performance priorities, which include safety, security, compliance and the environment. Specifically, Mr. Hargis explained that his division is responsible for LANL's compliance with state and federal environmental regulations, environmental surveillance, environmental legacy cleanup, pollution prevention, environmental management and legacy waste management. He emphasized that the division consists of environmental professionals who are committed to LANL's mission, to protecting the environment and to working openly with LANL's regulators and the public.

Mr. Hargis next discussed, in detail, LANL's two environmental strategic goals: compliance excellence and continuous risk reduction. To implement the goal of compliance excellence, major air, water and hazardous waste permitting is required for LANL's facilities. Mr. Hargis described the use of LANL's environmental self-assessment program as a tool to ensure compliance for over 400 sites at LANL that store hazardous waste. He also explained that his division conducts numerous reviews of new projects and that management consistently reviews environmental performance. Mr. Hargis pointed out that the volume of hazardous waste sites at LANL makes it difficult to manage; however, he highlighted that NMED inspection results confirm that LANL is improving.

Turning to the goal of continuous risk reduction, Mr. Hargis stated that the division tries to go beyond compliance to improvement of quality of life. For example, LANL is improving staff environmental awareness at the working level and has made commitments for nearly 600 environmental improvement actions. Additionally, LANL is working on aggressive pollution prevention and the laboratory has an on-site recycling center that recycles 60 percent of LANL's

solid waste. Finally, Mr. Hargis discussed how LANL is making efforts to reduce radioactive waste, including transuranic (TRU) and low-level waste, as well as PCBs.

Questions and comments included:

- a request for more specific details of LANL's continuous risk reduction;
- the responsibilities of the Environmental Stewardship Division beyond the boundaries of LANL;
- the type of toxic chemicals used by LANL employees and the procedures for using those chemicals; and
- LANL's measurements on foodstuffs, including the monitoring of bees and honey to determine whether there is contamination.

Northern New Mexico Citizens Advisory Board (NNMCAB)

J.D. Campbell, chairman of the NNMCAB, encouraged the committees to support amendments to the HWA that would allow NMED to use MOAs with individual site operators, in lieu of general fee schedules, as a method of funding cleanup actions. He emphasized that the small staff at NMED would not be able to implement the strict compliance schedule and review process outlined in the consent order. Therefore, permitting NMED to enter into MOAs would provide the necessary funding that NMED needs to fulfill its regulatory duties. Mr. Campbell stated that NMED should also have the authority to hire outside expertise and consultants to aid its work. Additionally, he informed the committees that NNMCAB does not support the DOE's decision to expand low-level radioactive waste disposal to Area G in 2006.

Questions and comments included:

- discussion of NNMCAB's meetings being scheduled to accommodate the public;
- whether NNMCAB has technical expertise on its board;
- the benefits of a third party that oversees NMED, LANL and DOE and that reports back to NNMCAB;
- whether NNMCAB is wholly independent from DOE if appointed by DOE; and
- how NNMCAB is funded.

Water Quality Program

Steven R. Rae, group leader, LANL Water Quality and Hydrology Group, presented an overview of LANL's water quality compliance activities. Mr. Rae reviewed the group's broad responsibilities and LANL's various water permits regarding effluents and storm water. He explained that the National Pollutant Discharge Elimination System (NPDES) outfall permit is one of the main permits that regulates 17 LANL outfalls, including its sanitary wastewater treatment plant and its radioactive liquid waste treatment facility. The group also works on compliance for LANL's multiple storm water permits, including a multi-sector general storm water permit that encompasses 27 operating facilities and 17 storm water construction permits for 45 construction sites. Mr. Rae informed the committees that LANL signed a Federal Facilities Compliance Agreement (FFCA) in February 2005 and has worked closely with NMED on locating storm water runoff sites at or near the laboratories.

Mr. Rae summarized the group's water protection and monitoring activities. These include compliance with dredge and fill permits, maintenance of aboveground storage tanks and

the development of containment plans for spills. In addition, Mr. Rae described LANL's progress on the ground water monitoring portion of the LANL consent order and informed the committees that his group submitted a site-wide monitoring plan in May 2005. Furthermore, his group performs environmental surveillance reports for ground water, surface water and sediments.

Finally, Mr. Rae outlined the water quality goals and achievements and the remaining permit issues of the LANL group. He stated that the reduction of outfall types over the past decade has reduced NPDES compliance violations. Additionally, LANL is maintaining 91 percent storm water construction permit compliance for 2005. Lastly, LANL is expecting a new NPDES outfall permit to be issued by the Environmental Protection Agency (EPA) in 2005.

Questions and comments included:

- the volume of water migrating from LANL discharges into the Rio Grande;
- the type of containment structures surrounding LANL's aboveground storage tanks;
- how far south on the Rio Grande the LANL group conducts its monitoring activities;
- the extent of contamination from the Cerro Grande fire on the upstream and downstream areas of LANL; and
- how NMED primacy over the NPDES program would impact LANL.

Air Quality Program David P. Fuehne, acting group leader, LANL Air Quality and Meteorology Group, stated that his group's responsibilities are divided into regulatory services and environmental surveillance. With regard to regulatory services, the group is in charge of ensuring LANL's compliance with the New Mexico Administrative Code and with the permits issued under Title V of the Clean Air Act that include regulation of LANL's radioactive air emissions. Mr. Fuehne explained that LANL has 28 stacks that are continuously monitored for radioactive emissions and 80 non-monitored stacks that do not meet EPA's threshold for monitoring. The group also uses ambient air monitoring stations to measure radioactivity in the air around LANL.

Mr. Fuehne also reviewed his group's environmental surveillance programs that evaluate laboratory impacts on air pathways, identify areas for operational improvements and produce an annual environmental surveillance report. He pointed out to the committees that a typical New Mexico resident is exposed to about 400 millirem of background radiation and that LANL operations contribute, at most, an additional 10 millirem to the public. Mr. Fuehne went on to summarize the group's meteorology program, which provides ozone assessment to the Four Corners region, and the ambient air monitoring program, which monitors about 50 locations in and around Los Alamos County for radionuclides. As a final point, Mr. Fuehne discussed the group's issues currently in progress with NMED, including open burn permits, Title V permit modifications and working with NMED on enforcement interactions.

Questions and comments included:

- what circumstances led to an increase in 2005 of the off-site dose level of radioactive air emissions from LANL;

- LANL's pit productions and what effect they have on an increase in air emissions; and
- how far outside the boundaries of LANL that air monitoring is conducted.

WIPP Shipments and Legacy Waste Status

The committees received a status report on LANL's legacy waste and shipments to the Waste Isolation Pilot Plant (WIPP) from Tom Starke, acting deputy program director of the LANL Legacy Waste Disposition Project. Mr. Starke began by explaining that since 1997, LANL has been required to dispose of its TRU waste. Most recently, pursuant to the LANL consent order, LANL must dispose of its TRU waste from Area G by 2015. Consequently, Mr. Starke stated that the mission of the Legacy Waste Disposition Project is to dispose of legacy mixed low-level and TRU wastes located at Area G in order to reduce the risk to the nearby community of White Rock and so that the environmental corrective actions can be completed by 2015, thereby ensuring LANL compliance with the LANL consent order.

Mr. Starke next reviewed the kinds of legacy waste at LANL and how the waste is characterized, repackaged and shipped to WIPP. He pointed out that the hottest type of radioactive waste at LANL, remote-handled waste (RHW), cannot yet be shipped to WIPP because the WIPP facility is waiting on a permit modification from NMED that will allow WIPP to receive and store RHW. Mr. Starke also discussed LANL's shipping schedule of TRU waste to WIPP in relation to other DOE sites that ship TRU waste to WIPP. Since resuming its shipments in April 2005, LANL has made 37 shipments to WIPP that consist of 832 drums of TRU waste; Mr. Starke emphasized that this volume of shipments measures as the best rate in LANL's history. Although LANL will be making a small number of shipments to WIPP from October through December 2005 due to the large volume of waste WIPP will be receiving from other DOE sites, he pointed out that LANL shipments will increase for 2006.

Mr. Starke went on to summarize the partnership, roles and responsibilities of LANL and the Carlsbad Field Office Central Characterization Project (CBFO-CCP) for shipments to WIPP. LANL undertakes the preparation of drums for shipment, and the CBFO-CCP characterizes, certifies and ships the waste. He praised the work of the CBFO-CCP and stated that LANL has taken advantage of CBFO-CCP's waste management expertise and is making many improvements to the shipment process. Mr. Starke accentuated the need for WIPP's permit modification to store RHW in order to make shipments more efficient and to move more waste off the LANL site.

In closing, Mr. Starke highlighted LANL's and CBFO-CCP's excellent partnership, their accomplishments for 2005 and the work plan deliverables for 2006. Key points raised by Mr. Starke were the resumption of TRU waste shipments in 2005, the planned increase in shipments to WIPP in 2006 and achieving permit modifications for RHW.

Questions and comments included:

- what percentage of radioactive waste is shipped from other locations to LANL to be received and processed;
- the receipt of waste from sites in Idaho and the volume of characterization performed at LANL;

- what happens to the storage of liquid waste; and
- the estimated time frame to complete hearings on the permit modifications for RHW.

Airborne Spectral Photometric Environmental Collection Technology and Other LANL Support to the Hurricane Katrina Response

The director of the Los Alamos Center for Homeland Security, Dr. J. Wiley Davidson, provided the committees with a presentation on LANL's integrated reachback activities for hurricanes Katrina and Rita. Integrated reachback activities are the on-call, real-time analytical support provided in situations ranging from natural disasters to weapons of mass destruction incidents. Dr. Wiley explained that one of LANL's integrated reachback activities is airborne spectral photometric environmental collection technology (ASPECT). ASPECT is airplane-borne and uses detection and imaging capabilities to identify chemicals in the atmosphere. The EPA operates the plane that employs ASPECT; however, LANL provides emergency response data analysis to state and local first responders. The technology looks at emissions made from the ground as the plane performs multiple passes over a particular site. Dr. Wiley emphasized that this data is extremely valuable for chemical terrorist attacks, as well as natural disasters such as hurricanes Katrina and Rita. To date, the ASPECT aircraft has responded to over 40 incidents nationwide and has directly supported the United States Secret Service during the last eight national special security events.

Dr. Wiley went on to discuss in detail how ASPECT was used in response to hurricanes Katrina and Rita. For hurricane Katrina, ASPECT made 14 flights over New Orleans, three flights over Mississippi and three flights over southern Louisiana. During those flights, ASPECT detected five fires in New Orleans, performed imagery of numerous railcar locations, found hot railcars and located missing chemical tanks blown away from facilities. The data helped the EPA, the city of New Orleans, the National Guard and the state of Louisiana develop action items for addressing the disaster. For hurricane Rita, Dr. Wiley stated that the ASPECT deployment was still ongoing, but that the plane had made seven flight runs over Texas and three flight runs over Louisiana. The ASPECT had located and analyzed emissions from multiple fires, as well as plumes released from facilities in the Port Arthur and Beaumont areas. As with hurricane Katrina, the data was used to assist rapid assessment teams, the EPA, the Federal Emergency Management Agency and the states of Texas and Louisiana in responding to Rita.

Questions and comments included:

- whether ASPECT can be used from a satellite instead of an aircraft;
- how close the ASPECT aircraft has to be to plumes for detection and analysis; and
- what agency deploys ASPECT.

Coalition for LANL Excellence (CLE)

Robert Gibson and Joe Ladish, members of CLE, expressed their concerns to the committees regarding the impending change in management contractors at LANL. They explained that CLE was formed in response to the perceived need to address issues concerned with the rebidding of the LANL contract. CLE is primarily concerned about maintaining the

ability of LANL to carry out its mission and conduct excellent scientific research programs by providing the incentives necessary to attract and retain the best talent.

Mr. Gibson and Mr. Ladish described the details of the contract transition process for the committees and said that the mission of LANL is likely to be redefined during that process. They emphasized that any loss of LANL-related jobs will have a detrimental economic impact throughout northern New Mexico and that LANL employees are currently experiencing anxiety and stress over this uncertainty. To ensure a positive end result in the contract transition process, Mr. Gibson and Mr. Ladish stated that a number of important stakeholders will have to be involved. They indicated to the committees that the New Mexico Legislature's role in state government policy will play an important part in shaping the future of LANL. Both presenters stressed that LANL is a national treasure and an important local employer. They urged that the committees help affect the contract transition process in a manner that leads to a good result for LANL's employees and the local community.

Questions and comments included:

- how CLE views the state legislature's role after the contract is awarded; and
- the impact of the gross receipts tax on the contract transition process.

Other Committee Business

The minutes of the September 20, 2005 Radioactive and Hazardous Materials Committee meeting were approved as written, by unanimous consent.

The minutes of the August 24, 2005 LANL Oversight Committee meeting were approved as written, by unanimous consent.

There being no further business, the committees adjourned at 4:25 p.m.

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

**November 21, 2005
Santa Fe**

The fifth meeting of the radioactive and hazardous materials committee was called to order at 10:10 a.m. on Monday, November 21, 2005, by Senator Phil A. Griego, chair.

Present

Sen. Phil A. Griego, Chair
Rep. John A. Heaton, Vice Chair
Rep. Donald E. Bratton
Rep. Manuel G. Herrera
Sen. Carroll H. Leavell
Sen. Richard C. Martinez
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

Absent

Sen. Vernon D. Asbill
Sen. John T.L. Grubestic
Sen. Gay G. Kernan
Rep. Antonio Lujan

Advisory Members

Rep. Thomas A. Anderson
Rep. Nick L. Salazar

Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto
Rep. Avon W. Wilson

Staff

Evan Blackstone
Jeret Fleetwood

Guests

The guest list is in the meeting file.

Monday, November 21

Committee Business

Evan Blackstone, staff attorney for the committee, presented the committee with a draft of a letter to the legislative finance committee (LFC) expressing support for the New Mexico department of environment's (NMED) base budget expansion request that adds more employees to the hazardous waste bureau. James Bearzi, chief of NMED's hazardous waste bureau, explained that the expansion is necessary for NMED to carry out its regulatory obligations and ensure that the Los Alamos national laboratory (LANL) properly proceeds with its cleanup of contaminated legacy waste sites pursuant to a federal consent order. Revenues to support the requested staff expansion have been provided to NMED pursuant to a memorandum of

agreement between NMED and the federal department of energy executed on September 27, 2005. The expansion of the base program is estimated to cost an additional \$663,700 and will provide five new positions to oversee corrective action orders and permits with LANL. Members of the committee stated the draft of the letter should be amended to include the exact number of employees being added to the hazardous waste bureau and the cost. With these changes, the letter was approved by unanimous consent.

NMED: Budget Overview

Jim Perry, division director of NMED's administrative services division, provided a brief overview of the NMED budget requests for the upcoming legislative session. He explained that a recent audit exposed some problems with NMED's accounting practices, but that a fair amount of work has been done to resolve those issues and the NMED books are now transparent. Mr. Perry went on to note that the NMED budget would be basically flat, but that the expansion request for the cleanup of LANL and an increase in group health insurance for the agency would account for a slight increase in the NMED budget. The committee asked Mr. Perry about staffing increases and whether some salaries were paid out of the corrective action fund. The committee suggested that a more specific presentation by NMED on its budget would help the committee understand the details of NMED's 2007 budget request; without a more detailed presentation, the committee is unable to express its support for NMED's budget to the LFC.

Recycling and Disposal of Electronic Waste: Task Force Report

E. Gifford Stack, manager of outreach for NMED's solid waste bureau, and Justin Stockdale of the Santa Fe solid waste management agency provided the committee with a summary of the interim work completed by a task force studying the disposal of electronic waste. Mr. Stack explained that Senate Joint Memorial 9, passed during the 2005 legislative session, called on the secretary of environment to form a task force to explore the issue of recycling and disposal of electronic waste and to make recommendations. Mr. Stack clarified that while there are a number of definitions of electronic waste, the task force chose to focus primarily on computer systems, such as central processing units, monitors or cathode ray tubes (CRTs) and peripherals (such as printers and keyboards). Mr. Stack went on to describe that electronic waste poses some environmental risks, such as those from the lead found in color CRTs. Next, Mr. Stack and Mr. Stockdale pointed out that while it is currently unclear exactly how much electronic waste finds its way into municipal landfills, estimates place the amount somewhere between 1.5 and four percent of the total municipal solid waste stream.

Mr. Stockdale next discussed the means of disposing and recycling electronic waste that were explored by the task force. He pointed out that while no federal regulations currently exist on the subject, a number of states have addressed the issue through their laws, with California implementing the most progressive measures. Mr. Stockdale noted that California residents are charged a fee when they purchase items such as computers that will eventually wind up as electronic waste, and that those fees go into a fund set up for the recovery, recycling and disposal of electronic waste. He pointed out that while such a program might not work in New Mexico, a voluntary program for residents to turn in electronic waste would help address the issue here. Mr. Stockdale discussed a "hub and spokes" model, whereby rural communities bring their electronic waste to a centrally located, larger community for disposal. He noted that such a model would likely be a good fit for a state with many rural areas like New Mexico.

Other recommendations made by the task force include a strong education program about proper disposal of electronic waste; a pilot program to assess the viability of the hub and spokes model of gathering electronic waste from New Mexico communities; and having local and national retailers promote electronic waste recycling.

Questions and comments included the:

- ability of small, rural communities to gather and transport electronic waste to hub sites;
- effectiveness of large businesses in disposal of electronic waste;
- membership of the task force;
- representation of small communities on the task force, such as the New Mexico association of counties; and
- economics of electronic waste disposal programs.

Consideration of Legislation

The committee discussed and endorsed the following bills for introduction in the next legislative session:

1. Uniform Environmental Covenants Act: this act would provide for enforcement of use limitations on real property due to adverse environmental conditions; and
2. amendments to the Hazardous Waste Act: this bill would allow NMED to enter into a voluntary fee agreement with a business that would be a substitute for all or some of the fees included in the fee schedule that is set by the environmental improvement board under the act.

NMED: Overview of Revised Rules for Septic Tanks and Other Sewage Treatment and Disposal Systems

Ron Curry, secretary of environment, Anna Marie Ortiz, Dennis McQuillan and Brian Shaw, also of NMED, summarized the recently revised rules adopted for septic tanks and discussed other developments regarding septic tank system regulation by NMED. They explained that septic systems are the leading cause of ground water contamination and that only about half of the septic systems in New Mexico have a permit. Ms. Ortiz noted that while a septic tank is a safe means of on-site sewage treatment if conditions are suitable, too many tanks in a small area can overload the ability of the earth to purify the sewage. She provided the committee with examples of improperly sited or illegal septic systems and some of the problems such systems can cause.

Ms. Ortiz and Mr. McQuillan went on to discuss the major rule changes NMED has made regarding septic systems. They pointed out that standards have been set, permitting processes have been put in place and requirements for property transfer inspections have been implemented. Ms. Ortiz went on to discuss the development of advanced septic treatment systems and how such systems often help property owners meet NMED's septic system requirements because traditional ones simply will not work in all applications.

Randy Traynor, lobbyist for the New Mexico homebuilders association, discussed some of the problems homebuilders and homeowners have encountered in trying to meet the new

NMED septic system regulations. He explained that permit requirements often cause difficulties for people who do have permits but have lost the actual permit.

Lauren Earls, a Los Alamos-based real estate broker, explained that NMED's requirement for septic system inspection on property transfers is causing problems within the Los Alamos real estate market because inspection costs have increased dramatically and enforcement is inconsistent.

Questions and comments included:

- whether septic systems are becoming too expensive and if rules regarding them are becoming too cumbersome;
- the cost of advanced septic treatment systems;
- the cost of new traditional septic treatment systems;
- NMED reasoning in moving the district office regarding septic system inspections to Albuquerque;
- the difficulty of making septic system inspection certificates part of real estate closing documents;
- the number of septic system inspectors hired by NMED to work in New Mexico; and
- whether NMED regulations apply to the Navajo Nation.

Consent Order on Environmental Remediation for Sandia National Laboratories

Mr. Bearzi and Fran Nimick, environmental restoration project manager for Sandia national laboratories (SNL), provided the committee with an update on cleanup progress pursuant to the federal consent order that mandates corrective action for contaminated sites at SNL. They stated that the purpose of the order was to accelerate the pace of cleanup, set requirements and schedules and provide stable funding from the federal government for the remediation. They explained that the LANL efforts under its consent order have recently just begun, and that SNL is nearing the end of its cleanup under its consent order. They provided the committee with a schedule of the SNL cleanup, pointing out that many of the items on the schedule have been completed. Mr. Bearzi also discussed public comments and hearings as well as NMED staff's involvement in the cleanup effort.

Questions and comments included the:

- amount of time spent actually cleaning up sites versus writing reports about the cleanup;
- cleanup of mixed-waste landfill;
- appeal of NMED's decision on leaving some material in SNL's mixed-waste landfill; and
- cleanup of an area called the "crash site".

Climate Change in New Mexico

Jim Norton, director of NMED's environmental protection division, provided the committee with testimony regarding climate change in New Mexico. He explained that the steady rise in U.S. annual mean temperatures and New Mexico's mean winter temperatures over the past 25 years, as well as increased carbon dioxide concentrations in the atmosphere, will

likely result in warmer temperatures. Mr. Norton stated that warmer temperatures can lead to droughts and floods as well as less snowpack, resulting in earlier and faster snow runoff and more forest fires.

Mr. Norton informed the committee that Governor Richardson signed an executive order on June 9, 2005 that requires emissions inventory and tracking and establishes reduction targets for emissions over the next few decades. He also discussed New Mexico's role in the production of greenhouse gases, indicating that the state produces twice the national average. Mr. Norton also noted that electricity production accounts for roughly 40 percent of the greenhouse gas emissions in New Mexico, compared to 32 percent nationally.

Mr. Norton also discussed the mission of the climate change advisory group created by Governor Richardson's executive order. The group will propose strategies for reducing New Mexico's greenhouse gas emissions to targeted levels and make recommendations by December 2006. The group is comprised of 40 members from industry, agriculture, nongovernmental organizations, tribes, laboratories, universities and municipalities. Mr. Norton summarized the potential solutions the advisory group is exploring, including greater efficiency in buildings and vehicles; increased use of renewable energy sources; and economic and environmental improvements in oil and gas production.

Questions and comments included:

- the value of nuclear power as a means of reducing greenhouse gas emissions;
- New Mexico's role as an energy-producing state, making it appear as though it produces more greenhouse gases than consumer states;
- the efforts of other states to reduce greenhouse gas emissions;
- the time it will take for existing greenhouse gases to dissipate into the atmosphere;
- the effect of global warming on the creation of hurricanes; and
- the wisdom of using several decades of data to draw conclusions about long-term climate change.

There being no further business, the committee adjourned at 5:00 p.m.

Legislative Proposals

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HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO REAL PROPERTY; ENACTING THE UNIFORM ENVIRONMENTAL COVENANTS ACT; PROVIDING FOR COVENANTS RESTRICTING USE OF REAL PROPERTY SUBJECT TO ENVIRONMENTAL REMEDIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Uniform Environmental Covenants Act".

Section 2. DEFINITIONS.--As used in the Uniform Environmental Covenants Act:

A. "activity and use limitations" means restrictions or obligations created pursuant to the Uniform Environmental Covenants Act with respect to real property;

B. "agency" means the department of environment or any other state or federal agency that determines or approves the environmental response project pursuant to which the

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1 environmental covenant is created;

2 C. "common interest community" means a condominium,
3 cooperative or other real property with respect to which a
4 person, by virtue of the person's ownership of a parcel of real
5 property, is obligated to pay property taxes or insurance
6 premiums or for maintenance or improvement of other real
7 property described in a recorded environmental covenant that
8 creates the common interest community;

9 D. "environmental covenant" means a servitude
10 arising under an environmental response project that imposes
11 activity and use limitations;

12 E. "environmental response project" means a plan or
13 work performed for environmental remediation of real property
14 and conducted:

15 (1) under a federal or state program governing
16 environmental remediation of real property;

17 (2) incident to closure of a solid or
18 hazardous waste management unit, if the closure is conducted
19 with approval of an agency; or

20 (3) under a state voluntary cleanup program
21 authorized in the Voluntary Remediation Act;

22 F. "holder" means the grantee of an environmental
23 covenant as specified in Subsection A of Section 3 of the
24 Uniform Environmental Covenants Act;

25 G. "person" means an individual; corporation;

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1 business trust; estate; trust; partnership; limited liability
2 company; association; joint venture; public corporation;
3 government; governmental subdivision, agency or
4 instrumentality; or any other legal or commercial entity;

5 H. "record", when used as a noun, means information
6 that is inscribed on a tangible medium or that is stored in an
7 electronic or other medium and is retrievable in perceivable
8 form; and

9 I. "state" means a state of the United States, the
10 District of Columbia, Puerto Rico, the United States Virgin
11 Islands or any territory or insular possession subject to the
12 jurisdiction of the United States.

13 Section 3. NATURE OF RIGHTS--SUBORDINATION OF
14 INTERESTS.--

15 A. Any person, including a person who owns an
16 interest in real property, an agency or a municipality or other
17 unit of local government, may be a holder. An environmental
18 covenant may identify more than one holder. The interest of a
19 holder is an interest in real property.

20 B. A right of an agency pursuant to the Uniform
21 Environmental Covenants Act or pursuant to an environmental
22 covenant, other than a right as a holder, is not an interest in
23 real property.

24 C. An agency is bound by any obligation it assumes
25 in an environmental covenant, but an agency does not assume

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1 obligations merely by signing an environmental covenant. Any
2 other person who signs an environmental covenant is bound by
3 the obligations the person assumes in the environmental
4 covenant, but signing the environmental covenant does not
5 change obligations, rights or protections granted or imposed
6 under law other than the Uniform Environmental Covenants Act,
7 except as provided in the environmental covenant.

8 D. The following rules apply to interests in real
9 property in existence at the time an environmental covenant is
10 created or amended:

11 (1) an interest that has priority under other
12 law is not affected by an environmental covenant unless the
13 person that owns the interest subordinates that interest to the
14 environmental covenant;

15 (2) the Uniform Environmental Covenants Act
16 does not require a person who owns a prior interest to
17 subordinate that interest to an environmental covenant or to
18 agree to be bound by the environmental covenant;

19 (3) a subordination agreement may be contained
20 in an environmental covenant covering real property or in a
21 separate record. If the environmental covenant covers commonly
22 owned property in a common interest community, the record may
23 be signed by any person authorized by the governing board of
24 the owners' association; and

25 (4) an agreement by a person to subordinate a

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1 prior interest to an environmental covenant affects the
2 priority of that person's interest but does not by itself
3 impose any affirmative obligation on the person with respect to
4 the environmental covenant.

5 Section 4. CONTENTS OF ENVIRONMENTAL COVENANT.--

6 A. An environmental covenant shall:

7 (1) state that the instrument is an
8 environmental covenant executed pursuant to the Uniform
9 Environmental Covenants Act;

10 (2) contain a legally sufficient description
11 of the real property subject to the environmental covenant;

12 (3) describe the activity and use limitations
13 on the real property;

14 (4) identify every holder;

15 (5) be signed by the agency, every holder and,
16 unless waived by the agency, every owner of the fee simple of
17 the real property subject to the environmental covenant; and

18 (6) identify the name and location of any
19 administrative record for the environmental response project
20 reflected in the environmental covenant.

21 B. In addition to the information required by
22 Subsection A of this section, an environmental covenant may
23 contain other information, restrictions and requirements agreed
24 to by the persons who signed it, including:

25 (1) requirements for notice following transfer

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1 of a specified interest in, or concerning proposed changes in
2 use of, applications for building permits or proposals for any
3 site work affecting the contamination on the property subject
4 to the environmental covenant;

5 (2) requirements for periodic reporting that
6 describe compliance with the environmental covenant;

7 (3) rights of access to the property granted
8 in connection with implementation or enforcement of the
9 environmental covenant;

10 (4) a brief narrative description of the
11 contamination and remedy, including the contaminants of
12 concern, the pathways of exposure, limits on exposure and the
13 location and extent of the contamination;

14 (5) limitation on amendment or termination of
15 the environmental covenant in addition to those contained in
16 Sections 9 and 10 of the Uniform Environmental Covenants Act;
17 and

18 (6) rights of the holder in addition to the
19 holder's right to enforce the environmental covenant pursuant
20 to Section 11 of the Uniform Environmental Covenants Act.

21 C. In addition to other conditions for the agency's
22 approval of an environmental covenant, the agency may require
23 those persons specified by the agency who have interests in the
24 real property to sign the environmental covenant.

25 Section 5. VALIDITY--EFFECT ON OTHER INSTRUMENTS.--

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1 A. An environmental covenant that complies with the
2 Uniform Environmental Covenants Act runs with the land.

3 B. An environmental covenant that is otherwise
4 effective is valid and enforceable even if:

5 (1) it is not appurtenant to an interest in
6 real property;

7 (2) it can be or has been assigned to a person
8 other than the original holder;

9 (3) it is not of a character that has been
10 recognized traditionally in common law;

11 (4) it imposes a negative burden;

12 (5) it imposes an affirmative obligation on a
13 person having an interest in the real property or on the
14 holder;

15 (6) the benefit or burden does not touch or
16 concern real property;

17 (7) there is no privity of estate or contract;

18 (8) the holder dies, ceases to exist, resigns
19 or is replaced; or

20 (9) the owner of an interest subject to the
21 environmental covenant and the holder are the same person.

22 C. An instrument that creates restrictions or
23 obligations with respect to real property that would qualify as
24 activity and use limitations, except for the fact that the
25 instrument was recorded before the effective date of the

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1 Uniform Environmental Covenants Act, is not invalid or
2 unenforceable because of any of the limitations on enforcement
3 of interests described in Subsection B of this section or
4 because it was identified as an easement, servitude, deed
5 restriction or other interest. The Uniform Environmental
6 Covenants Act does not apply in any other respect to such an
7 instrument.

8 D. The Uniform Environmental Covenants Act does not
9 invalidate or render unenforceable any interest, whether
10 designated as an environmental covenant or other interest, that
11 is otherwise enforceable under the law of New Mexico.

12 Section 6. RELATIONSHIP TO OTHER LAW.--

13 A. The Uniform Environmental Covenants Act does not
14 authorize a use of real property that is otherwise prohibited
15 by zoning, by a law other than the Uniform Environmental
16 Covenants Act regulating use of real property or by a recorded
17 instrument that has priority over the environmental covenant.
18 An environmental covenant may prohibit or restrict a use of
19 real property that is authorized by zoning or by a law other
20 than the Uniform Environmental Covenants Act.

21 B. The Uniform Environmental Covenants Act
22 supplements and does not displace the Voluntary Remediation
23 Act, the New Mexico Mining Act, the Surface Mining Act, the Oil
24 and Gas Act, the Water Quality Act or any other law governing
25 an environmental response project.

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1 C. An agency shall not approve a servitude or other
2 restriction on the use of ground water unless an environmental
3 response project has been approved and the agency has
4 determined that the environmental response project will achieve
5 compliance with ground water standards adopted or alternative
6 abatement standards approved pursuant to the Water Quality Act.
7 For the purposes of this subsection, "ground water" means water
8 below the land surface in a zone of saturation.

9 Section 7. NOTICE.--

10 A. A copy of an environmental covenant shall be
11 provided by the following persons and in the manner required by
12 the agency to:

- 13 (1) each person who signed the environmental
14 covenant;
- 15 (2) each person holding a recorded interest in
16 the real property subject to the environmental covenant;
- 17 (3) each person in possession of the real
18 property subject to the environmental covenant;
- 19 (4) each municipality or other unit of local
20 government in which real property subject to the environmental
21 covenant is located; and
- 22 (5) any other person the agency requires.

23 B. The validity of an environmental covenant is not
24 affected by failure to provide a copy of the environmental
25 covenant as required under this section.

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1 Section 8. RECORDING.--

2 A. An environmental covenant and any amendment or
3 termination of the environmental covenant shall be recorded in
4 every county in which any portion of the real property subject
5 to the environmental covenant is located. For purposes of
6 indexing, a holder shall be treated as a grantee.

7 B. Except as otherwise provided in Subsection C of
8 Section 9 of the Uniform Environmental Covenants Act, an
9 environmental covenant is subject to the laws of New Mexico
10 governing recording and priority of interests in real property.

11 Section 9. DURATION--AMENDMENT BY COURT ACTION.--

12 A. An environmental covenant is perpetual unless it
13 is:

14 (1) by its terms, limited to a specific
15 duration or terminated by the occurrence of a specific event;

16 (2) terminated by consent pursuant to Section
17 10 of the Uniform Environmental Covenants Act;

18 (3) terminated pursuant to Subsection B of
19 this section;

20 (4) terminated by foreclosure of an interest
21 that has priority over the environmental covenant; or

22 (5) terminated or modified in an eminent
23 domain proceeding, but only if:

24 (a) the agency that signed the
25 environmental covenant is a party to the proceeding;

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1 (b) all persons identified in
2 Subsections A and B of Section 10 of the Uniform Environmental
3 Covenants Act are given notice of the pendency of the
4 proceeding; and

5 (c) the court determines, after hearing,
6 that the termination or modification will not adversely affect
7 human health or the environment.

8 B. If the agency that signed an environmental
9 covenant has determined that the intended benefits of the
10 environmental covenant can no longer be realized, a court,
11 under the doctrine of changed circumstances, in an action in
12 which all persons identified in Subsections A and B of Section
13 10 of the Uniform Environmental Covenants Act have been given
14 notice, may terminate the environmental covenant or reduce its
15 burden on the real property subject to the environmental
16 covenant. The agency's determination or its failure to make a
17 determination upon request is subject to review pursuant to the
18 Administrative Procedures Act.

19 C. Except as otherwise provided in Subsections A
20 and B of this section, an environmental covenant may not be
21 extinguished, limited or impaired through issuance of a tax
22 deed, foreclosure of a tax lien or application of the doctrine
23 of adverse possession, prescription, abandonment, waiver, lack
24 of enforcement, acquiescence or a similar doctrine.

25 Section 10. AMENDMENT OR TERMINATION BY CONSENT.--

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1 A. An environmental covenant may be amended or
2 terminated by consent only if the amendment or termination is
3 signed by:

4 (1) the agency;

5 (2) the current owner of the fee simple of the
6 real property subject to the environmental covenant, unless
7 waived by the agency;

8 (3) each person who originally signed the
9 environmental covenant, unless the person waived in a signed
10 record the right to consent or a court finds that the person no
11 longer exists or cannot be located or identified with the
12 exercise of reasonable diligence; and

13 (4) the holder, except as otherwise provided
14 in Paragraph (2) of Subsection D of this section.

15 B. If an interest in real property is subject to an
16 environmental covenant, the interest is not affected by an
17 amendment of the environmental covenant unless the current
18 owner of the interest consents to the amendment or has waived
19 in a signed record the right to consent to amendments.

20 C. Except for an assignment undertaken pursuant to
21 a governmental reorganization, assignment of an environmental
22 covenant to a new holder is an amendment.

23 D. Except as otherwise provided in an environmental
24 covenant:

25 (1) a holder may not assign interest without

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1 consent of the other parties;

2 (2) a holder may be removed and replaced by
3 agreement of the other parties specified in Subsection A of
4 this section; and

5 (3) a court of competent jurisdiction may fill
6 a vacancy in the position of holder.

7 Section 11. ENFORCEMENT OF ENVIRONMENTAL COVENANT.--

8 A. A civil action for injunctive or other equitable
9 relief for violation of an environmental covenant may be
10 maintained by:

11 (1) a party to the environmental covenant;

12 (2) the agency;

13 (3) any person to whom the environmental
14 covenant expressly grants power to enforce;

15 (4) a person whose interest in the real
16 property or whose collateral or liability may be affected by
17 the alleged violation of the environmental covenant; or

18 (5) a municipality or other unit of local
19 government in which the real property subject to the
20 environmental covenant is located.

21 B. The Uniform Environmental Covenants Act does not
22 limit the regulatory authority of the agency under law other
23 than the Uniform Environmental Covenants Act with respect to an
24 environmental response project.

25 C. A person is not responsible for or subject to

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1 liability for environmental remediation solely because that
2 person has the right to enforce an environmental covenant.

3 Section 12. FILE--SUBSTITUTE NOTICE.--

4 A. The department of environment shall establish
5 and maintain a file that contains all environmental covenants
6 and any amendment or termination of those covenants. The file
7 may also contain any other information concerning environmental
8 covenants and the real property subject to them that the
9 department of environment considers appropriate. The file is a
10 public record.

11 B. After an environmental covenant or an amendment
12 or termination of a covenant is filed in the file established
13 pursuant to Subsection A of this section, a notice of the
14 covenant, amendment or termination that complies with this
15 section may be recorded in the land records in lieu of
16 recording the entire covenant. Any such notice shall contain
17 the following:

18 (1) a legally sufficient description and any
19 available street address of the real property subject to the
20 covenant;

21 (2) the name of the owner of the fee simple
22 interest in the real property, the agency and the holder if
23 other than the agency;

24 (3) a statement that the covenant, amendment
25 or termination is available in a file at the department of

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1 environment and that discloses the method of any electronic
2 access; and

3 (4) a statement that the notice is
4 notification of an environmental covenant executed pursuant to
5 the Uniform Environmental Covenants Act.

6 C. A statement in substantially the following form,
7 executed with the same formalities as a deed in this state,
8 satisfies the requirements of Subsection B of this section:

9 "1. This notice is filed in the land records of the
10 county in which the real property is located pursuant to
11 Section 12 of the Uniform Environmental Covenants Act.

12 2. This notice and the covenant, amendment or termination
13 to which it refers may impose significant obligations with
14 respect to the real property described below.

15 3. A legal description of the real property is attached
16 as Exhibit A to this notice. The address of the real property
17 that is subject to the environmental covenant is [insert
18 address of real property][not available].

19 4. The name and address of the owner of the fee simple
20 interest in the real property on the date of this notice is
21 [insert name of current owner of the real property].

22 5. The environmental covenant, amendment or termination
23 was signed by [insert name and address of agency].

24 6. The environmental covenant, amendment or termination
25 was filed in the file on [insert date of filing].

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1 7. The full text of the environmental covenant, amendment
2 or termination and any other information required by the agency
3 is on file and available for inspection and copying in the file
4 maintained for that purpose by the department of environment at
5 [insert address and room of building in which the file is
6 maintained]. The environmental covenant, amendment or
7 termination may be found electronically at [insert web address
8 for covenant]."

9 Section 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--
10 In applying and construing the Uniform Environmental Covenants
11 Act, consideration shall be given to the need to promote
12 uniformity of the law with respect to its subject matter in
13 states that enact it.

14 Section 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
15 AND NATIONAL COMMERCE ACT.--The Uniform Environmental Covenants
16 Act modifies, limits or supersedes the federal Electronic
17 Signatures in Global and National Commerce Act but does not
18 modify, limit or supersede 15 USCA Section 7001(a) or authorize
19 electronic delivery of any of the notices described in 15 USCA
20 Section 7003(b).

21 Section 15. SAVING CLAUSE.--The Uniform Environmental
22 Covenants Act does not affect an action commenced, proceeding
23 brought or right accrued before the effective date of that act.

24 Section 16. SEVERABILITY.--If any part or application of
25 the Uniform Environmental Covenants Act is held invalid, the

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1 remainder or its application to other situations or persons
2 shall not be affected.

3 Section 17. APPLICABILITY.--The provisions of the Uniform
4 Environmental Covenants Act apply to environmental covenants
5 arising before or after the effective date of that act, but
6 shall not apply to lands held in trust by the state pursuant to
7 the act of congress of June 20, 1910, entitled "An act to
8 enable the people of New Mexico to form a constitution and
9 state government and be admitted into the union on an equal
10 footing with the original states".

11 Section 18. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2006.

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BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE
HAZARDOUS WASTE ACT TO ALLOW VOLUNTARY FEE AGREEMENTS AS AN
ALTERNATIVE TO FEE SCHEDULES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-4-4.2 NMSA 1978 (being Laws 1981
(1st S.S.), Chapter 8, Section 6, as amended) is amended to
read:

"74-4-4.2. PERMITS--ISSUANCE--DENIAL--MODIFICATION--
SUSPENSION--REVOCATION.--

A. An application for a permit pursuant to the
Hazardous Waste Act shall contain information required pursuant
to Section 74-4-4.7 NMSA 1978 or to regulations promulgated by
the board and shall include:

- (1) estimates of the composition, quantity and

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1 concentration of any hazardous waste identified or listed under
2 Subsection A of Section 74-4-4 NMSA 1978 or combinations of any
3 hazardous waste and other solid waste proposed to be disposed
4 of, treated, transported or stored and the time, frequency or
5 rate at which the waste is proposed to be disposed of, treated,
6 transported or stored; and

7 (2) an identification and description of, and
8 other pertinent information about, the site where hazardous
9 waste or the products of treatment of hazardous waste will be
10 disposed of, treated, transported to or stored.

11 B. Hazardous waste permits shall require corrective
12 action for all releases of hazardous waste or constituents from
13 any solid waste management unit at a treatment, storage or
14 disposal facility seeking a permit under this section.

15 C. The department shall provide timely review on
16 all permit applications. Upon a determination by the secretary
17 that the applicant has met the requirements adopted pursuant to
18 Section 74-4-4 NMSA 1978, the secretary may issue a permit or a
19 permit subject to any conditions necessary to protect human
20 health and the environment for the facility.

21 D. The secretary may deny any permit application or
22 modify, suspend or revoke any permit issued pursuant to the
23 Hazardous Waste Act if the applicant or permittee has:

24 (1) knowingly and willfully misrepresented a
25 material fact in the application for a permit;

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1 (2) refused to disclose the information
2 required under the provisions of Section 74-4-4.7 NMSA 1978;

3 (3) been convicted in any court, within ten
4 years immediately preceding the date of submission of the
5 permit application, of:

6 (a) a felony or other crime involving
7 moral turpitude; or

8 (b) a crime defined by state or federal
9 statutes as involving or being in restraint of trade,
10 price-fixing, bribery or fraud;

11 (4) exhibited a history of willful disregard
12 for environmental laws of any state or the United States;

13 (5) had any permit revoked or permanently
14 suspended for cause under the environmental laws of any state
15 or the United States; or

16 (6) violated any provision of the Hazardous
17 Waste Act, any regulation adopted and promulgated pursuant to
18 that act or any condition of a permit issued under that act.

19 E. In making a finding under Subsection D of this
20 section, the secretary may consider aggravating and mitigating
21 factors.

22 F. If an applicant or permittee whose permit is
23 being considered for denial or revocation, respectively, on any
24 basis provided by Subsection D of this section has submitted an
25 action plan that has been approved in writing by the secretary,

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1 and plan approval includes a period of operation under a
2 conditional permit that will allow the applicant or permittee a
3 reasonable opportunity to demonstrate its rehabilitation, the
4 secretary may issue a conditional permit for a reasonable
5 period of time. In approving an action plan intended to
6 demonstrate rehabilitation, the secretary may consider:

7 (1) implementation by the applicant or
8 permittee of formal policies;

9 (2) training programs and management control
10 to minimize and prevent the occurrence of future violations;

11 (3) installation by the applicant or permittee
12 of internal environmental auditing programs;

13 (4) the applicant's release or the permittee's
14 release subsequent to serving a period of incarceration or
15 paying a fine, or both, after conviction of any crime listed in
16 Subsection D of this section; and

17 (5) any other factors the secretary deems
18 relevant.

19 G. Notwithstanding the provisions of Subsection D
20 of this section:

21 (1) a research, development and demonstration
22 permit may be terminated upon the determination by the
23 secretary that termination is necessary to protect human health
24 or the environment; and

25 (2) a permit may be modified at the request of

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1 the permittee for just cause as demonstrated by the permittee.

2 H. No ruling shall be made on permit issuance,
3 major modification, suspension or revocation without an
4 opportunity for a public hearing at which all interested
5 persons shall be given a reasonable chance to submit data,
6 views or arguments orally or in writing and to examine
7 witnesses testifying at the hearing; provided, however, that
8 the secretary may, pursuant to Section 74-4-10 NMSA 1978, order
9 the immediate termination of a research development and
10 demonstration permit whenever the secretary determines that
11 termination is necessary to protect human health or the
12 environment and may order the immediate suspension or
13 revocation of a permit for a facility that has been ordered to
14 take corrective action or other response measures for releases
15 of hazardous waste into the environment.

16 I. The secretary shall hold a public hearing on a
17 minor permit modification if the secretary determines that
18 there is significant public interest in the minor modification.

19 J. Except as provided in Subsection K of this
20 section, the board shall provide a schedule of fees for
21 businesses generating hazardous waste, conducting permitted
22 hazardous waste management activities or seeking a permit for
23 the management of hazardous waste, to be deposited to the
24 credit of the hazardous waste fund, including but not limited
25 to:

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1 (1) a hazardous waste business fee applicable
2 to any business engaged in a regulated hazardous waste
3 activity, which shall be an annual flat fee based on the type
4 of activity;

5 (2) a hazardous waste generation fee
6 applicable to any business generating hazardous waste, which
7 shall be based on the quantity of hazardous waste generated
8 annually; however, when any material listed in Paragraph (2) of
9 Subsection K of Section 74-4-3 NMSA 1978 is determined by the
10 board to be subject to regulation under Subtitle C of the
11 federal Resource Conservation and Recovery Act of 1976, the
12 board may set a generation fee under this paragraph for that
13 waste based on its volume, toxicity, mobility and economic
14 impact on the regulated entity;

15 (3) a hazardous waste permit application fee,
16 not exceeding the estimated cost of investigating the
17 application and issuing the permit, to be paid at the time the
18 secretary notifies the applicant by certified mail that the
19 application has been deemed administratively complete and a
20 technical review is scheduled; and

21 (4) an annual hazardous waste permit
22 management fee based on and not exceeding the estimated cost
23 of conducting regulatory oversight of permitted activities.

24 K. The department and a business generating
25 hazardous waste, conducting permitted hazardous waste

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1 management activities or seeking a permit for the management
2 of hazardous waste may enter into a voluntary fee agreement
3 in lieu of some or all of the fees required by Subsection J
4 of this section."

5 Section 2. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2006.

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