RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

REPORT
to the
FORTY-NINTH LEGISLATURE

January 2010
Legislative Council Service

2009 WORK PLAN AND SCHEDULE

2009 APPROVED WORK PLAN AND MEETING SCHEDULE
for the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

Members

Sen. Richard C. Martinez, Chair
Rep. John A. Heaton, Vice Chair
Sen. Vernon D. Asbill
Sen. Stephen H. Fischmann
Rep. William J. Gray
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Sen. John Pinto
Rep. Jeff Steinborn
Rep. Jim R. Trujillo
Sen. David Ulibarri
Rep. Jeannette O. Wallace

Advisory Members

Sen. Rod Adair
Sen. Dianna J. Duran
Rep. Eliseo Lee Alcon
Rep. Thomas A. Anderson
Rep. Donald E. Bratton
Sen. Gay G. Kernan
Sen. Lynda M. Lovejoy
Rep. Rodolpho "Rudy" S. Martinez
Sen. William H. Payne
Rep. Nick L. Salazar

Work Plan

The committee proposes to review the following topics during the 2009 interim:

(1) examine uranium mining and milling in New Mexico, including energy needs, environmental concerns, sociological factors, economic development and land stewardship;

(2) determine what the state's contribution or obligation would need to be if, by 2030, the demand for electricity increases by 50 percent;

(3) receive WIPP updates and evaluate disposal of various types of hazardous waste;

(4) explore options for interim storage for spent fuel and recycling of spent fuel;

(5) review the transmission process, including implementation and legislation from other states;

(6) examine advantages and liabilities of alternative mobile or transportation fuels, including biofuels, fuel cells, hybrids and electric;

(7) study the state's potential for energy diversification and review initiatives to implement diversification, including clean energy alternatives, the renewable portfolio standard, available resources and investments in clean energy;

(8) assess whether the name "radioactive and hazardous materials" encompasses the scope of the committee's activities and, if not, propose legislation redefining the scope in statute and suggest a more appropriate name;

(9) study the use of rubberized asphalt (HM 6) and greenhouse gas emissions (HM 52) and underground gas storage tank compliance; and

(10) review the status of regulations affecting the dairy industry, pore space legislation and proposals for carbon sequestration.

MEETING SCHEDULE

Dates	Location
June 17	Santa Fe
August 6-7	Albuquerque
September 10-11	Albuquerque/Los Alamos
October 26-27	Hobbs/Carlsbad
November 12-13	Santa Fe

AGENDAS AND MINUTES

Revised: June 9, 2009

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

June 15, 2009
Room 321, State Capitol

Monday, June 15

10:00 a.m.	**Call to Order** —Senator Richard C. Martinez, Chair
10:05 a.m.	**Legislative Interim Committee Meeting Protocols** —Paula Tackett, Director, Legislative Council Service
10:30 a.m.	**2009 Interim Work Plan, Itinerary and Meeting Schedule**
11:00 a.m.	**Renewable Energy Development in New Mexico** —Roy Stephenson, Director, Utility Division, Public Regulation Commission —Craig O'Hare, Energy, Minerals and Natural Resources Department
12:00 noon	**Adjourn**

Revised: August 3, 2009

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

August 6-7, 2009
National Museum of Nuclear Science and History
601 Eubank, SE
Albuquerque

Thursday, August 6

9:00 a.m. **Call to Order**
—Senator Richard C. Martinez, Chair

Climate Change
—Dave Kessel, Senior Manager, Sandia National Laboratories, Carlsbad Program Group

10:00 a.m. **Climate Change Impacts**
—Dr. David Raymond, New Mexico Institute of Mining and Technology
—Dr. Tom McGuckin, New Mexico State University

11:00 a.m. **New Mexico Renewable Energy Transmission Authority Status Report**
—Jeremy Turner, Director, New Mexico Renewable Energy Transmission Authority

12:30 p.m. **Lunch**

1:30 p.m. **Carbon-Free Portfolio Standards**
—Roy Stephenson, Public Regulation Commission

2:30 p.m. **Electricity Demand Expectations and Integrated Resource Planning**
—Michael D'Antonio, Public Service Company of New Mexico

3:30 p.m. **Transmission Challenges**
—Teresa Mogensen, Director of Transmission Business Relations, XCel Energy

5:00 p.m. **Recess**

Friday, August 7

9:00 a.m. **Global Energy Security; Dynamic Modeling**
—Arnold Baker, Sandia National Laboratories

10:00 a.m. **Federal Stimulus-Funded Clean Energy Initiatives**
—Fernando Martinez, Energy, Minerals and Natural Resources Department
—Tom Bowles, Governor's Science Advisor

11:30 a.m. **Renewable Energy Finance Programs**
—Brian Cassutt, Renewable Energy Industries Association
—Paul Gutierrez, New Mexico Association of Counties

12:30 p.m. **Working Lunch**

Tour Sandia National Laboratories Research Facilities
—Wind
—Solar
—Biofuels

5:00 p.m. **Adjourn**

Revised: September 4, 2009

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

September 10-11, 2009
Ballroom B, Student Union, University of New Mexico
301 Cornell Dr. NE
Albuquerque
and
Fuller Lodge
Community Building
2132 Central Avenue
Los Alamos

<u>Thursday, September 10</u> — Joint Meeting with Indian Affairs Committee (IAC) — Ballroom B, University of New Mexico (UNM), Albuquerque

9:00 a.m. **Call to Order, Welcome and Introductions**
—Senator Richard C. Martinez, Chair, Radioactive and Hazardous Materials Committee
—Representative James Roger Madalena, Co-Chair, IAC

9:05 a.m. **Welcome**
—Dr. Julia E. Fulghum, Vice President for Research, University of New Mexico

9:15 a.m. **Uranium Legacy Impacts: Regional Ground Water, Environment and Health**
—Marcy Leavitt, Director, Water and Waste Management Division, Department of Environment (NMED)
—Jerry Schoeppner, Uranium Project Team Leader, NMED

9:45 a.m. **Abandoned Uranium Mines — Assessment and Reclamation Status Update**
—Bill Brancard, Director, Mining and Minerals Division (MMD), Energy, Minerals and Natural Resources Department
—Tony Herrell, Deputy State Director, Bureau of Land Management (BLM)

10:15 a.m. **Report of Uranium Policy Subcommittee**
—Senator Lynda M. Lovejoy, Co-Chair, Uranium Policy Subcommittee
—Representative Patricia A. Lundstrom, Co-Chair, Uranium Policy Subcommittee
—Damian Lara, Legislative Council Service

11:00 a.m. **Reclamation and Remediation Standards of Uranium Mill Sites**
—Keith McConnell, Deputy Director, Division of Waste Management and Environmental Protection, Nuclear Regulatory Commission

11:45 a.m. **Legacy Management: Long-Term Management and Containment of Ground Water Contamination**
—Ray Plieness, Director, Site Operations, Office of Legacy Management, Department of Energy

12:15 p.m. **Working Lunch**

Homestake Site — Status Update
—Al Cox, Project Manager, Homestake Mining Company
—George Hoffman, Hydrologist, Homestake Mining Company

12:45 p.m. **Environmental and Technical Support — Characterizations and Assessments**
—Carol Brewer, Environmental Program Manager, RAMS, USACE
—Tony Herrell, Deputy State Director, BLM
—Linda S. Weiss, Director, USGS New Mexico Water Science Center

1:30 p.m. **Multi-Agency Five-Year Plan to Address the Uranium Legacy in New Mexico**
—Sam Coleman, Director, Superfund Division, Environmental Protection Agency (EPA), Region 6
—John Meyer, Chief, Site and Risk Assessment Section, Superfund Division, EPA, Region 6
—Jon Rinehart, Scene Coordinator, EPA, Region 6

2:30 p.m. **Navajo Nation Five-Year Plan — Status Update**
—Clancy Tenley, Acting Branch Chief, EPA, Region 9
—Stephen B. Etsitty, Navajo Nation EPA

3:15 p.m. **Mt. Taylor Current Developments — Status Update**
—Nancy Rose, Forest Supervisor, Cibola National Forest and National Grasslands, United States Forest Service

4:15 p.m. **Uranium Legacy Impacts on Health of Residents**
—Dr. Johnnye Lewis, The Diné Network for Environmental Health (DiNEH) Project
—Steve Dearwent, Branch Chief, Agency for Toxic Substances and Disease Registry, Department of Health and Human Services

5:00 p.m. **Recess**

<u>Friday, September 11</u> — Los Alamos, Fuller Lodge

9:00 a.m. **Welcome to Los Alamos**
—Mike Wheeler, Chair, Los Alamos County Council

9:30 a.m. **LANL Environmental Management Program**
—Ron Curry, Secretary of Environment (Invited)
—Michael Graham, Associate Director, Environmental Programs, Los Alamos National Laboratory (LANL)

11:00 a.m. **LANL Renewable Energy Research and Development**
—Terry Wallace, Principal Associate Director for Science, Technology and Engineering, LANL

12:00 noon **Working Lunch**

1:00 p.m. **Solid Waste Management in New Mexico**
—Mark Turnbough, Ph.D., Environmental Consultant
—Mark Miller, National Solid Wastes Management Association, New Mexico Chairman
—Keith Gordon, Gordon Environmental, Inc.
—Marla Shoats, Lobbyist, Waste Connections, Inc.

2:00 p.m. **Environmental Education Initiative**
—Cedric Page, Ph.D., Executive Director, UNM-Los Alamos
—Kate Massengale, Ph.D., Dean of Instruction, UNM-Los Alamos
—Beverly Kay Willerton, Division Head for Science, Math, Applied Science, Fine Arts and Communications, UNM-Los Alamos

3:00 p.m. **Adjourn**

Revised: October 21, 2009

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

October 26-27, 2009
Multipurpose Room
New Mexico Junior College
Hobbs
and
Pecos River Village Conference Center
Carlsbad

Monday, October 26, New Mexico Junior College, Hobbs

1:00 p.m. **Call to Order**
—Senator Richard C. Martinez, Chair

National Enrichment Facility Status: Report from Louisiana Energy Services (LES)
—Reinhard Hinterreither, CEO/President, LES

2:00 p.m. **Algae Biodiesel Project**
—Doug Lynn, Executive Director, Center of Excellence for Hazardous Materials Management

3:00 p.m. **Produced Water**
—Tim Coakley, President, SCW, Inc.

4:00 p.m. **Recess**

Tuesday, October 27, Pecos River Village Conference Center, Carlsbad

9:00 a.m. **Call to Order**
—Representative John A. Heaton, Vice Chair

Waste Isolation Pilot Project RCRA Permits Update
—Ron Curry, Secretary of Environment

10:00 a.m. **Potash Solution Mining**
—Leonard Kaskiw, General Manager, Intrepid Potash - New Mexico, LLC
—Jim Stovall, Bureau of Land Management

11:00 a.m. **Carlsbad Brine Well Report**
—Mark Fesmire, Director, Oil Conservation Division, Energy, Minerals and Natural Resources Department

12:00 noon **Adjourn**

Revised: November 5, 2009

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

November 12-13, 2009
Room 321, State Capitol
Santa Fe

Thursday, November 12

8:30 a.m. **Call to Order**
—Senator Richard C. Martinez, Chair

8:45 a.m. **Potential Impacts of Climate Change to New Mexico**
—Patrick McCarthy, Director, Southwest Climate Change Initiative
—Alan Hamilton, New Mexico Wildlife Federation

9:45 a.m. **Federal/State Greenhouse Gas Emissions Issues and Climate Change Legislation**
—Jeff Burks, Energy Strategies
—Jeanette Pablo, Director of Federal Affairs and Senior Climate Advisor, Public Service Company of New Mexico Resources
—Manik Roy, Pew Center on Global Climate Change

11:00 a.m. **Potential Economic Costs of Climate Change to New Mexico**
—Dr. Janie Chermak, University of New Mexico
—Dr. Kristine Grimsrud, University of New Mexico

12:00 noon **Lunch**

1:00 p.m. **Regional and State Proposed Global Warming Solutions**
—Franz Litz, World Resources Institute
—Jim Norton, Department of Environment
—Sandra Ely, Department of Environment
—Louis Rose, Attorney, Montgomery and Andrews

2:30 p.m. **Perspectives on Climate Change**
—Joe Garcia, National Congress of American Indians
—Jerry Padilla, National Tribal Environmental Council
—Laura E. Sanchez, Natural Resources Defense Council
—Brittany Benko, BP America Production Company
—Jamie Grindatto, Intel

5:00 p.m. **Recess**

Friday, November 13

8:00 a.m. **Environmental Education**
—James Bearzi, Department of Environment
—Kate Massengale, Dean of Instruction, UNM-Los Alamos

9:00 a.m. **Uranium Legacy Cleanup Motion**
—Representative Patricia A. Lundstrom
—Senator Lynda M. Lovejoy

10:00 a.m. **Mining Safety Act**
—Terence Foreback, State Mine Inspector

11:00 a.m. **Dairy Industry Update**
—Sharon Lombardi
—T.J. Trujillo

12:00 noon **Lunch**

1:00 p.m. **Air Quality — Bad Actor**
—Mary Uhl, Department of Environment
—Deborah Seligman, New Mexico Oil and Gas Association
—Louis Rose, Attorney, Montgomery and Andrews

2:00 p.m. **Office of Nuclear Worker Advocacy Act**
—Jim Perry, Department of Environment
—Loretta Valerio, Department of Environment

3:00 p.m. **Storage Tank Legislation**
—Jim Davis, Department of Environment
—Susan George, Attorney, Institute of Public Law

4:00 p.m. **New Mexico's Energy Economy, New Mexico First Town Hall Report**
—Heather Balas, President and Executive Director, New Mexico First
—Jennifer A. Salisbury, Chair, Energy Implementation Committee, New Mexico First

5:00 p.m. **Adjourn**

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

June 15, 2009
Room 321, State Capitol
Santa Fe

The first meeting of the Radioactive and Hazardous Materials Committee (RHMC) of the 2009 interim was called to order by Senator Richard C. Martinez, chair, at 10:05 a.m. on June 15, 2009 in Room 321 of the State Capitol in Santa Fe.

Present
Sen. Richard C. Martinez, Chair
Rep. John A. Heaton, Vice Chair
Rep. William J. Gray
Sen. Carroll H. Leavell
Sen. David Ulibarri
Rep. Jeannette O. Wallace

Absent
Sen. Vernon D. Asbill
Sen. Stephen H. Fischmann
Rep. Antonio Lujan
Sen. John Pinto
Rep. Jeff Steinborn
Rep. Jim R. Trujillo

Advisory Members
Sen. Rod Adair
Rep. Eliseo Lee Alcon
Rep. Thomas A. Anderson
Rep. Donald E. Bratton
Sen. Dianna J. Duran
Sen. Lynda M. Lovejoy
Rep. Nick L. Salazar
Sen. Gay G. Kernan
Rep. Rodolpho "Rudy" S. Martinez
Sen. William H. Payne

Staff
Gordon Meeks
Mark Harben

Guests
The guest list is in the original meeting file.

<u>Monday, June 15</u>

Senator Martinez welcomed the committee and had the members introduce themselves.

Interim Committee Meeting Protocols

Raúl Burciaga, assistant director for drafting services, Legislative Council Service (LCS), provided the committee with an overview of protocol for interim committee meetings. He explained that the New Mexico Legislative Council decided to clarify interim committee protocols because some issues were not covered last year. Mr. Burciaga outlined the definition of "quorum" in order to conduct business as a voting committee; he said that once a quorum is established, it is assumed to exist unless challenged. If a challenge is issued, only voting

members can vote, according to Mr. Burciaga; while advisory members may express their views, he continued, their vote cannot be counted formally. Membership of committees may be adjusted to make sure there is a quorum for purposes of conducting a meeting, which, according to Mr. Burciaga, is intended to allow the committees to function officially and is not designed to change the outcome of a particular vote.

The sound systems are adjusted to automatically adjust the volume. Some conditions may obstruct the microphones and affect volume. Seating capacity in the capitol was designed to accommodate committees in the 1970s and 1980s. The LCS does try to seat as many as possible at the dais, but patience is appreciated when legislators have to be seated at an auxiliary table.

The New Mexico Legislative Council has asked staff to develop a schedule that minimizes conflicts of voting members. Mr. Burciaga has created a schedule with a minimal amount of conflicts, so he asked the members to avoid making changes unless absolutely necessary.

He discussed the per diem rules, including travel days that are eligible for per diem. Each legislator may attend other committees and obtain per diem for up to four days with prior approval from the speaker or pro tempore. Travel out of state may also be approved, but must be done so prior to the travel.

Work Plan, Schedule and Itinerary

Mr. Meeks discussed the proposed work plan. Representative Heaton suggested topics for agendas at each scheduled meeting that the committee agreed to on the work plan and provided staff with a copy of his recommendations. He also discussed his bill from the 2009 session to change the name and mission of the committee, which failed, but which he intends to introduce again.

The importance of the Grants Mineral Belt and the need to reprocess spent nuclear fuel was discussed by committee members. The committee agreed to ask that the same members who participated in the trip to Washington, D.C., for briefings on the issue continue to take the lead on behalf of the committee on the issue of uranium mining and legacy mine cleanup and be appointed to the task force. The committee also asked that a representative from the Office of the Governor be present at all meetings dealing with this issue.

Renewable Energy Development in New Mexico

Roy Stephenson, director of the Utility Division of the Public Regulation Commission (PRC), gave a presentation to the committee. He discussed the Renewable Energy Act, including its inception in 2004 and its history of updates and provisions. He explored the distinctions between energy conservation and energy efficiency. The act created the renewable portfolio standard (RPS), which required renewable generation of five percent of retail sales by 2006, 10 percent by 2011, 15 percent by 2015 and 20 percent by 2020. Mr. Stephenson explained that alternative energy such as wind and solar power is important to explore, but it also has drawbacks and limitations. He discussed Senate Bill (SB) 644 from 2005, explaining that it mandates cost-effective energy and load management; seeks identification and removal of disincentives; and establishes integrated resource planning and cost recovery via a rate rider

capped at 1.5 percent of a customer's bill. He continued to explain the modifications of SB 644 by 2007's SB 418. House Bill 305 from 2008 was also examined, including its provision for incentives for energy efficiency programs and its goals. The Integrated Resources Planning (IRP) Rule was adopted in March 2007, requiring utilities to file periodic IRPs, along with having short- and long-term plans.

Mr. Stephenson told the committee that one of the largest issues and obstacles to alternative energy is transmission. He explained what net metering is, in which energy generated at a home that is not used is then sent back to the utility company for a monetary compensation. Mr. Stephenson said that net metering in New Mexico is limited to 10 kilowatts (kW) systems, but a new rule provides expedited treatment of systems 10 kW to 100 kW. All RPS annual filings are in compliance to date, but 2011 will find more challenges for this to happen again. Mr. Stephenson informed the committee about current and proposed projects, including EPE Esolar Project (92 megawatt concentrated solar at Santa Teresa, New Mexico) and the Tri-State PV Project (30 megawatt PV facility at Springer, New Mexico).

Questions and discussion from the committee addressed:

- quantification of demand compared to costs for renewable energy;
- in-state demand for renewable energy;
- storage of electric power generated from wind turbines;
- transmission capacity as a constraint to renewable energy development;
- publicizing net metering availability;
- royalties to the State Land Office from wind farms;
- whether the renewable portfolio standard is limited to in-state generation or includes out-of-state generation;
- "carbonless portfolio standard" as opposed to the term RPS;
- basing credits for the RPS on an annual basis rather than monthly accounting;
- the scheduled hearing before the PRC on Rule 572 on the periodicity of the accounting period for net metering;
- the appropriateness of the 10 kW maximum for net metering;
- cost-recovery options for transmission lines;
- the economic development benefits when job creation from renewable energy systems is minimal; and
- smaller power plants adjacent to regional cities to take advantage of the existing distribution grid.

Craig O'Hare, special assistant for clean energy to the secretary of energy, minerals and natural resources, explained to the committee the steps New Mexico has taken to attract a diversified clean energy industry and the state's progress in establishing a clean energy industry cluster. He described the provisions of the advanced energy tax credit and the renewable energy production tax credit. There are over 500 megawatts of energy generated from wind farms in New Mexico. A 10 megawatt geothermal plant in Hidalgo County is coming on line to serve the Arizona Salt River Project. This represents a "gold mine" of geothermal resources in New Mexico. He also mentioned announcements by El Paso Electric for 92 megawatts of power from a solar thermal tower to be built in Santa Teresa, a 30 megawatt thin film photovoltaic project in northeast New Mexico being developed by Tri-State Electric Coop, a 40-45 megawatt PV

system being pursued by Xcel and SPS and a 10 megawatt project by Public Service Company of New Mexico.

Mr. O'Hare told the committee that the New Mexico Renewable Energy Transmission Authority is the key to developing renewable energy for export out of New Mexico. He then said that distributed generation is an alternative to massive new transmission facilities that could take advantage of existing distribution systems and provide for distributed "harvesting" of energy akin to water harvesting. Distributed generation involves the purchase of energy from customers or small-scale generators distributed through the existing customer grid system. This approach could meet more than 40 percent of society's electric needs for commercial and residential power. Senator Peter Wirth's SB 647, which authorizes creation of renewable energy financing districts, supports the emergence of distributed generation as a renewable energy policy option. More legislation may be needed to provide incentives, accommodate third-party ownership of distributed generation systems and set interconnection standards.

He told the committee that New Mexico is well on its way to creating a clean energy industry economic cluster, with alternative energy manufacturers being drawn here with the tax credits offered by the state and better coordination between state and local economic development agencies. He mentioned the location of Advent Solar, Schott Solar, Signet Solar, Skyfuel and Solar Array Ventures as examples of renewable energy companies locating in New Mexico as a result of state efforts to attract alternative energy industry. He described several existing provisions in law that may need some amending, including the Efficient Use of Energy Act and the sustainable building tax credit. Building code changes and green energy job training were also mentioned.

Questions and comments from the committee dealt with:

- renewable energy districts status of implementation;
- potential state revenue bond issuance;
- the PRC position on de-coupling utility rates from their electric power generation/acquisition costs;
- where de-coupling has been successful; and
- a motion to support the creation of a subcommittee from the RHMC and Indian Affairs Committee to deal with uranium mine legacy wastes.

The committee adjourned at 12:10 p.m.

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

August 6-7, 2009
National Museum of Nuclear Science and History
601 Eubank SE
Albuquerque

The second meeting of the Radioactive and Hazardous Materials Committee for 2009 was called to order by Senator Richard C. Martinez, chair, on August 6, 2009 at 9:17 a.m. in the National Museum of Nuclear Science and History in Albuquerque.

Present
Sen. Richard C. Martinez, Chair
Rep. John A. Heaton, Vice Chair
Sen. Vernon D. Asbill
Sen. Stephen H. Fischmann
Rep. William J. Gray
Sen. Carroll H. Leavell
Rep. Jim R. Trujillo
Sen. David Ulibarri
Rep. Jeannette O. Wallace

Absent
Rep. Antonio Lujan
Sen. John Pinto
Rep. Jeff Steinborn

Advisory Members
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Donald E. Bratton
Sen. Dianna J. Duran
Sen. Lynda M. Lovejoy (8/6)
Rep. Nick Salazar
Rep. Eliseo Lee Alcon
Sen. Gay G. Kernan
Rep. Rodolpho "Rudy" S. Martinez
Sen. William H. Payne

Guest Legislator
Rep. Miguel P. Garcia (8/6)

(Attendance dates are noted for those members not present for the entire meeting.)

Staff
Gordon Meeks
Mark Harben

Thursday, August 6

Call to Order

Senator Martinez welcomed the committee and audience and thanked the museum for holding the meeting. The committee members introduced themselves.

Senator Timothy M. Keller was recognized by Senator Martinez. Senator Keller

provided a background and history of his district, which is where the museum is located. He said that there has been a concerted effort to create more business and improve the infrastructure of this area. He discussed the refugee housing, which has 9,000 refugees from Africa and around the world, along with the revitalization of what was once known as the "war zone" and is now the "international district".

Climate Change

Dave Kessel, senior manager at Sandia National Laboratories (SNL), Carlsbad Program Group, provided the committee with a brief background and history of SNL. He said the core purpose of SNL today is to help the nation secure a peaceful world utilizing technology. There are five areas that SNL focuses on: protecting infrastructure; limiting nuclear proliferation and protecting nuclear stockpiles; developing technological advancements; helping defend the nation against terrorism; and ensuring the stability of the nation's water and energy supplies. Mr. Kessel said that SNL has a presence in many places other than the main location in Albuquerque, including: Carlsbad, New Mexico; Livermore, California; and Las Vegas, Nevada. Mr. Kessel provided information about budgets for SNL and told the committee about the many programs SNL participates in to help the community.

Rush D. Robinett, SNL, discussed energy issues with the committee. He discussed the problems of not having sufficient storage and transmission of renewable energy in New Mexico. He said that the optimal storage structure for energy is fuel; renewable energy will, as a result of poor storage, lead to an increase in cost of 20% to 80%.

Climate Change Impacts

Dr. David Raymond, New Mexico Institute of Mining and Technology, discussed the impacts of climate change. He said that there has been an increase of atmospheric carbon dioxide, and he discussed global warming. Dr. Raymond said that in the last 100 years, global land surface temperatures increased by about 1.2 degrees Celsius, with higher increases at higher northern latitudes, and .7 degree Celsius increases of global sea surfaces. He explained that atmospheric water vapor is also increasing, along with carbon dioxide, and is the most important greenhouse gas. According to Dr. Raymond, there have been earlier global thaws and later frosts; arctic sea ice is thinning and covering less area; and ice loss in Greenland has been significant over the last 15 years. He asserted that the balance of evidence, which includes physics, observations and models, indicates that human-generated global warming is real and significant. Dr. Raymond also discussed the impacts on global rainfalls. Regarding New Mexico, he said the most important direct effect on the state is likely on the average to be less winter snowpack and a less reliable water supply; uncertainty of summer rains; and expected drought.

Dr. Tom McGuckin, New Mexico State University (NMSU), told the committee that becoming more environmentally efficient and friendly is very costly. Changing systems and people's behaviors will be extremely expensive and hard to "sell". Without a change, however, the results may be disastrous, but the extent of the disaster is unknown. Dr. McGuckin said there are options to reduce greenhouse gases, which include cap and trade, carbon taxes and regulatory control. Dr. McGuckin discussed the plans and progress of NMSU's carbon footprint program.

Added to the Agenda: Energy Demand and State Energy Policy

Glen Anderson, National Conference of State Legislatures, provided an overview of the energy demands of states until 2030. He said that the "business as usual" model is changing. As examples, he cited Xcel Energy closing coal plants in Denver and Grand Junction, Colorado, because it is the first time a voluntary closure for emissions has taken place. He gave figures for energy demand projections from 2007 to 2030, illustrating a decrease of energy demand. Mr. Anderson said that renewable energy demand and consumption will increase, with an anticipated decrease in fossil fuels. He did remind the committee that these projections do not take into account any future policy changes that would affect demand and consumption. According to Mr. Anderson, residential electricity use will increase by 24% by 2030, and he provided statistics of energy consumption increases for industries as well. He discussed energy demand projections and the effects they have on climate change.

New Mexico Renewable Energy Transmission Authority Status Report

Jeremy Turner, director of the New Mexico Renewable Energy Transmission Authority (RETA), discussed the RETA. He said that it is the nation's first state-level financing authority whose primary focus is developing renewable energy-related transmission infrastructure and storage projects. Mr. Turner discussed the RETA's role in financing transmission and storage projects, which include revenue bonds payable from the revenues generated by the development; assisting with issues of sites through eminent domain power; and funding technologies that convert, store and return electricity to help alleviate disparities between electric supply and demand. According to Mr. Turner, the RETA's first project is a 100 megawatt (MW) wind farm in Torrance County known as High Lonesome Wind Ranch, LLC, which has a total projected revenue of approximately $580 million over the life of the farm, compared to $219 million of operating expenses. He said that the estimated financing from the RETA is $34 million. Mr. Turner also explored the green grid initiative and the collector systems of Public Service Company of New Mexico (PNM), SunZia and Integrated Transmission Solutions.

Electricity Demand Expectations and Integrated Resource Planning

Michael D'Antonio, PNM, introduced Jim Ferland, who gave a presentation to the committee.

Mr. Ferland, senior vice president of utility operations of PNM, said that it takes a long time to build a new power plant. He said there are issues that must be evaluated such as the cost of fuel, new renewable energies and unknown factors such as policy changes. The integrated resource planning (IRP) process was completed recently, which utilized the concerns and needs of customers, the company and other groups. The IRP four-year action plan seeks to promote demand of side resources; add natural gas resources (added Luna County and Lordsburg this year); monitor opportunities for Palo Verde leases; expand distributed generation; and add renewable resources. Mr. Ferland discussed near-term proposed renewable energies, including: utility scale renewables (70 MWs or more of solar and wind); distributed renewables (small on-site, individual solar devices within the system); biogas; and wind purchase.

Transmission Challenges

Teresa Mogensen, director of transmission business relations for Xcel Energy, provided a background of Xcel's perspective on transmission. She said Xcel wants a transmission system that is adequate and reliable; aligns with regulators and policymakers; and integrates intermittent renewable energy sources into the grid. Ms. Mogensen highlighted key issues, including: what

transmission is needed; renewable resource/climate drivers; who should plan and who should pay; and jurisdictions, such as state, regional and federal areas. She explained the SPS transmission system, Xcel's territory and the different grids within the United States. According to Ms. Mogensen, transmission planning drivers include load growth rate; regional economic conditions; systems interconnections; regulatory and environmental considerations; and stakeholder concerns.

She examined cost recovery issues such as regulatory lag where there is a cost difference between the time period when cost occurred and the time period when rates are implemented to recover those costs. Ms. Mogensen remarked that there is a need for supportive regulation to encourage ongoing investment in transmission infrastructure and that regulatory lag increases investment risk. She also explored stakeholder concerns, saying customers and regulators are concerned about impacts on rates, along with the transmission access of new energy resources such as new wind energy developers. Ms. Mogensen discussed what should be done to gain acceptance of renewable energy, including: establishing a clear need; aligning public policy objectives and public utility obligations; building an investment-enabling environment; focusing on high returns with low risks; presenting a clear path to cost recovery; and establishing collaborative planning and project development.

The committee recessed at 4:09.

Friday, August 7

The committee was called to order at 9:03 a.m. by Senator Martinez. Senator Ulibarri wanted the record to show an amendment, and Senator Duran seconded the amendment. Senator Leavell made a motion to approve the minutes; after Representative Bratton seconded the motion, the committee approved the minutes.

Global Energy Security: Dynamic Modeling

Arnold Baker, SNL, discussed global energy security. He explained an energy futures model that illustrates a sharp rise in global demand for oil, natural gas, coal and other energy sources. Mr. Baker also told the committee that world carbon emissions will rise extremely high. He described a scenario in which increasing the United States' use of nuclear power will decrease demand of natural gas and coal, but not necessarily oil (it is not often used for electricity). Not only will demand for other energies drop, so too would carbon emissions. Mr. Baker said that if the global carbon emissions problem is going to be solved, there must be technologies and programs to ensure the rest of the world, including the developing world and China, will adopt those technologies and programs.

He also explored costs of various alternative energy sources such as solar and wind energy. Mr. Baker examined alternative liquid fuels such as corn and ethanol, including their costs and efficiency. He said that corn ethanol, which takes up a lot of arable land to produce, could dominate the corn production of the United States, thus threatening corn production of corn for food. If corn ethanol made up 25% of U.S. oil consumption, it would take up 37% of the country's arable land and would dominate 93% of corn production, leaving only 7% for food and other uses. Mr. Baker said there are many options for liquid fuel for transportation and coal to liquid should be examined — the United States is to coal what Saudi Arabia is to petroleum

— and what subsidies are given out for different alternative fuel programs should be considered carefully.

Federal Stimulus-Funded Clean Energy Initiatives

Fernando Martinez, Energy, Minerals and Natural Resources Department (EMNRD), discussed the federal stimulus package and how it relates to New Mexico energy. He said that New Mexico will have federal grants to achieve increases in energy efficiency to reduce energy costs and consumption for consumers, businesses and government; to reduce reliance on imported energy; to improve the reliability of electricity and fuel supply and the delivery of energy services; and to reduce the impact of energy production and use on the environment. Mr. Martinez explored the status and distribution of the stimulus funds. He said New Mexico's American Recovery and Reinvestment Act of 2009 (ARRA) State Energy Plan (SEP) was approved by the Department of Energy (DOE) on July 10 with special conditions for NEPA compliance for certain activities. The total ARRA SEP award for New Mexico is $31,821,000, but it is being disbursed in several allocations; to date, the total awarded is $15,910,000. According to Mr. Martinez, funding opportunities will be available in both the public and private sectors, but information on jobs created or saved will not be known until the GSAs and PSAs for selected projects are complete or further federal guidance is received.

Mr. Martinez discussed the energy efficiency and conservation block grant program. He said that the program will work to create and retain jobs; save energy; reduce emissions of greenhouse gases; increase renewable energy production; and save money while leveraging private and other public funds. ARRA totals $20.6 million, with $11.4 million available directly to eligible local governments of the 10 most populous cities and the 10 most populated counties; $5.8 million in competitive grants to smaller municipalities and counties; and $3.8 million in competitive grants. Mr. Martinez said that through projects conducted by EMNRD-ECMD, local governments and all citizens of New Mexico will benefit from the cost savings associated with reduced energy use, with the larger benefit of reducing the contribution to global warming and increased energy security. He also discussed the energy efficient appliance rebate program, which has a total funding of $1.9 million.

Questions:
What is the level of cooperation with cities, municipalities, counties and local governments?
How are the tribes affected by the stimulus; what is their eligibility?
Deadlines of applications, allocations and completion of projects were discussed.

Tom Bowles, the governor's science advisor, discussed the New Mexico green grid initiative. The green grid is intended to utilize smart-grid technologies, basically making the grid more intelligent. He said the goal is to build out a smart micro grid with secure controls integrated with distributed energy generation and storage tied to a grid with utility-scale renewables. The intention also includes: building out a community of substation level (five MWs) with smart energy management substation storage with storage; smart two-way metering of buildings; distributed energy generation (rooftop solar photovoltaic) with storage; time-of-day pricing; energy efficient buildings and appliances; full monitoring and control with simulation and modeling; and integration with renewable energy sources on the New Mexico grid. Dr. Bowles said that the DOE has announced it will provide $4.2 billion in smart grid funding. New Mexico's strategy includes engaging utilities and communities across New Mexico in

demonstration projects, along with holding discussion meetings in various communities for better education on the subject.

Dr. Bowles said that New Mexico is the only state that has signed a memorandum of understanding with Japan to collaborate on joint economic development, which has allowed for mutual benefit from applying the best technologies from both countries to develop the smart grid. This could lead to long-term benefits for New Mexico, such as the ability to grow joint ventures in clean energy manufacturing in New Mexico. Dr. Bowles stated that the New Mexico green grid initiative has the stimulus smart grid demonstrations project integrated into the state's longer-term strategy to make New Mexico the first state to implement a full statewide green grid system.

Renewable Energy Finance Programs

Paul Gutierrez, New Mexico Association of Counties, discussed financing renewable energy projects through special assessments. He said programs have been implemented across the nation that allow local governments to facilitate funding to homeowners who wish to install renewable energy systems. Mr. Gutierrez said the legislature passed two bills in 2009 dealing with this, including SB 647 (which allows for the creation of a district for the purpose of encouraging and financing renewable energy projects) and HB 572 (which helps to facilitate financing arrangements for solar energy improvements).

Brian Cassutt, Renewable Energy Industries Association, discussed financing renewable energy. He said the traditional challenge to renewable energy procurement has been the large up-front costs coupled with a lack of financing tools that sufficiently spread out the cost over the useful life of the energy generating asset. He said that both bills do not create a general tax, but involvement in the programs is completely voluntary. Santa Fe County has been the leader in the state to push the programs from both bills. Mr. Cassutt discussed the allowances and possibilities under SB 647. The bill calls for district formation development; of guidelines for property owners to join a district; development of guidelines for district implementation; and adoption of intent resolution and ordinance ordering the formation of the district. He said that a district can issue bonds to pay for renewable energy projects; he discussed the way bonds can be structured and issued. According to Mr. Cassutt, special assessment may be imposed by resolution on participating property or properties and assessments may pay for improvements, costs of bond issuance, debt service and administration costs of the county/municipality. SB 647 allows for special assessments to be collected in the same time and manner as property taxes unless the district provides otherwise. Special assessment constitutes a lien on the property and shall have priority over all other liens except liens for ad valorem property taxes.

Under HB 572, a commission may enact an ordinance imposing a special assessment on real property within the county if the owner requests the assessment. It also allows for a financing arrangement between a certified lender and property owner. Mr. Cassutt said the assessing ordinance directs the county treasurer to include the assessment in the property tax bill for the property and the amount of assessment on a property shall be the amount necessary to finance the eligible solar improvement. The Financial Institutions Division of the Regulation and Licensing Department is charged with promulgating rules for the certification of lenders, according to Mr. Cassutt. He continued to say that written documentation of the proposed financing agreement must be approved by the county treasurer and funds are transferred from the

certified lender to the homeowner's contractor for the installed product. Mr. Cassutt discussed the upcoming next steps for the programs.

Questions:
Can organizations and agencies such as the RETA and New Mexico Finance Authority help with the programs, especially the bonding procedure?
Issues about the conflicts between bonds and property taxes were brought up.

MINUTES
for the
THIRD MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE
September 10-11, 2009
Ballroom B, Student Union, University of New Mexico
301 Cornell Dr. NE
Albuquerque
and
Fuller Lodge
Community Building
2132 Central Avenue
Los Alamos

Present	**Absent**
Sen. Richard C. Martinez, Chair	Sen. Stephen H. Fischmann
Rep. John A. Heaton, Vice Chair	Rep. Jeff Steinborn
Sen. Vernon D. Asbill (9-10)	
Rep. William J. Gray	
Sen. Carroll H. Leavell	
Rep. Antonio Lujan	
Sen. John Pinto (9-10)	
Rep. Jim R. Trujillo	
Sen. David Ulibarri	
Rep. Jeannette O. Wallace (9-11)	

Advisory Members	
Sen. Rod Adair (9-10)	Sen. Gay G. Kernan
Rep. Eliseo Lee Alcon (9-10)	Rep. Rodolpho "Rudy" S. Martinez
Rep. Thomas A. Anderson	Sen. William H. Payne
Rep. Donald E. Bratton (9-11)	
Sen. Dianna J. Duran (9-11)	
Sen. Lynda M. Lovejoy (9-10)	
Rep. Nick L. Salazar	

(Attendance dates are noted for those members not present for the entire meeting.)

Staff
Gordon Meeks
Mark Harben

Thursday, September 10 — UNM, Albuquerque

The Indian Affairs Committee (IAC) and Radioactive and Hazardous Materials Committee (RHMC) met jointly to hear testimony, consider recommendations from the Joint Subcommittee on Uranium Legacy Management and discuss methods to coordinate state and federal efforts to clean up radioactive waste.

Representative James Roger Madalena, IAC chair, and Senator Martinez, RHMC chair, called the meeting to order at 9:10 a.m. The meeting began with members introducing themselves and both committees approved their previous meetings' minutes.

Dr. Julia E. Fulghum, vice president for research at the University of New Mexico (UNM), welcomed the members, presenters and audience.

Uranium Legacy Impacts: Regional Ground Water, Environment and Health and Navajo Nation Five-Year Plan

Bill Olson, bureau chief at the Department of Environment (NMED), and Jerry Shoeppner, uranium project team leader at the NMED, discussed the department's efforts to clean up and monitor the "Grants Mineral Belt", an area approximately 100 miles long and 20 miles wide in a strip running from the Pueblo of Laguna to Shiprock.

Navajo Nation representatives, updating the status on a project with the federal Environmental Protection Agency (EPA), reported that they have completed a five-year plan for addressing the problems of contamination due to uranium mining. The NMED has contemplated seeking a similar plan for the State of New Mexico.

Contamination detected by the NMED at the Ambrosia Lake area (approximately 25 miles north of Gallup) is made all the more serious by the fact that the contamination sites are interconnected, the department reported. There is little pre-mining ground water data to establish responsibility for the cleanup and serious gaps in data and, because the EPA standards for uranium mining remediation were established in the year 2000, it is difficult to establish responsibility for the pollution.

Points of discussion included:

- availability of reports on sites surveyed by the NMED;
- the natural occurrence of uranium, lack of base data before mining began and lack of regulations on original mining;
- the concentration levels of uranium in water at different mine sites; and
- lists of all companies that operated mines prior to regulations.

Assessment and Reclamation of Abandoned Uranium Mines

Bill Brancard, director of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department (EMNRD), and Tony Herrell, deputy state director of the Bureau of Land Management (BLM), joined Mr. Olson to review problems dealing with uranium contamination.

Mr. Brancard said that the federal government does not have the ability to fix the mines that industry has abandoned. However, beginning three years ago, the EMNRD built databases

from all the mines in the area and visited sites out in the field. The EMNRD is now working with other agencies on ground and surface water contamination and estimates that over 1,500 locations had a "disturbance" related to uranium. Therefore, the department is focusing on locations that were actually mined. One database has been created to track mines that were once active, and another database has been created for everyone else.

Of the 259 New Mexico mines in 18 counties that reported uranium production, 137 have no record of any reclamation efforts. Focusing on the mines where no record of reclamation exists, the EMNRD has safeguarded 15 abandoned uranium mines from the early 1990s. It identified a need for maintenance at 21 sites on public land in the year between the summer of 2007 and the summer of 2008. In 2009, the departments got more detail on seven mines in the Poison Canyon area and did site assessment and surveys. With a $150,000 appropriation sponsored by Senator Lovejoy, the departments hope to complete 20 site assessments, leveraging state, federal and tribal grants.

Mr. Herrell said the U.S. Department of the Interior and the BLM have prioritized sites and have entered a $7 million agreement in 2009 to last for five years. The BLM is transferring $325,000 for 2009 and $450,000 for 2010 to do the work.

There have been three periods of BLM activity in the area: one with an inventory of locations in the 1980s; an abandoned mine land inventory from 1990 to 2006; and an abandoned mine site cleanup module from 2006 to the present.

The last time the department received significant funding, however, was in the 1980s, at which time the BLM surveyed 40 sites for remediation and did work on physical hazards on 12 sites. The inventory included meter readings for radioactivity.

The federal BLM funding for New Mexico was $125,000 in 2000 and $675,000 by 2009. Mr. Herrell said that the BLM has a $7 million agreement to work for five years on the issue of uranium legacy. The BLM has transferred $325,000 for 2009 and $450,000 for 2010 for legacy issues and has targeted the $450,000 to Ambrosia Lake cleanup. Back in the year 2000, the funding was only $125,000 for New Mexico uranium legacy.

Questions and discussion ensued regarding:

- the possibility of adding federal stimulus funds to the effort;
- the role of the federal Department of Energy (DOE) in the cleanup;
- how much has been spent for the Homestake Mine cleanup;
- cooperation between multiple federal and state agencies;
- standards for closing mine shafts and prevention of further oxidation and contamination of ground water;
- in situ mining as a preference to open pit mining;
- the position of the Department of Interior's (DOI's) solicitor general to use the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) cleanup money;
- the overlap of new mines and legacy mines and opportunity for cleanup to be paid by the DOE rather than the new mines;
- the summary of technical data of abandoned mines;
- the responsibility of owners for getting wells tested; and

- natural background contamination from mineralized zones.

Report of the Joint Subcommittee on Uranium Legacy

Senator Lovejoy and Representative Patricia A. Lundstrom, aided by staff attorney Damian Lara of the Legislative Council Service, reported to the full committees that the Joint Subcommittee on Uranium Legacy came to consensus on short-term recommendations. The co-chairs of the subcommittee gave a brief history of forming the subcommittee, noting that a delegation of legislators from both committees had traveled to Washington, D.C., last spring to talk with the New Mexico congressional delegation about the legacy of uranium mining. The group was acting to get more federal funds for cleaning up contamination from uranium mining in the post-war period up through the 1980s.

The report of the subcommittee included consensus priorities that requested senior New Mexico Senator Jeff Bingaman to:

(1) introduce new federal legislation or amendments to the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) to expand federal authority to reclaim mines that were active, remediate ground water contamination and address the spread of ground water contamination and set aside $1.5 billion for reclamation and remediation caused by past uranium and milling activities;

(2) work with Interior Secretary Ken Salazar to revise limitations on use of funds in SMCRA funds for non-coal mine reclamation;

(3) ensure that any future amendments to SMCRA provide funding flexibility for non-coal mine site reclamation;

(4) support for the federal Hardrock Mining and Reclamation Act of 2009;

(5) seek money for the EPA to coordinate with the DOE, the Nuclear Regulatory Commission (NRC), the DOI and state governments to create a five-year plan for cleanup of uranium mines, mill sites and ground water contamination;

(6) ask the NRC to review cleanup and ground water plans and review the background levels of aquifers affected by uranium mining and milling activities;

(7) seek a National Academy of Sciences study on reclamation of uranium mines and remediation of ground water contamination caused by uranium mining and milling activities; and

(8) amend the federal Radiation Exposure Compensation Act of 1990 to include uranium miners who worked after 1971.

The co-chairs noted that the only bone of contention among committee members concerned a recommendation that New Mexico help to fund a field conference at New Mexico Tech this coming spring, since the state is so short on funding. Therefore, that consensus point was dropped. The report of the subcommittee then was written to include only points that were

passed by vote. After approval by the IAC and the RHMC, the subcommittee planned to seek endorsement of the recommendations by both the governor and tribal leaders across the state.

After much discussion, during which some subcommittee members denied that consensus had been reached, Senator Leavell of the RHMC moved and Representative Heaton of the RHMC seconded a motion to strike numbers 4 and 6 of the points and both committees approved. A motion to approve the subcommittee's recommendations failed the RHMC but passed the IAC. Ultimately, members of the IAC and the RHMC voted unanimously to support the motion of Senator Asbill and second of Senator Ulibarri to request the New Mexico Legislative Council to approve a second joint committee meeting and one more subcommittee meeting. Staff was requested to redraft the letters to Senator Bingaman, Secretary of the Interior Ken Salazar and Secretary of the DOE Dr. Steven Chu to reflect the deletion and to clarify that seven rather than 10 meetings were held on uranium legacy management in New Mexico. The redrafted letters would be reconsidered by the subcommittee at its next meeting if approved by the New Mexico Legislative Council to meet and by the full committees whether or not they are approved for another joint meeting.

Multi-Agency Five-Year Plan to Address the Uranium Legacy in New Mexico

Staff from Region 6 of the EPA addressed the committee over a working lunch. Sam Coleman, director of the Superfund Division, said that the current Region 6 plan encompassed cleanup of the San Mateo Basin as a priority. He said the agency is collecting input from the state, tribes and other states to see what parties need to be included in creating a five-year plan such as that agreed to by the EPA with the Navajo Nation. He expects to release a five-year plan in spring 2010, but noted that the plan is only "a starting point". The EPA is working with the EMNRD's Mining and Minerals Division and the NMED's Water and Waste Management Division in the early planning stages.

Mr. Coleman suggested that organizations and governments should decide upon the scope of work and agreed to send the draft scope of work to the subcommittee.

It is likely that, with the support of each of the committees, the EPA would move more quickly to establish a firm plan of action.

Discussion points included:

- the cost of providing water to Navajo communities with contaminated wells;
- specific problems on the Navajo Nation where water is being supplied and excessive charges are made by trading post operators;
- public meetings on the Navajo Nation;
- when the subcommittee was appointed;
- the lack of baseline data;
- the need for a five-year plan for New Mexico to clean up abandoned mines;
- the scope of work of federal agencies to be submitted to the subcommittee;
- cost of cleanup and time required; and
- unknown sources of ground water contamination.

Long-Term Legacy Management and Containment of Ground Water Contamination

Ray Pleiness, director of site operations at the Office of Legacy Management (OLM) at the DOE, explained to the committee that the state and DOE do not have a cooperative agreement for site maintenance. The OLM's support to the NMED is in data sharing, nitrate sampling beyond basic requirements and sampling in general. The OLM has invited NMED participation, including joint sampling and visiting of sites.

To assuage the NMED's concerns about ground water, the OLM will install a shallow monitor, Mr. Pleiness said. On questions from committee members, Mr. Pleiness said that the DOE has the authority to fix sites and has responsibility for mill sites to protect ground water.

To address the lack of communication among different levels of government and different departments within the federal, state and tribal governments, a memorial is being drafted to coordinate all legacy management agencies.

Discussion points included:

- the difference between federal NRC standards and New Mexico standards for contaminants in ground water;
- the status of leaking tailings impoundment;
- the lack of baseline information;
- inconsistent standards among government agencies;
- the differences between contamination sources and tailings versus mines;
- wind-born contaminants; and
- the need to establish an understanding of background levels.

Reclamation and Remediation Standards of Uranium Mill Sites

Keith McConnell, deputy director of the Division of Waste Management and Environmental Protection at the NRC, discussed the roles and responsibilities for "Title I" sites in New Mexico: the EPA is in charge of cleanup and disposal; the DOE is in charge of remediation of sites to the EPA standards; the DOE is in charge of remediating properties in the vicinity; and the NRC is in charge of evaluating and stating concerns to the DOE. The goal is to return the sites to a background level or a maximum contaminant level. Title I sites in New Mexico include Shiprock, where there is active ground water remediation in two areas, and Ambrosia Lake.

Title II sites were determined by agreement with the State of New Mexico in 1974. These include milling activities up through 2002 at Ambrosia Lake. Superfund sites are at Homestake and Church Rock. The Title II sites include ARCO at Bluewater, the Homestake mine in Grants, Ambrosia Lake, Church Rock, L Bar and HRI in Crownpoint. Of these, Homestake and Ambrosia Lake are being decommissioned. The decommissioning sites were the result of a facilitated meeting.

Senator Lovejoy mentioned that the subcommittee met with Commissioner of Public Lands Patrick Lyons on establishing "alternate concentration" limits. These are established at varying levels depending on the site. She noted that the NRC standards sometimes are different from those established by the EPA or the DOE. Mr. McConnell said that it is not unusual for state standards to be stricter than the federally established standards, as is the case in New Mexico.

Discussion ensued on how the NRC establishes the standard "background" of radiation at a site. The NRC has allowed certain sites simply to raise that "background" level rather than establishing "alternate" standards.

Discussion points included:

- who is in charge;
- reiteration of the elements in the motions from the morning presentations; and
- the distance of mines to mill sites.

Homestake Site — Status Update

Al Cox and George Hoffman of Homestake Mining Company spoke to the committee on the status of the mine. The Homestake mine, operated from 1956 to 1990 in Milan near Grants, generated 22 million tons of mill tailings over its 30 years of operation, of which only the pilings remain, now stored in two huge piles. One pile covers 200 acres and is 100 feet high. The other covers only 40 acres at 25 feet tall. The mine was declared a Superfund site and is now under assessment by the Agency for Toxic Substances and Disease Registry (ATSDR), a federal public health agency that is part of the U.S. Department of Health and Human Services.

The presenters gave a summary of the report released on June 26, 2009. Among the findings were:

(1) the uranium, selenium and molybdenum concentrates found in private wells near the Homestake site in the 1970s to 1990s were, in some cases, up to 100 times greater than those over the past three years;

(2) while some persons took advantage of using alternate water from the City of Milan between 1985 and 1995, others may have continue using their well water and may have been exposed to the contaminants;

(3) the ATSDR did not sample soil or vegetables to know to what extent they were affected by the contaminants;

(4) residents of the area may have use contaminated ground water for irrigation and watering livestock, and residents meeting with ATSDR in 2005 did not report any adverse health effects in the livestock; and

(5) water tested between 2005 and 2007 had levels of uranium and selenium concentrates above the minimum (MCL) but below the standards setting a risk of adverse health effects.

Testimony before the committees included the information that the EPA lowered its standard of 5,000 parts per billion of uranium allowed per million to only 30 contaminant parts per billion in the year 2000. The standard means that many areas that were approved in previous years are not considered safe now. It was also reported that contamination from the mine is not, as is usually believed, spreading underground, and legislators were challenged to report any information that it is spreading.

Homestake reported that the NMED has not approved its permits for more mining for the past 32 months and the statement was met with disbelief. Asked why the permit has not yet been approved, Homestake said it did not know. Mr. Olson said the NMED formerly had an issue on the size of the pond and of "radiation migration". Now a public meeting for the public and tribal leaders is set for November 2009 for approval of a restart of the mine.

Representative Lundstrom requested a written response to her question of why the Homestake mine still has not been approved.

So far, estimates are that $100 million will have been spent by the year 2017 for remediation. The report also mentioned that Homestake's obligation to take remedial action to clean the ground water expires in 2015. Even after the mine's obligation to remediate the ground water in 2015, uranium and selenium levels will still be above safe standards for drinking water.

The mine has capped the large tailings pile with a radon barrier and erosion-protection cover on its sides and an interim soil cover on its top. After the tailings are flushed, the small tailings pile will also be capped by an interim soil cover. When the ground water restoration is complete, a final radon barrier will be constructed.

Discussion points included:

- flushing to reduce contaminants;
- a lack of baseline data for water quality or water chemistry;
- scientific data on ground water quality monitoring of hundreds of wells and logs demonstrate that the aquifer northeast of Homestake mine is not being contaminated by the facility;
- that New Mexico is terrible for business as indicated by the time it takes to get a permit (two and one-half years) for a pond to clean up the tailings (22 million tons);
- the amount of money brought into the state by the uranium industry;
- a comparison of Homestake cleanup to other uranium mining and milling site cleanups;
- New Mexico's radiation standards;
- permit delays based on community objections;
- the role of the U.S. Army Corps of Engineers remedial systems evaluation program as a consultant to the EPA;
- why the EPA has not approved the Homestake permit for cleanup (potential sizing, radon migration, requests for public hearings, differences in standards, tribal consultation process and discrepancies between the EPA and the NRC);
- a request to the NMED for written explanation;
- corporate bylaws of Homestake;
- the cost of cleanup so far: $100,000,000 and $47,000,000 more anticipated by 2017;
- reverse osmosis and evaporation as techniques for pond cleanup; and
- potential court action.

Environmental and Technical Capabilities

Carol Brewer, environmental program manager with the U.S. Army Corps of Engineers, and Mr. Herrell talked about their recent work on water resources, addressing planning, study and design of non-coal mines. The two agencies have $20 million authorized now and will ask for $7 million more for 2010.

Representative Madalena asked the U.S. Army Corps of Engineers to do a study on tribal contract lands (638 contracts). Ms. Brewer said they are working directly with the tribes.

Linda Weiss, U.S. Geological Survey, gave a short promotional presentation of the capabilities of her agency.

Mt. Taylor Current Developments — Status Update

Nancy Rose, forest supervisor at the Cibola National Forest and Grasslands, United States Forest Service, made a brief presentation. Ms. Rose reported that Murex Energy wanted to dig 21 "exploration" holes on the mountain. Since the mountain contains sacred sites, the exploration holes were not dug. The United States Forest Service also rejected one application from La Jara Mesa, three others in preliminary discussions and nine others that said they are likely to go forward.

The United States Forest Service will begin the NEPA process for uranium in the year 2011. At that time, all the builder proposals will be combined into one environmental impact statement. A decision is expected next spring.

Discussion points addressed water requirements for proposed mines.

Uranium Legacy Impacts on Health of Residents

Dr. Johnnye Lewis, principal investigator of the Navajo Nation Uranium Assessment and head of the Dine Network for Environmental Health Project (DiNEH), and Steve Dearwent, branch chief of the ATSDR at the U.S. Department of Health and Human Services, reviewed their work with 20 chapters from the Eastern Navajo Agency. Among the questions the study conducted recently asked were what level of exposure to uranium causes physical damage and to what extent.

The studies have indicated a high rate of kidney disease among Navajos in that area with significant uranium exposure. The study showed that 30% of Navajos had access to regulated water, compared with only 0.6% of the United States as a whole. This number translates to 12% of the nationwide count of Native American people. Some prevalence of kidney disease may be attributed to a genetic sensitivity to uranium, Dr. Lewis said, but exposure to all metals can destroy kidneys. People who are healthy can resist some level of exposure, but if a person has diabetes, the exposure can accelerate the diabetes.

Dr. Lewis' study included three generations of 300 people exposed to uranium. The population manifested hypertension, kidney disease, diabetes and a high percentage of other autoimmune diseases, all of which increased as the number of mines in a chapter increased. Some 19% to 25% of the respondents were unaware that they were living near a uranium mine.

Dr. Dearwent said his study, the Church Rock Uranium Monitoring Project and Uranium Assessment and Kidney Health Project, assesses the health effects of hazardous substances in the environment. He noted that "exposure routes" for uranium include both inhalation and ingestion and produce kidney disease, lung cancer, developmental delays, DNA damage and endocrine disruption. His study asked about exposure levels in the population and what activities contributed to the exposure, and the study found that living near waste and living in

contaminated buildings as well as relying on contaminated water had effects.

Legislators discussed:

- whether the level of a single exposure was as significant a contributor to illness as the amount of exposure over a lifetime;
- autoimmune disease as a genetic disorder instead of an environmental disorder;
- the difficulty of sorting out the presence of uranium on the surface of the earth from mined uranium ores;
- the immobility of natural uranium material compared to tailings and mined material;
- the problem with expanding findings from a specific population to a broader population or of excluding a particular population;
- the frequency and magnitude of changes in uranium standards;
- which autoimmune diseases are being researched;
- the lack of medical records study;
- scientific validity in general of the study presented;
- reliance of the study on self-reporting as opposed to statistical comparison of randomly selected individuals compared to a control group;
- the lack of whole body counts;
- the relationship between heavy metals exposure and hypertension; and
- the potential effects of arsenic and cadmium in fatty deposits where they are not usually found rather than from uranium exposure.

Recess

The meeting recessed at 6:15 p.m.

Friday, September 11 — Fuller Lodge, Los Alamos

Welcome

The RHMC was called to order at 9:15 a.m. by Senator Martinez, chair.

Welcome to Los Alamos

Mike Wheeler, chair of the Los Alamos County Council, welcomed the committee to Los Alamos. He said that Los Alamos County has hosted and supported Los Alamos National Laboratory (LANL) for a long time, but is its own entity, operating separately from LANL. He said the cleanup of radioactive and hazardous materials are necessary and are pushing forward.

Roger Snyder, DOE, also welcomed the committee. He said that LANL has been instrumental in keeping the United States safe, and he mentioned the anniversary for the September 11, 2001 terrorist attack.

The committee members introduced themselves.

LANL Environmental Management Program

Ron Curry, secretary of environment, introduced members of the department. He provided background regarding Los Alamos, LANL and his personal connection to them. Secretary Curry said that Dr. Ines Triay is in the Obama administration working on

environmental cleanup for the DOE on the federal level, but she is connected to the Los Alamos area and will be a great ally in the federal government.

Secretary Curry discussed the consent order, which was signed in 2005, and mentioned the milestones established in that order. He said the department believes it is a good document and the future success is likely. One of the biggest challenges is the chromium contamination in the Mortandad Canyon, with the sources coming from the head of Sandia Canyon. Another area important to the department is Area G, LANL's radioactive disposal facility. Area G is really a legacy facility, so it is not an approved site for disposal, and it must be cleaned up by 2015. Secretary Curry explained the penalties associated with not meeting the milestones mandated in the consent order make the process more complex for the contractors and the state itself. He mentioned the effects of radioactive contamination in Los Alamos on the Buckman project, and said that the department is committed to move the program forward as planned. Secretary Curry discussed the program called RACER, which goes through all the data files about the cleanup and makes them available to the public.

Michael Graham, associate director for environmental programs for LANL, thanked the committee for allowing him to speak. He said he is relatively new, joining LANL in November 2008, and told the committee about his background. Dr. Graham said he is responsible for the $2 billion LANL cleanup of the Manhattan Project and Cold War waste through 2015, along with management of LANL waste from ongoing operations. He explained his priorities, including worker safety, protecting the public and environment, compliance with laws, efficient and effective operations and transparency of the operations. According to Dr. Graham, under his management, LANL has completed the High Activity Drum Campaign; completed shipments of 16 remote-handled transuranic canisters to the Waste Isolation Pilot Plant (WIPP); tripled the transuranic repackaging rate at Technical Area 54; and completed a record number of shipments to WIPP. There has also been a completion of remediation of 10,000 cubic yards at Material Disposal Area Y; removal of approximately 1,100 cubic yards of PCB contaminated soils at the DP site; and completion of 20 ground water monitoring wells.

Dr. Graham told the committee about the LANL Recovery Act progress and scope, stating that $212 million was released to LANL on July 22 with four main projects, including: demolition of Cold War era buildings (two projects); installation of ground water monitoring wells; and cleanup of LANL's first landfill, operated from 1944 to 1948. According to Dr. Graham, these projects created and saved 100 jobs in the first month, along with awarding a $100 million master task order agreement for remedial actions and demolition for small businesses, three of which were northern New Mexico businesses (Portage, ARSEC and LATA). The LANL Recovery Act progress also includes a direct push soil sampling completion at the landfill; conclusion of the first phase of demolition readiness; and the issuance of a request for proposals for the $100 million for waste disposal master task order agreement. The LANL Recovery Act project has outreach as well. There is a public meeting on August 18 and an operating web site, along with briefings of local governments, business networking and a job fair. He discussed the accomplishments under the consent order as well, saying that 201 deliverables and supporting documents were submitted year-to-date.

Committee discussion and questions addressed:

- why permits for Homestake's cleanup are taking so long to be issued;

- cleanup on tribal lands;
- the Buckman project and the citizen advisory board;
- packaging of waste;
- the number of monitoring wells and if there are adequate numbers;
- disposal of demolition materials;
- labor shifts and assignment of personnel;
- the negative public image that results from slowness of environmental cleanup;
- the status of shipments to WIPP;
- sediment in canyons or the Rio Grande;
- elements of the consent order;
- a request for inventory of all sites (1,400) that need cleanup and a matrix of their accounting status; and
- the relationship between the various agencies that have a role in overseeing the sites.

LANL Renewable Energy Research and Development

Terry Wallace, principal associate director of science, technology and engineering for LANL, said that ensuring that America has a reliable, affordable and clean energy supply is critical to national security. He continued to say that meeting this challenge in the face of growing global energy demand and climate change will require dramatic advances in science, technology and engineering. LANL is a central player in this scenario, according to Dr. Wallace, and Los Alamos will provide science, technology and engineering leadership for highly innovative solution to meet the nation's energy needs.

Dr. Wallace discussed the energy security challenge, stressing the importance of energy to American society and its economy (the U.S. uses one-fifth of the world's energy). He said that the U.S. imports 70% of its oil products today and the country's energy supply is susceptible to price volatility and global politics. Renewable energy is pivotal to ensure the United States' secure access to energy in the years ahead. Dr. Wallace discussed nuclear, wind and solar energy sources, saying that Los Alamos has a role to play in developing these sources in New Mexico. He said that LANL is looking at advanced systems to provide energy for transportation and the energy grid as well. The resources at LANL are extensive, such as computer modeling systems, research facilities and general expertise. Dr. Wallace said there are three principal elements to the Los Alamos energy security programs, including: sustainable nuclear energy; materials and concepts for clean energy; and mitigating impacts of global energy demand growth.

The committee discussed:

- the five megawatt, self-moderating nuclear reactor invented at LANL;
- the potential for technology transfer as affected by the difference between applied research and fundamental research;
- implementation of renewable energy potentials;
- the new energy paradigm of individual homes generating energy with a grid backup rather than the current reliance on grid distributed energy;
- limitations of transmission capacity; and
- technology advances for solar and wind efficiency and storage as limiting factors.

Working Lunch
Solid Waste Management in New Mexico

Marla Shoats, lobbyist for Waste Connections, Inc., thanked the committee for having the panel provide a presentation. She introduced the panelists and members of the audience affiliated in the waste management industry. Ms. Shoats discussed the previous legislative session and various proposed legislation that dealt with waste management. She said that solid waste management is one of the most heavily regulated industries in the country. New Mexico passed regulation laws for solid waste management in 1990.

Mark Turnbough, Ph.D., environmental consultant, discussed his background and job description. He explained siting compliances, including areas that cannot be used such as: areas greater than 500 acres; flood plains, wetlands and watercourses; areas 100 feet to the water table; subsurface mines; areas within 200 feet of a fault line; an active alluvial fan; areas with threatened or endangered species; and seismic impact zones or unstable areas. Dr. Turnbough mentioned environmental setbacks regarding the location of landfills. He said a concerted effort is made to protect the integrity of historical and archaeological sites, which is especially relevant in New Mexico. There has also been a strong push to define vulnerable area assessments, which would include: economically stressed households; a population of 50 people or more within any square mile; and an area of three or more regulated facilities. Dr. Turnbough examined the rule of having a site in an area that is at least 100 feet from the water table, which greatly limits where these sites can be because so much land in New Mexico does not have the necessary distance from the water table. Dr. Turnbough also told the committee that 60% of the land in New Mexico is in a seismic impact zone.

Mark Miller, National Solid Wastes Management Association, New Mexico chair, provided a summary of his background to the committee. He discussed permitting processes for solid waste management and the costs involved (as well as construction and operations). Mr. Miller informed the committee about New Mexico's Solid Waste Act and the role the NMED plays in permitting. According to Mr. Miller, permitting can cost from $500,000 to $1 million and can take up to two years to obtain. Regarding operating costs, Mr. Miller said that those can total $10.00 to $30.00 per ton, while cell construction can equal $100,000 to $200,000 (or $4.00 to $8.00 per ton). He discussed different solid waste facility systems, including: an impermeable double liner system; leachate collection removal systems; heat-welded double liner seams; and composite liner systems. Ground water monitoring wells are required and cost $10,000 to $100,000 per well, and annual ground water and methane monitoring are in place for each well at $10,000 per well. Closure and post-closure operations are conducted to have revegetation, thus making the land open space.

I. Keith Gordon, Gordon Environmental, Inc., gave a brief synopsis of his background and qualifications. He said that there is a national trend of reducing the number of landfills at a dramatic rate (from over 8,000 to around 2,000 landfills in the last 20 years). New Mexico has followed this trend, but at slower rate. According to Mr. Gordon, New Mexicans generate over two million tons of solid waste per year, which is five pounds per person a day; approximately 12.4% is recycled, putting the state behind the national curve. Currently, New Mexico has 36 landfills of various forms, including 20 permitted landfills and 11 registered landfills (small, non-lined landfills serving small communities). Within the next five years, there will be 25 landfills in New Mexico. According to Mr. Gordon, privately operated landfills are the largest

in the state and take the most waste, but have permits for only 10 years instead of 20, even though privately owned landfills have better track records for safety compared to public ones. He commented on the South Central Solid Waste Authority Transfer Station in Las Cruces, which is an award-winning system. Mr. Gordon said there are 13 permitted transfer stations and over 100 registered collection centers in the state.

Ms. Shoats said the fact that private landfills can only receive a 10-year permit is limiting. She said there is need for discussion to get 20-year permits.

Discussion points included:

- the difference between public and private landfills;
- the anti-business bias of the NMED and state government;
- a two-year period for permitting;
- the number of landfills in the state (20);
- permit fees ($10,000) and dependency of the NMED on them and proposed increase supported by the industry in exchange for a 20-year permit period;
- municipal and county support for the Solid Waste Act changes to increase the permit period;
- cost analysis of regulatory policies;
- the life expectancy of current technology;
- that tires are the most durable component in landfills;
- molecular weight of the liner membranes and life span of liners (300 to 500 years);
- methane from landfills;
- liability for failure;
- the Lea County landfill dispute with the NMED waste acceptance issues;
- disposition of last years's bills to amend the Solid Waste Act;
- tipping fees; and
- comments on the quality of the Los Alamos landfill.

Environmental Education Initiative

Cedric Page, Ph.D., executive director of UNM-Los Alamos (LA), said that the UNM-LA is committed to serve the communities of northern New Mexico, especially within the environmental realm.

Kate Massengale, Ph.D., dean of instruction at UNM-LA, thanked the committee for presenting this topic. She said that UNM-LA transfers (200 UNM-LA students transfer to UNM's main campus each year) are extremely successful when they go to the UNM main campus. According to Dr. Massengale, 75% of the transfer students get As or Bs in math, science and english and 95% earned Cs or higher. She said that UNM-LA wants to update the environmental science program, which was established recently to allow students to finish a bachelor's degree in environmental science in Los Alamos.

Discussion points included:

- field experience students can acquire with participating organizations;
- working with northern New Mexico communities;
- student support;
- support by the committee for a memorial to the federal government asking for funding

support for the environmental education program at UNM-LA;
- online class curriculum for degree fulfillment;
- the lack of core faculty; and
- the accommodation of military students.

The committee adjourned at 2:02 p.m.

MINUTES
of the
FOURTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

October 26-27, 2009
Hobbs and Carlsbad

The fourth meeting of the Radioactive and Hazardous Materials Committee was called to order at 1:15 p.m. by Representative John A. Heaton, vice chair, on Tuesday, October 26, 2009, at New Mexico Junior College in Hobbs.

Present
Rep. John A. Heaton, Vice Chair
Sen. Vernon D. Asbill
Rep. William J. Gray
Sen. Carroll H. Leavell
Rep. Jeff Steinborn
Rep. Jeannette O. Wallace

Absent
Sen. Richard C. Martinez, Chair
Sen. Stephen H. Fischmann
Rep. Antonio Lujan
Sen. John Pinto
Rep. Jim R. Trujillo
Sen. David Ulibarri

Advisory Members
Sen. Rod Adair
Rep. Donald E. Bratton
Sen. Gay G. Kernan
Sen. William H. Payne
Rep. Eliseo Lee Alcon
Rep. Thomas A. Anderson
Sen. Dianna J. Duran
Sen. Lynda M. Lovejoy
Rep. Rodolpho "Rudy" S. Martinez
Rep. Nick L. Salazar

Guest Legislator
Rep. Shirley A. Tyler

Staff
Gordon Meeks
Mark Harben
Damian Lara

Monday, October 26

The committee toured the Louisiana Energy Services (LES) facility in the morning.

National Enrichment Facility Status: Report from LES

Reinhard Hinterreither, president and chief executive officer of LES, thanked the committee for taking a tour of the LES facility. He said that safety is the top priority of LES in order to ensure the well-being of the community. Mr. Hinterreither stated that LES has 331 full-time employees working in design, engineering, licensing, operations, maintenance and construction management. There was a peak of 1,600 employees during the biggest construction phase in the spring and summer of 2009. He discussed the amount of money spent with New Mexico companies in 2008, totaling $110 million. Gross receipt taxes paid to vendors since the start of

construction have been $29 million; annual payroll is $35 million (including benefits); $6 million in New Mexico income taxes, along with $3 million in property taxes, have been paid out; and construction payroll amounts to $11 million per month. Mr. Hinterreither relayed safety statistics to the committee, saying that there have been no lost-time accidents during the 6.8 million man hours tabulated, and the site was recently awarded the Occupational Excellence Achievement Award. He also discussed historical milestones for the company.

LES, according to Mr. Hinterreither, received construction and operating licenses in June 2006 and chose the Greenfield site outside of Eunice, New Mexico. He provided status updates for the construction site, including the security/visitor center; the technical services building; the cylinder receipt and dispatch building; the central utilities building; the CUB emergency diesel generator; the centrifuge assembly building; and the Pete V. Domenici separation building module. Mr. Hinterreither explained aspects of the centrifuge process, along with the handling process, including feed, product and tailings stations.

Discussion points included issues with getting and keeping enough employees and New Mexico losing out on new home construction to Texas because of requirements for contractors in New Mexico.

Algae Biodiesel Project

Doug Lynn, executive director, Center of Excellence for Hazardous Materials Management (CEHMM), discussed the algae project currently underway, saying that its algae is very versatile in marginal water. He said that he is growing marine microalgae in open ponds at the New Mexico State University Agricultural Experimental Station. Mr. Lynn said the CEHMM is working with industry and university partners to implement a fully integrated system for growing, harvesting and making fuel and co-products from algae. He told the committee that algae is not only good for fuel, but has been found to be a great form of cattle feed.

Mr. Lynn discussed the production goals of the CEHMM and said that it would like to refine winter cultivation protocol; establish data trend sets for lipid content, carbohydrates and production yield; build and test larger ponds; maximize growth in all ponds; and test increased pond depth models. The CEHMM is growing algae in deeper ponds than its competitors. He discussed progress, including construction of a new one-fourth-acre pond with an experimental raceway design; a ribbon-cutting event for the public attended by U.S. Congressman Harry Teague; a lease agreement for production space; and permits for water rights.

Mr. Lynn explained the research and production goals of the CEHMM. He said that there is a commitment to increasing the harvest rate to optimize trend yield and to test, build and install a prototype harvesting system. He discussed fractionation, extraction, purification and conversion. Mr. Lynn told the committee that 80% of the on-site pilot plant to optimize yield is completed. He said that there are some legislative issues that the company would like the committee to assist with, including addressing standards that are not necessary.

Produced Water

Tim Coakley, president, SCW, Inc., described produced water uses, saying that 28.9 billion gallons of produced water from oil and natural gas fields are pumped out of the ground in New Mexico each year on average. Mr. Coakley stated that water quality varies over the range of

3,500 to 305,000 parts per million of total dissolved solids (TDS). He also said that produced water contains amounts of crude oil that can be economically recovered in the treatment process. According to Mr. Coakley, SCW's mission is to convert this toxic waste into a valuable resource. He discussed uses of remediated produced water such as industrial process uses, oil and gas, biodiesel and potable water supply. Mr. Coakley discussed cost drivers for produced water remediation, such as destination for cleaned water, TDS magnitude, total organic carbon in parts per million, available volume and location accessibility. The remediated water can also be used for drilling fluid and drinking water and possibly used for biodiesel ponds. Mr. Coakley explained the component for treating produced water, such as hydrocyclones and a vacuum distillation unit. In future, remediated water could be used for municipal needs. The committee also discussed costs.

The meeting recessed at 3:50 p.m.

Tuesday, October 27

The meeting reconvened at 9:14 a.m. at the Pecos River Village Conference Center in Carlsbad.

Waste Isolation Pilot Plant (WIPP) Resource Conservation and Recovery Act of 1976 Permits Update

James Bearzi, Department of Environment (NMED), thanked the committee for the opportunity to speak before it. There are three levels of permit types: class 1, class 2 and class 3, each getting more difficult to obtain. Class 3 has a significant process, including drafting new permits and seeking public comment. WIPP is renewing its permits because the permits expire next month. There have been many unforeseen challenges during the lifetime of WIPP, but those challenges have been met by the state, the NMED and permittees. The permittees had meetings to gather all the necessary information and establish a useful strategy to renew the permits.

WIPP decided that it would like to have a permit similar to the permit on which it has been operating. The permittees did ask for an extension on the submittal date, which was granted, extending it from May to September 2009. Mr. Bearzi said it is entirely possible to have the renewal process complete in 18 months, which is incredibly fast. There are rules and requirements in the process, including an administrative completion checklist (all elements in the permit request are complete), a technical adequacy evaluation and a draft permit coupled with a public comment period. According to Mr. Bearzi, WIPP and the NMED are both going forward to get the process done.

The NMED is also looking at the WIPP audits to ensure that waste is characterized properly according to its categorization. Mr. Bearzi discussed other sites in the country that are similar to the WIPP site, and the department has sent people to view and evaluate those sites. Mr. Bearzi also discussed the provision in the permit that allows WIPP to resolve a dispute it may have with the department. The dispute resolution clause allows for a resolution without a lawsuit.

Potash Solution Mining

Leonard Kaskiw, general manager of Intrepid Potash-New Mexico, LLC, discussed potash solution mining. He talked about possible solution mining sites and where the underground mines would be flooded. Mr. Kaskiw said that solution mining and evaporative mining are proven techniques around the world. He said that there will be a 500-acre evaporative pond where the brine is pumped in to allow for evaporation. Mr. Kaskiw discussed the process of solution mining, saying salty brine is pumped into the area for mining, which will bring up the potash when that brine is pumped into the evaporative ponds.

Mr. Kaskiw discussed the major facilities to be constructed, including six injection wells and five extraction wells, with associated pipelines on federal and state lands; 500 acres of solar evaporation ponds on Intrepid property; and a flotation plant adjacent to the west plant. He told the committee that the mine will have a 28-year life, yielding 184,000 tons of potash a year. An environmental impact statement is currently in progress by the Bureau of Land Management (BLM), and the NMED draft discharge permit is expected to go to a second public notice and public comment by the end of 2009. According to Mr. Kaskiw, Intrepid has established good working relationships with both agencies.

Mr. Kaskiw continued to explain the benefits of the process, saying that there will be associated federal and state royalties associated with the low-cost extraction of five million tons of potash, a total estimated investment of over $400 million to construct and operate the project and the hiring of an additional work force of 40 employees to be drawn from the local area, along with the first year construction phase employing 150 to 200 contract workers. He added that the process minimizes the environmental impacts and utilizes green technologies, including reusing extract salt, thus not creating a new salt tailings pile; minimal surface disturbance; use of salty, nonpotable ground water to inject into underground workings; no ground water impacts; and use of solar energy for evaporation.

Jim Stoval, BLM, said that HB Potash is proposing to use in-situ mining for potash around Carlsbad and discussed the conditions for such a process in the area.

Carlsbad Brine Well Report

Mark Fesmire, director, Oil Conservation Division, Energy, Minerals and Natural Resources Department (EMNRD), told the committee that on July 16, 2008, a brine well collapsed southeast of Artesia, and there was a collapse in November 2008 north of Loco Hills. The first brine well collapse was 400 feet wide and 100 feet deep.

Jim Griswald, senior hydrologist, Environmental Bureau, Oil Conservation Division, EMNRD, discussed the collapse of a well operated by a trucking company, I & W, Inc., providing history and background of the company and the area that experienced the collapse. According to Mr. Griswald, an I & W early warning system is in place and is currently configured with three borehole tiltmeters, each installed approximately 15 feet beneath the ground above the brine cavern; electronic pressure transducers installed in each of the ground water monitoring wells; an electronic barometer to measure ambient atmospheric pressure; a signal conditioning system; an on-site computer and wireless connection with a secure remote server; and a temporary building on the site that protects the signal conditioning, computer and

internet equipment. Mr. Griswald also provided the committee with a time line of activity and monitoring of brine well collapses in the area.

The committee adjourned at 12:30 p.m. and took a tour of WIPP.

MINUTES
of the
FIFTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE
November 12-13, 2009
Room 321, State Capitol
Santa Fe

The fifth meeting of the Radioactive and Hazardous Materials Committee was called to order by Senator Richard C. Martinez, chair, at 8:45 a.m. on Thursday, November 12, 2009, in Room 321of the State Capitol.

Present	**Absent**
Sen. Richard C. Martinez, Chair	Sen. Vernon D. Asbill
Rep. John A. Heaton, Vice Chair	Sen. John Pinto
Sen. Stephen H. Fischmann	Sen. David Ulibarri
Rep. William J. Gray	
Sen. Carroll H. Leavell	
Rep. Antonio Lujan	
Rep. Jeff Steinborn	
Rep. Jim R. Trujillo	
Rep. Jeannette O. Wallace	

Advisory Members	
Sen. Rod Adair	Rep. Thomas A. Anderson
Rep. Eliseo Lee Alcon (November 12)	Rep. Donald E. Bratton
Sen. Lynda M. Lovejoy (November 12)	Sen. Dianna J. Duran
Sen. William H. Payne	Sen. Gay G. Kernan
Rep. Nick L. Salazar	Rep. Rodolpho "Rudy" S. Martinez

(Attendance dates are noted for members not present for the entire meeting.)

Staff
Gordon Meeks
Mark Harben

<u>Thursday, November 12</u>

Potential Impacts of Climate Change on New Mexico

Patrick McCarthy, director of the Southwest Climate Change Initiative of the Nature Conservancy, told the committee that the nature conservancy works around the world to protect ecologically important lands and water for nature and people. He said that global climate change is real; it is already happening; it is caused by processes that are understood; and New Mexico's climate is already changing. He explained some basic science about the greenhouse effect on the

temperature of the earth. He said that since about 1750, human activities have amplified the natural greenhouse effect by more than doubling the concentration of heat-trapping gases in the atmosphere. Atmospheric carbon dioxide concentration is now at its highest level in 650,000 years, he testified; and that level has risen rapidly since the beginning of the Industrial Revolution (roughly 250 years ago). Other effects include changes in the timing of the seasons, rises in the sea level, increases in the severity and frequency of various types of storms, more frequent extreme weather such as droughts and floods, rises in global average air and ocean temperatures and widespread melting of snow and ice. Data gathered from hundreds of weather stations across New Mexico show that virtually all of New Mexico is warmer than the baseline and the southwest is warming faster than any other part of the lower 48 states.

During the five-year reference period, 2000-2005, several areas stand out, like the Jemez Mountains and the Bootheel. Mean annual temperatures were about nine degrees Fahrenheit warmer. Ninety-five percent of New Mexico has experienced mean temperature increases. The five-year drought period, he said, shows that more than 75 percent of the state was drier. These trends in temperature and precipitation act together to cause water loss more quickly when the weather is warm. Moisture deficit is a broad indicator of environmental stress. New Mexico's watersheds have experienced increasing moisture stress during 1970-2006. The Jemez Mountains is a spot on the map where there has been a large increase in mean temperatures and is the epicenter of an insect- and drought-induced forest dieback affecting two million acres, including much of Santa Fe. This landscape has crossed a threshold, he said, which is likely to transform the landscape permanently. Simulations for 2080-2099 indicate that a day so hot that it currently happens once every 20 years would occur every other year or more frequently by the end of the century if trends continue. Institutions and infrastructure need to be redesigned so that they can handle environmental and economic shocks that arrive more frequently and with greater severity, he testified. Snowpack in mountain ranges has declined over the past two decades, and the timing of peak stream flow is on average a week earlier than it was in the mid-twentieth century. Water flows that used to reach reservoirs, cities and towns may no longer reach those destinations or may provide less ground water recharge, thus affecting cold-water fish and making delivery of water to farms more challenging and increasing the frequency of large, severe wildfires. Climate change is already putting New Mexico's water supplies, forests and grasslands at risk, and New Mexico's economy stands to lose up to $3.2 billion annually from decreased revenues and increased costs.

The committee discussed:

- the tipping point, beyond which little can be done to repair the damage;
- international treaty negotiations in Copenhagen;
- the U.S. contribution to greenhouse gases compared to the rest of the world;
- 20 percent of greenhouse gases is from forest destruction around the world;
- what the New Mexico Legislature can do;
- impreciseness of modeling data and comparison of predictive models based on solar flares and volcanic activity;
- accuracy of models to predict the effects of the damage that has already been done;
- potential multiple causes;
- U.S. global change research program;
- causes of extremes in cycles over past 650,000 years;

- Los Alamos National Laboratory research on historic long-term variations in dust bowls;
- ocean acidification related to carbon dioxide concentrations (coral reef and diatom declines); and
- peer-reviewed studies from opposing opinions.

Alan Hamilton, conservation director of the New Mexico Wildlife Federation, described the history and membership of the federation. He told the committee that New Mexico drought, habitat fragmentation, invasive species and the growing demands for water resources have already degraded wildlife habitat considerably and that climate change exacerbates these problems by weakening and further reducing the resiliency of natural systems. As the temperature increases, the amount and pattern of precipitation will continue to change, affecting the frequency and intensity of weather events, the distribution and duration of drought, the number and intensity of major wildfires, the timing of runoff and flooding and the timing of animal and plant life cycles. He said that the southwest has been hard hit by a drought that has devastated some of its most beautiful forests and wildlife. These losses have come from both the worst wildfires in history and from pine beetle infestation. He said that recent wildfires in the southwest are most likely the result of global warming, the nine years between 1997 and 2005 being the warmest on record. The same period fueled an outbreak of pine beetles throughout the Rocky Mountains. He said the risk to ponderosa pine forests is especially concerning, as these forests are critical to some of the most treasured game species including deer, elk, turkey, grouse and bear. He testified that trout are especially vulnerable to global warming because they are dependent on an abundance of clear, cold water. As the temperatures in trout streams continue to rise, there will be negative impacts on all life phases of these fish. The burning of fossil fuels is partially responsible for greenhouse gases. Another byproduct from the burning of fossil fuels is mercury, one of the most prevalent toxins found in fish. It is no longer safe to indiscriminately consume fish in New Mexico, he said; it is critical to begin reducing the amounts of carbon dioxide and mercury that are being released into the atmosphere and into the environment. He called for action by the state to mitigate the effects of global warming, referring to the "Comprehensive Wildlife Conservation Strategy for New Mexico" of the Department of Game and Fish; the Department of Environment's (NMED) River Ecosystem Restoration Initiative that the legislature enacted in 2007; the State and Tribal Wildlife Grants program; and the federal Land and Water Conservation Fund, which requires a state match.

The committee discussed:

- the state's ability to clean up or regulate mercury contamination;
- a state-funded river ecosystem restoration program;
- conversations with coal-fired power generation plants; and
- the consent decree affecting the San Juan Generating Station.

Federal/State Greenhouse Gas Emissions Issues and Climate Change Legislation

Malik Roy, Pew Center on Global Climate Change, told the committee that the Public Service Company of New Mexico (PNM) is one of the founding members of the U.S. Climate Action Partnership. He said that the three goals of current national energy policy are economic growth, national security and addressing climate change. There is no silver bullet to accomplish any of these goals, he said. He said cap-and-trade legislation would be a key component to

reducing emissions by 2050. Cap-and-trade legislation allows emitters to sell emissions rights at a profit while investing in emissions-reduction technology not prescribed by the Environmental Protection Agency (EPA). Mr. Roy briefed the committee on the status of Senator Jeff Bingaman's bill, which has been reported out of committee.

Jeannette Pablo, director of federal affairs and senior climate advisor for PNM, and Jeff Burks, director of sustainability and climate strategies for Energy Strategies, told the committee that they support national legislation, rather than local legislation, on greenhouse gases. PNM plans to comment on the proposed rulemaking changes related to climate issues, scheduled on the Public Regulation Commission (PRC) docket. States have been considering climate change policies in lieu of federal action, but now Congress is stepping up to the plate, and the state should wait to see what federal policy will turn out to be before enacting state legislation, Ms. Pablo and Mr Burks recommended. They said that the nation can no longer afford to have a stalemate on this issue, but neither can the economy bear conflicting or inconsistent state and federal policies. They testified that states will have a role to play in greenhouse gas emissions control but not cap-and-trade law or "new economies" initiatives. They said that the states and federal government need to work in tandem based on their respective strengths. This is reflected in the NMED's withdrawal of its cap-and-trade proposals before the Environmental Improvement Board (EIB).

The committee discussed:

- Chicago Climate Exchange;
- transition of policy lead from local and state to federal;
- concerns about cap-and-trade policy based on the European experience with overallocated emissions allowances;
- use of sulphur dioxide and acid rain cap-and-trade programs as a model for greenhouse gas cap-and-trade models;
- political benefit to state leadership in renewable energy policies;
- investment in efficient greenhouse gas controls;
- economic opportunities in renewable energy;
- net decrease in greenhouse gases by replacing coal-fired power plants with nuclear power plants;
- whether 80 percent reduction is possible or desirable;
- debate over legitimacy of climate change caused by carbon dioxide emissions by humans;
- less expensive technologies to reduce carbon dioxide in the atmosphere;
- regulatory hurdles to reduce carbon dioxide emissions through conversion to nuclear energy based on political reasons compared to technical reasons;
- new business models based on national security and economic development benefits to emphasize energy efficiency and energy independence;
- costs to consumer as an equal factor;
- "Is cap and trade really going to get us to improve the way we generate electric power?";
- argument against taxes as policy options; and
- cost recovery under cap-and-trade policies.

Potential Economic Costs of Climate Change to New Mexico

Janie M. Chermak Ph.D., professor of economics at the University of New Mexico (UNM), and Kristine Grimsrud, Ph.D., assistant professor of economics at UNM, told the committee that climate modeling indicates that the average global surface temperature could rise by more than five degrees Celsius (nine degrees Fahrenheit) above pre-industrial levels by the end of this century. During the twentieth century, the temperature rose 0.74 degrees Celsius (1.33 degrees Fahrenheit), mostly in the past three decades. Economic costs would arise from changes in climate and ecosystems, Dr. Chermak and Dr. Grimsrud said. Higher temperatures would increase the incidence of heat-related health problems, for example. This would cause economic costs to New Mexico's families, businesses and communities. By 2020, 19 different cost categories could total $3.2 billion per year. They include wildland fire costs ($490 million per year), health-related costs ($421 million per year) and recreation costs ($286 million). Additionally, the continuation of activities that contribute to climate change could cost New Mexicans almost $1.3 billion per year in missed opportunities to implement energy efficiency programs and about $275 million per year in health costs related to the burning of coal. The combined total annual costs increase sixfold by 2080. If spread evenly, New Mexico's households, on average, could incur annual costs of $3,430 per year by 2020. Of this amount, $1,650 relates to energy-related expenditures, $740 relates to health-related costs and $520 relates to wildland fire costs. The 2020 average of $3,430 represents more than eight percent of the current median household income in New Mexico. Potential costs in 2040 represent more than 13 percent of median household income, and those in 2080 more than 29 percent of the income that half of the households in New Mexico earn in a year.

The committee discussed:

- how to calculate tradeoffs such as loss of trees that may be offset by increased water yield in underground aquifers;
- bases for predictions, assumptions and avoidance of other factors that might offset the assumed costs;
- how to use this information;
- it is a matter of magnitude, not to put too much emphasis on any specific numbers;
- lack of validation of economic predictions; and
- simple investment analysis advantage over complex predictive models.

Regional and State Proposed Global Warming Solutions

Franz Litz, World Resources Institute, and Jim Norton and Sandra Ely, both with the NMED, proposed to the committee a bill they said would help prepare New Mexico for federal climate change policies. Referring to Governor Bill Richardson's leadership on clean energy and green jobs, they said the proposal does not set an emissions cap. The bill was described as neither requiring industry to reduce emissions nor establishing an allowance auction. The bill would enable the NMED to assist businesses in preparing for future climate change policy. They said the bill directs the EIB to establish an emissions offset program, which would issue offset allowances to a project in New Mexico that is determined to reduce or avoid greenhouse gas emissions not otherwise required by law. Offsets are generally allowed in sources that are not subject to the cap in cap-and-trade programs, and the bill would then allow entities outside the capped sector to participate and reduce emissions, such as dairy-generated methane and landfill gas. These allowances could then be sold on the market and purchased by sources that are

obligated to reduce emissions. Offsets will provide for cost-effective emission reductions, keeping costs of allowances down because these emission reductions would be cheaper than from sources under a regulatory cap.

The bill would also direct the EIB to establish a program for early emission reductions. Early reduction allowances are issued to a source for greenhouse gas emissions reductions that occur before the date required by law. For example, if PNM chooses to burn less coal by preheating one or more units at the San Juan Generating Station with geothermal heat, PNM could register emission reductions with the state in anticipation of receiving credit for the reductions under an established cap-and-trade program, explained Ms. Ely. She said that the offset and the early reduction programs would be voluntary. She also said that there is no guarantee that a federal program will recognize allowances awarded for these programs. Finally, she said the draft bill also requires entities to report greenhouse gas emissions.

Louis W. Rose, attorney with Montgomery and Andrews, described himself as the lone "voice of reason" on the panel. He said he spent 16 years at the NMED and 17 years practicing law, representing corporate clients. Since 1976, he has appeared before the EIB in these capacities. He told the committee that industry prefers a national policy on this issue. He said there is not a lot of agreement within the industry on what the federal policy should be, but there is uniform agreement that it should be a federal, not a state, policy. He said it is a global issue, not local or regional. He said that "we" do not want a competitive disadvantage to New Mexico business. That would be catastrophic, he said. It is absolutely necessary, he said, for this issue to be a national initiative. The existing infrastructure in New Mexico is inadequate to address national and global policy issues. The EIB is ill-equipped, he said, to make these kinds of policy decisions. Existing law does not allow the EIB to do this. The EIB thinks its authority to adopt air quality rules is enough to restrict carbon emissions. That should be the legislature's responsibility to make specific policy like that. The PRC, the Energy, Minerals and Natural Resources Department (EMNRD) and others should also be a part of a unified approach. He told the committee that his clients have a rulemaking request before the EIB scheduled for next May and that this proposal is premature and the wrong way to go.

The committee discussed:

- what a unified policy would look like;
- the bill's delegation of legislative authority;
- the relationship of the bill's content to the state budget and a study of the bill's impact on the economy;
- an economic study of the pit rule;
- a study performed before the EIB's rule on clean cars;
- too many rules;
- a statement that the EIB is moving forward on rulemaking without legislative authorization anyway;
- the rationale for the regulatory threshold of 10,000 tons of carbon dioxide emissions;
- why reporting rules and permitting rules differ on thresholds;
- how allowances would be determined and how they would be measured;
- the burden on and capability of the agency to administer rules as a factor in setting thresholds;

- how transactions of allowances would take place;
- valuation of allowances without federal cap-and-trade legislation;
- partnership with Canadian provinces and Mexico states;
- what might be specific actions in response to information on imported energy generated by carbon emissions outside New Mexico;
- the need for fiscal efficiency;
- too broad, too little revenue to implement and the burden on industry;
- need to be tied to the northeast regional cap-and-trade program;
- legislative delegation of authority;
- opposition to mandatory reporting;
- example of the continuing assault on the dairy industry by the NMED;
- the assumption that the federal bills will be enacted;
- whether New Mexico can be more stringent than federal law;
- the number of full-time employees of the Western Climate Initiative;
- the number of members of the EIB and their qualifications;
- leveling the playing field for electric and petroleum refining industries;
- cost of the bill to refineries and their customers;
- interstate commerce clause implications;
- getting credit under pending federal legislation for offsets and allowances that predate related legislation;
- New Energy Economy petition before the EIB;
- number of Western Climate Initiative states that have considered legislation to regulate greenhouse gases;
- scope of the problem; and
- the need for nuclear in the title in order to get the votes to pass the federal bill.

The committee approved the September and October minutes.

Perspectives on Climate Change

Laura E. Sanchez, attorney in the Air and Energy Program, Natural Resources Defense Council (NRDC), thanked the committee for holding the hearing. She said that the NRDC has 1.3 million members and online activists and more than 350 lawyers, scientists and other professionals around the United States. She said that New Mexico has 14,534 members and online activists. The NRDC is a member of the Coalition for Clean Affordable Energy (CCAE), which is a coalition of 14 or so energy, consumer, environmental and health advocacy organizations dedicated to promoting energy efficiency and renewable energy. The CCAE works to educate the public about clean energy and works with policymakers to develop and implement policies that will allow New Mexico to take advantage of all the clean energy resources available to it. The NRDC works on climate change and energy issues at the international, national, regional, state and local levels. As the committee was told this morning, PNM Resources is a member of the U.S. Climate Action Partnership (USCAP). The NRDC is also a member and advocates the following approach, Ms. Sanchez told the committee: limits on greenhouse gas emissions; investing in green jobs and clean energy development; development of more fuel efficient cars and renewable fuels; creating green homes and buildings; building smarter communities; and supporting better public transportation solutions. Energy efficiency investments provide the best opportunities to foster renewable energy, economic development and savings on costs and of jobs.

Brittany Benko, environmental manager for BP America, told the committee that BP has a long history in the U.S. energy market as the largest oil and gas producer in the United States, and the company has the most diverse energy portfolio in the industry. She said that BP is the third-largest operator in New Mexico and employs more than 140 full-time employees and operates more than 2,200 wells, 1,000 compressors and 400 miles of pipeline, primarily in the San Juan Basin. In addition, she said, BP energy is the largest marketer of natural gas in New Mexico. Ms. Benko explained that BP contributes about $60 million per year in state and local taxes. Community investments include a $750,000 contribution to San Juan College to develop advanced computer simulations of well site equipment for improved natural gas field technician training and work force development. BP has also awarded $1.5 million to New Mexico educators who teach energy education to New Mexico schoolchildren through the A+ for Energy program. BP is an advocate of global solutions to find the most cost-effective ways to reduce greenhouse gas emissions in balance with economic development and energy security. BP supports national climate change legislation in lieu of state and local efforts, she testified. Uncoordinated state and local actions run the risk of both raising the overall cost of reductions and failing to weigh competing energy policy goals. She then summarized BP's corporate greenhouse gas reduction initiatives and the company's progress in achieving them. As a local example, BP reduced emissions from the Farmington operations by 41 percent from a 2001 baseline. She said that BP met with the NMED to share greenhouse gas emission inventory methods, technologies and practices. Generally, BP believes that local and regional approaches are the best way to tackle environmental challenges due to distinct geologies, geographies and unique local considerations. However, the reduction of greenhouse gas emissions, unlike the other environmental issues mentioned, is a global issue, and climate change will require a global solution. The reductions made at the Farmington operations not only made sense for BP's U.S. gas business but also made sense for BP and represented the best "bang for the buck" reductions for the company. National governments should create action plans appropriate for their national circumstances that can be aligned and integrated over time within the framework of the United Nations Framework Convention on Climate Change. Natural gas can be a key factor in enabling the transition to a lower carbon future while minimizing cost and providing for energy security. Electricity generation is the largest single source of carbon dioxide emissions, accounting for 41 percent of all such emissions. Natural gas-fired power generation produces approximately half the emissions of conventional coal-fired power on a kilowatt-per-hour basis. Natural gas produces less sulfur dioxide, nitrogen oxide and particulate matter and no mercury or waste ash, and natural gas requires less water.

Thom Little, environmental relations manager for Intel, told the committee that Intel believes that climate change is not only an environmental issue but also an important societal challenge that warrants a serious policy response. Intel's contribution to meeting this challenge includes both policy and operational elements. Intel supports re-engagement of the U.S. government in the international climate policymaking process to ensure both effectiveness in dealing with the environmental challenge of climate change and the protection of key economic interests. Additionally, Intel supports enactment of a mandatory federal climate change program that includes key flexibility features and preempts state action. Key flexibility features include a workable cap-and-trade program, reliance on the "basket of gases" concept and recognition of voluntary industry reductions and credit for early action. Intel's position on sub-national initiatives is that they must be compatible with a federal market.

Intel committed itself to reduce its total greenhouse gas emissions by 20 percent by 2012, and the corporation has a long-standing proactive policy on the environment. Since 2000, Intel has reduced per fluorinated compound (PFC) emissions by 56 percent in absolute terms and 80 percent normalized by production volume. He said that the company chairs the International Climate Change Partnership, a progressive industry coalition working with governments to develop workable climate policies. Intel, he testified, is committed to being the trusted source of energy-efficient performance technology and is designing and building energy efficiency into every product. The company has incorporated Design for Environment principles, already achieving significant reductions in per product energy consumption while continuing to increase performance and production. The use of Intel products consumes more energy than does manufacturing those products, said Mr. Little. Intel's U.S. energy bill is approximately $225 million, $200 million of which is spent on electricity. Intel has implemented more than 250 energy conservation projects, saving more than 500 million kilowatt-hours of electricity in its facilities. Intel has agreed to purchase 1.3 billion kilowatts per year of renewable energy certificates, resulting in 50 percent of the consumed U.S. energy coming from renewable sources, he said. This made Intel the number one purchaser of green power in the United States.

Intel is engaged with the EPA and the European Commission (EC) to develop new Energy Star specifications for computers, servers, and data centers. It is also working with the EC to develop personal computing standards under the EU Directive on Eco-Design on Energy-Using Products. He told the committee that Intel Capital, the company's venture capital arm, invests in a variety of green industries to accelerate innovation in startup companies that develop alternative power sources, including companies that will manufacture and supply photovoltaic cells to solar module makers. Intel, Google and the World Wildlife Fund jointly launched the Climate Savers Computing Initiative, the goal of which is to reduce computer-related carbon dioxide emissions by 50 percent by 2010. Intel is also a co-founder of The Green Grid, a global consortium dedicated advancing the energy efficiency in data centers. Intel's experience validates that investments in energy efficiency often create positive economic returns independent of their effect on climate emissions. "Smart" public policies are needed, he said, that enable, encourage and expand the energy, environmental and economic role of information and communications technologies (ICT). Studies have fleshed out the contribution that ICT can make to improve energy efficiency and reduce climate emissions. ICT could reduce U.S. climate emissions by 22 percent by 2020. Intel is leading the way in trying to close the policy gap. Intel has joined with technology leaders and nongovernmental organizations to form the Digital Energy Solutions Campaign (DESC). The DESC's mission is to expand policymakers' understanding of how ICT can improve the energy efficiency of the broader economy. ICT solutions are the full suite of hardware, software and broadband technologies that can increase the energy efficiency of society.

The committee discussed:

- economic advantages to energy efficiency;
- establishing a set point for earth's temperature;
- science intelligence;
- an alternative solution to global warming;

- money to offset costs to the consumer for energy efficient appliances, which could be cheaper and more effective than the regulation of industry and investments in greenhouse gas controls;
- utilities capitalization for energy efficiency investments;
- smart grid/smart meter and price signaling as ways to achieve energy efficiency; and
- misinformation and scare tactics used to attack nuclear power as a greenhouse gas alternative.

Environmental Education

As discussed during the September 11, 2009 meeting in Los Alamos, Kate Massengale, Ph.D., dean of instruction at UNM-Los Alamos, and James Bearzi, NMED, asked the committee to endorse a memorial requesting support from the federal government for an environmental education curriculum at UNM-Los Alamos.

Following up on the discussion at Los Alamos, the committee discussed:

- whether this curriculum would include both technical and academic training;
- integration with the Waste and Environmental Research Consortium;
- involvement of contractors in work force training to increase economic development;
- relationship with other campuses and post-secondary institutions; and
- U.S. Department of Energy's approach to the NMED rather than directly to UNM or other educational institutions.

The committee voted to endorse the legislation, with Representative Wallace as the primary sponsor.

Uranium Legacy Cleanup Motion

Damian Lara, staff attorney with the Legislative Council Service, summarized changes made to the proposed letters to Congress previously discussed at the September 10 meeting of the committee in Albuquerque.

The committee asked about:

- the scale of the uranium mine legacy problems;
- the status of studies by the EMNRD; and
- surveys of legacy sites.

The committee approved a motion to send the letters over the chair's signature.

Mining Safety Act

Terence Foreback, state mine inspector (SMI), asked the committee to endorse two bills. He explained that current statute delegates all authority regarding penalty for failure to provide emergency notification with the SMI. Current rules allow an appeal of the original penalty to the SMI, who then provides a final decision. The next option for an operator is district court. The proposed change would allow an appeal of the SMI decision to the Mining Safety Board (MSB). The MSB is the review board for the SMI and the rulemaking body in New Mexico for mine safety regulation. The MSB is balanced between nonmanagement and management members of

the New Mexico mining community. An appeal of the SMI decision to the MSB would bring the process in line with processes already in place with other state agencies that allow appeal of agency decisions to their oversight board (for example, to the Water Quality Control Commission or to the Coal Surface Mining Commission).

He also asked for endorsement of a bill to require that coal mine officials (surface foremen, underground examiners and underground foremen) be recertified every five years and to include language requiring testing for recertification.

The committee voted to endorse the legislation, with Representative Heaton as the primary sponsor.

Dairy Industry Update

T.J. Trujillo, attorney, Beverly Fikse, with Dairy Producers of New Mexico, and Robert Hagavoort, Ph.D., with the Agricultural Science Center at Clovis, discussed issues affecting the dairy industry. They said that there are between 160 and 165 dairies in the state. These dairies own approximately 300,000 cows. Most of the dairies are in the eastern plains of the state. The dairy industry is the number one agricultural commodity in New Mexico, but most dairies are small, family-owned operations vulnerable to economic hardship. Dr. Hagavoort said that the last two years have represented a "perfect storm" for dairies. The losses on average have been $100 per cow per month, equaling $200,000 per month per dairy and $2 million per dairy per year in losses. He said that to date there have not been a lot of foreclosures and bankruptcies because the rural banks cannot afford to lose any more customers.

The dairies represent a $2.5 billion industry to the New Mexico economy, with 18,000 jobs in New Mexico tied to dairy production directly and indirectly. The presenters said that New Mexico is currently the third-largest dairy production state in the nation, behind Wisconsin and California.

The presenters testified that dairy prices are controlled by the federal government and are currently set at $9.00 per 100 gallons of milk. The average cost of production is $16.00 per 100 gallons, and payments from buyers do not reach producers for a month. The upshot, they said, is that dairies are losing equity with their revenues at 1979 levels, but their costs are at 2009 levels. Also, the European Union is increasing subsidies to its dairies while the U.S. federal government is maintaining unreasonably low prices for U.S.-produced dairy products, thus driving the dairy industry out of business in North America.

The presenters said they have two legislative priorities: to maintain favorable tax treatment and to reduce regulatory burdens. They did not have any specific bills for which they were asking the committee's endorsement.

The committee discussed:

- combined reporting of taxes;
- corporate structure of cheese factories;
- economic impacts on processors;

- regulatory reform bills endorsed by the Economic and Rural Development Committee;
- stakeholder negotiation process for negotiating rules;
- NMED's regulation of the dairy industry in ways that threaten to put it out of business;
- override of veto compared to introduction of a new bill;
- effect of greenhouse gas rules on the industry;
- potential for carbon dioxide offset credit to dairies for growing feed and recycling carbon;
- large carbon footprint of fertilizers used to grow crops; and
- inclusion of regulations in statutes, such as in California.

Office of Nuclear Worker Advocacy Act

Jim Perry and Loretta Valerio, both from the NMED, asked the committee to endorse a bill to create a fund consisting of a percentage of federal money that is to be paid to certain employees in the nuclear industry harmed by the effects of radioactivity in the course of their work. The fund would pay for advocacy services by the department.

Questions from the committee related to:

- all claimants having to pay regardless of whether they received help from the state; and
- whether there is a U.S. Department of Energy office in Espanola.

The committee voted to endorse the bill, contingent on a minor change, to be sponsored by Representative Salazar.

Storage Tank Legislation

Jim Davis, NMED, and Susan George, attorney with the Institute of Public Law, UNM School of Law, requested the committee's endorsement of a bill similar to last year's legislation to bring New Mexico storage tank law into compliance with federal law. Mr. Davis and Mr. George said the content of the bill will:

- add authority for delivery prohibition (required by the federal Energy Policy Act of 2005);
- eliminate exemption for emergency generator tanks (which conflicts with federal law); and
- conform language for heating oil tank exemption to federal law (and expand exemption to reduce the number of heating oil tanks regulated as required by federal law).

They said that the bill addresses only tanks with substantial violations of technical and safety requirements (not for minor violations). The policy will be a facility-by-facility approach, not tank-by-tank. It includes provisions for shutting down a facility until violations are corrected. They testified that to date, approximately 30 states/territories have a red tag program, 13 states/territories have a green tag program, 14 states/territories have no red or green tag

program and two states have another type of program. They explained why a red tag program is better than a green tag program.

The committee discussed:

- a duplicate of last year's bill;
- support of industry;
- impacts in intervening time;
- pressure from the EPA;
- response to the federal Energy Policy Act of 2005;
- the EPA's delivery prohibition authority;
- comparison of green tag and red tag programs; and
- the need for a letter from industry to every standing committee in support of the bill.

The committee voted to endorse the bill with Senator Leavell as its primary sponsor.

Air Quality–Bad Actor Bill

Mary Uhl, NMED, and Seth Cohen, Office of the Attorney General, told the committee that not enacting this bill would allow bad actors to enter the state. The bill would amend the Air Quality Control Act to allow the NMED to deny or condition an air quality permit and modify, suspend or revoke an existing air quality permit if the permit applicant has:

- knowingly misrepresented facts in the application for a permit;
- refused or failed to disclose the information required under the provisions of the Air Quality Control Act;
- been convicted in any court within the past 10 years of a felony related to environmental crime or a crime defined as involving restraint of trade, price-fixing, bribery or fraud;
- exhibited a history of willful disregard for environmental laws;
- had any permit revoked or permanently suspended under environmental laws; or
- received two notices of violations for anything at any time.

Mr. Rose told the committee that the proposed bill copies language from the Solid Waste Act, which was written the way it is in large part to stop organized crime from coming into New Mexico when organized crime was involved in waste disposal in the 1980s when the law was enacted. Subsequently, changes were made to the Mining Act that reflect the Solid Waste Act language, and since the Mining Act enactment, no new mines have been permitted in New Mexico. Mr. Rose said that the language is overkill. He said that industry is not confident in the agency's exercise of its discretion. This change in the law would have a chilling effect on legitimate business, he testified.

The committee discussed:

- Marathon Oil Company's departure from the state;
- definition of "willful disregard";
- the low threshold of two notices of violation as a criteria for denying or rescinding permits;

- the enmity between the NMED and the regulated community and lack of constructive communication;
- a direct request for the department and industry to work better with each other and to develop a negotiated bill;
- local jurisdiction;
- non-attainment areas from dust and coal-powered generation plants; and
- lack of jurisdiction.

No action was taken on the bill.

New Mexico's Energy Economy, New Mexico First Town Hall Report

Jennifer Salisbury, chair of New Mexico First's Energy Implementation Committee, summarized the town hall process of New Mexico First and the Growing New Mexico's Energy Economy town hall report. The overriding objective of the town hall on energy is to create a diversified, innovative and resilient statewide energy system that supports long-term economic development for all areas in the state by capitalizing on New Mexico's inherent energy resources. The goal is to create a unifying energy strategy for New Mexico that will enhance and diversify economic development; tie together all related agencies and programs, energy sources and infrastructure; and provide a framework for coordinated plans from each stakeholder, Ms. Salisbury told the committee. The participants at the town hall were eager to promote work force education and business models that incorporate new technologies, renewable energy, energy efficiency, conservation, public health, appropriate siting, environmental impact reduction and consumer choice. Town hall participants also felt that New Mexico must maximize its strengths in the development and supply of energy, both for export and internal consumption, while fostering social and geographic equity and opportunity. State policy should optimize a mix of incentives and financial instruments (private activity bonds, corporate bonds, equity, etc.) to implement the energy strategy on local and state scales, including both centralized and distributed approaches. It was felt that the first step should be development of a detailed 20-year plan outlining the use, generation and export of energy (both liquid fuels and electricity) from all possible energy sources might:

- show how to diversify the economy and tax base to ensure the prosperity of New Mexicans in a wide range of possible futures (e.g., different energy price trends, different carbon pricing assumptions, different commodity prices, water availability, different federal scenarios and healthy communities);
- provide a road map for regulatory reform and policy integration across state government, including different departments and the PRC;
- have buy-in from a wide range of stakeholders, including those traditionally not well represented;
- employ advanced analysis, including full life-cycle costing, to estimate the full range of impacts under different scenarios (e.g., tax revenue; job creation; investment costs; health costs and returns on investment; and impacts on electric rate payers, including low and limited-income households);
- address energy efficiency and conservation opportunities;
- consider how to create lasting jobs throughout the energy field;
- show how the proposed policies align with other state goals (e.g., environmental conservation, education, tourism, water quality, health, aesthetics and culture); and

- outline implications in all areas of public policy, including land-use policies and building codes, as they relate to energy use, generation and transmission.

The committee adjourned at 11:30 a.m.

ENDORSED LEGISLATION

HOUSE JOINT MEMORIAL

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

A JOINT MEMORIAL

REQUESTING THE NEW MEXICO CONGRESSIONAL DELEGATION TO SUPPORT THE UNIVERSITY OF NEW MEXICO-LOS ALAMOS'S INITIATIVE FOR ENVIRONMENTAL SCIENCE EDUCATION FOR NORTHERN NEW MEXICO AND TO APPROPRIATE THE FUNDS NECESSARY FOR THAT PURPOSE.

WHEREAS, northern New Mexico faces many challenges concerning contamination and degradation of its environment from many sources; and

WHEREAS, the residents of northern New Mexico have increasingly become aware of the need to learn and understand more about their environment, how it becomes degraded and how such degradation can be minimized or reversed; and

WHEREAS, understanding the science behind the environment is crucial to making wise decisions regarding environmental issues; and

underscored material = new
[bracketed material] = delete

WHEREAS, the university of New Mexico-Los Alamos, the department of environment, the federal department of energy and others hold that environmental science education in northern New Mexico needs strengthening to include a strong focus on rigorous foundational science; and

WHEREAS, the department of energy has supported curriculum development and environmental education in the state of New Mexico for many years, including the development of WERC: a consortium for environmental education and technology development; and

WHEREAS, New Mexico state university, as the administrative center of WERC, has created a strong program for environmental science education in the southern part of New Mexico and graduated many professionals through this program; and

WHEREAS, the university of New Mexico-Los Alamos has offered an environmental science associate's degree for years and in the past collaborated with Los Alamos national laboratory; and

WHEREAS, the university of New Mexico-extended university offers a bachelor's degree in environmental science at the Los Alamos campus; and

WHEREAS, the university of New Mexico-Los Alamos is redesigning its associate's degree to build on rigorous, inter-disciplinary foundational science to include a community

underscored material = new
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education and citizen engagement component; and

WHEREAS, the redesign will provide a stronger pipeline into the university's environmental science degree available in Los Alamos;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the New Mexico congressional delegation be urged to support the university of New Mexico-Los Alamos's initiative for environmental science education for northern New Mexico; and

BE IT FURTHER RESOLVED that the New Mexico congressional delegation and the federal department of energy be urged to support appropriations for said initiative; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to United States Senator Jeff Bingaman, United States Senator Tom Udall, United States Representative Ben R. Lujan, United States Representative Martin T. Heinrich, United States Representative Harry Teague, Department of Energy Secretary Stephen Chu and the department of environment.

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SENATE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE HAZARDOUS WASTE ACT AND THE GROUND WATER PROTECTION ACT TO CLARIFY DEFINITIONS OF STORAGE TANKS AND TO PROVIDE FOR COMPLIANCE WITH THE FEDERAL ENERGY POLICY ACT OF 2005.

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

Section 1. Section 74-4-3 NMSA 1978 (being Laws 1977, Chapter 313, Section 3, as amended) is amended to read:

"74-4-3. DEFINITIONS.--As used in the Hazardous Waste Act:

A. "above ground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees

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Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. "Above ground storage tank" does not include any:

(1) farm, ranch or residential tank used for storing motor fuel [~~or heating oil~~] for noncommercial purposes;

(2) pipeline facility, including gathering lines, regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979 or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(3) surface impoundment, pit, pond or lagoon;

(4) storm water or wastewater collection system;

(5) flow-through process tank;

(6) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or to [~~the~~] oil field service industry operations;

(7) tank [~~associated with an emergency generator system~~] used for storing heating oil for consumptive use on the premises where stored;

(8) pipes connected to any tank that is described in Paragraphs (1) through (7) of this subsection; or

underscored material = new
[~~bracketed material~~] = delete

(9) tanks or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business;

B. "board" means the environmental improvement board;

C. "corrective action" means an action taken in accordance with rules of the board to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment;

D. "director" or "secretary" means the secretary of environment;

E. "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

F. "division" or "department" means the department of environment;

G. "federal agency" means any department, agency or other instrumentality of the federal government and any independent agency or establishment of that government, including any government corporation and the government printing office;

underscored material = new
[bracketed material] = delete

H. "generator" means any person producing hazardous waste;

I. "hazardous agricultural waste" means hazardous waste generated as part of [~~his~~] the licensed activity by any person licensed pursuant to the Pesticide Control Act or [~~any~~] hazardous waste designated as hazardous agricultural waste by the board, but does not include animal excrement in connection with farm, ranch or feedlot operations;

J. "hazardous substance incident" means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

K. "hazardous waste" means any solid waste or combination of solid wastes that because of their quantity, concentration or physical, chemical or infectious characteristics may:

(1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. "Hazardous waste" does not include any of the following, until the board determines that they are subject to Subtitle C of the

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federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.:

(a) drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy;

(b) fly ash waste;

(c) bottom ash waste;

(d) slag waste;

(e) flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(f) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore; or

(g) cement kiln dust waste;

L. "manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during transportation from point of generation to point of disposal, treatment or storage;

M. "person" means [~~any~~] an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

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N. "regulated substance" means:

(1) [~~any~~] a substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not including [~~any~~] a substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended; and

(2) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute;

O. "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended, 86 Stat. 880, or source, special nuclear or byproduct material as defined by the federal Atomic Energy Act of 1954, as amended, 68 Stat. 923;

P. "storage" means the containment of hazardous

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waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

Q. "storage tank" means an above ground storage tank or an underground storage tank;

R. "tank installer" means any individual who installs or repairs a storage tank;

S. "transporter" means a person engaged in the movement of hazardous waste, not including movement at the site of generation, disposal, treatment or storage;

T. "treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of [~~any~~] a hazardous waste so as to neutralize [~~such~~] the waste or so as to render [~~such~~] the waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

U. "underground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. "Underground storage tank"

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does not include any:

(1) farm, ranch or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel [~~or heating oil~~] for noncommercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines, that [~~are~~] is regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979 or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(4) surface impoundment, pit, pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

(7) liquid trap, tank or associated gathering lines directly related to oil or gas production and gathering operations;

(8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

(9) tank [~~associated with an emergency generator system~~] used for storing heating oil for consumptive use on the premises where stored;

(10) tank exempted by rule of the board after

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finding that the type of tank is adequately regulated under another federal or state law; or

(11) pipes connected to any tank that is described in Paragraphs (1) through (10) of this subsection; and

V. "used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities."

Section 2. Section 74-4-4 NMSA 1978 (being Laws 1977, Chapter 313, Section 4, as amended) is amended to read:

"74-4-4. DUTIES AND POWERS OF THE BOARD.--

A. The board shall adopt rules for the management of hazardous waste, as may be necessary to protect public health and the environment, that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended:

(1) for the identification and listing of hazardous wastes, taking into account toxicity, persistence and degradability, potential for accumulation in tissue and other related factors, including flammability, corrosiveness and other hazardous characteristics; provided that, except as authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the board shall not identify or list any solid waste or combination of

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solid wastes as a hazardous waste that has not been listed and designated as a hazardous waste by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(2) establishing standards applicable to generators identified or listed under this subsection, including requirements for:

(a) furnishing information on the location and description of the generator's facility and on the production or energy recovery activity occurring at that facility;

(b) record keeping practices that accurately identify the quantities of hazardous waste generated, the constituents of the waste that are significant in quantity or in potential harm to human health or the environment and the disposition of the waste;

(c) labeling practices for any containers used for the storage, transport or disposal of the hazardous waste that will identify accurately the waste;

(d) use of safe containers tested for safe storage and transportation of the hazardous waste;

(e) furnishing the information on the general chemical composition of the hazardous waste to persons transporting, treating, storing or disposing of the waste;

(f) implementation of programs to reduce

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the volume or quantity and toxicity of the hazardous waste generated;

(g) submission of reports to the secretary at such times as the secretary deems necessary, setting out the quantities of hazardous waste identified or listed pursuant to the Hazardous Waste Act that the generator has generated during a particular time period and the disposition of all hazardous waste reported, the efforts undertaken during a particular time period to reduce the volume and toxicity of waste generated and the changes in volume and toxicity of waste actually achieved during a particular time period in comparison with previous time periods; and

(h) the use of a manifest system and any other reasonable means necessary to assure that all hazardous waste generated is designated for treatment, storage or disposal in, and arrives at, treatment, storage or disposal facilities, other than facilities on the premises where the waste is generated, for which a permit has been issued pursuant to the Hazardous Waste Act; [~~and~~] that the generator of hazardous waste has a program in place to reduce the volume or quality and toxicity of waste to the degree determined by the generator to be economically practicable and that the proposed method of treatment, storage or disposal is that practicable method currently available to the generator that minimizes the present and future threat to human health and the environment;

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(3) establishing standards applicable to transporters of hazardous waste identified or listed under this subsection or of fuel produced from any such hazardous waste or of fuel from such waste and any other material, as may be necessary to protect human health and the environment, including but not limited to requirements for:

(a) record keeping concerning the hazardous waste transported and its source and delivery points;

(b) transportation of the hazardous waste only if properly labeled;

(c) compliance with the manifest system referred to in Subparagraph (h) of Paragraph (2) of this subsection; and

(d) transportation of all the hazardous waste only to the hazardous waste treatment, storage or disposal [~~facilities~~] facility that the shipper designates on the manifest form to be a facility holding a permit issued pursuant to the Hazardous Waste Act or the federal Resource Conservation and Recovery Act of 1976, as amended;

(4) establishing standards applicable to distributors or marketers of any fuel produced from hazardous waste, or any fuel that contains hazardous waste, for:

(a) furnishing the information stating the location and general description of the facility; and

(b) furnishing the information

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describing the production or energy recovery activity carried out at the facility;

(5) establishing performance standards as may be necessary to protect human health and the environment applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this section, distinguishing, where appropriate, between new facilities and facilities in existence on the date of promulgation, including requirements for:

(a) maintaining the records of all hazardous waste identified or listed under this subsection that is treated, stored or disposed of, as the case may be, and the manner in which [~~such~~] the waste was treated, stored or disposed of;

(b) satisfactory reporting, monitoring, inspection and compliance with the manifest system referred to in Subparagraph (h) of Paragraph (2) of this subsection;

(c) treatment, storage or disposal of all such waste and any liquid that is not a hazardous waste, except with respect to underground injection control into deep injection wells, received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the secretary;

(d) location, design and construction of hazardous waste treatment, disposal or storage facilities;

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(e) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any hazardous waste;

(f) maintenance and operation of the facilities and requiring any additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility, including financial responsibility for corrective action, as may be necessary or desirable;

(g) compliance with the requirements of Paragraph (6) of this subsection respecting permits for treatment, storage or disposal;

(h) the taking of corrective action for all releases of hazardous waste or constituents from [~~any~~] a solid waste management unit at a treatment, storage or disposal facility, regardless of the time at which waste was placed in the unit; and

(i) the taking of corrective action beyond a facility's boundaries where necessary to protect human health and the environment unless the owner or operator of that facility demonstrates to the satisfaction of the secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Rules adopted and promulgated under this subparagraph shall take effect immediately and shall apply to all facilities operating under permits issued under

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Paragraph (6) of this subsection and to all landfills, surface impoundments and waste pile units, including any new units, replacements of existing units or lateral expansions of existing units, that receive hazardous waste after July 26, 1982. No private entity shall be precluded by reason of criteria established under Subparagraph (f) of this paragraph from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where the entity can provide assurance of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste;

(6) requiring each person owning or operating, or both, an existing facility or planning to construct a new facility for the treatment, storage or disposal of hazardous waste identified or listed under this subsection to have a permit issued pursuant to requirements established by the board;

(7) establishing procedures for the issuance, suspension, revocation and modification of permits issued under Paragraph (6) of this subsection, which rules shall provide for public notice, public comment and an opportunity for a hearing prior to the issuance, suspension, revocation or major modification of any permit unless otherwise provided in the Hazardous Waste Act;

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(8) defining major and minor modifications; and

(9) establishing procedures for the inspection of facilities for the treatment, storage and disposal of hazardous waste that govern the minimum frequency and manner of the inspections, the manner in which records of the inspections shall be maintained and the manner in which reports of the inspections shall be filed; provided, however, that inspections of permitted facilities shall occur no less often than every two years.

B. The board shall adopt rules:

(1) concerning hazardous substance incidents; and

(2) requiring notification to the department of any hazardous substance incidents.

C. The board shall adopt rules concerning storage tanks as may be necessary to protect public health and the environment and that, in the case of underground storage tanks, are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

D. The board shall adopt rules concerning storage tanks that implement the federal Energy Policy Act of 2005, Pub. L. 109-58, as amended, and that are equivalent to and no

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more stringent than the Energy Policy Act and its grant guidelines and regulations.

E. Rules adopted pursuant to this [~~subsection~~] section shall include:

(1) standards for the installation, operation, [~~and~~] maintenance, repair and replacement of storage tanks;

(2) requirements for financial responsibility;

(3) standards for inventory control;

(4) standards for the detection of leaks from and the integrity-testing and monitoring of storage tanks;

(5) standards for the closure and dismantling of storage tanks;

(6) requirements for record keeping; [~~and~~]

(7) requirements for the reporting, containment and remediation of all leaks from any storage tanks; and

(8) criteria and procedures for classifying a storage tank facility as ineligible, and reclassifying a storage tank facility as eligible, for the delivery, deposit, acceptance or sale of petroleum products.

F. The criteria and procedures adopted by the board pursuant to this section shall require the department to classify a storage tank facility as ineligible for delivery, deposit, acceptance or sale of petroleum products if the storage tank facility has not installed required equipment for

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spill prevention, overfill protection, leak detection or corrosion protection, including required corrosion protection equipment for a buried metal flexible connector.

G. The criteria and procedures adopted by the board pursuant to this section may allow the department to classify a storage tank facility as ineligible for delivery, deposit, acceptance or sale of petroleum products when the owner or operator has failed to comply with a written warning within a reasonable period of time and the warning concerns:

(1) improper operation or maintenance of required equipment for spill prevention, overfill protection, leak detection or corrosion protection;

(2) failure to maintain required financial responsibility for corrective action; or

(3) operation of the storage tank facility in a manner that creates an imminent threat to the public health and the environment.

H. Rules adopted by the board pursuant to this section shall allow the department to defer classifying a storage tank facility as ineligible for delivery, deposit, acceptance or sale of petroleum products for a limited period of up to one hundred eighty days if the ineligible classification would not be in the best interest of the public because it would jeopardize the availability of, or access to, motor fuel in any rural and remote areas.

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I. Rules adopted by the board pursuant to this section shall allow the department to authorize delivery or deposit of petroleum products to:

(1) an emergency generator tank that is otherwise ineligible for delivery or deposit if a commercial power failure or other declared state of emergency exists and the emergency generator tank provides power supply, stores petroleum and is used solely in connection with an emergency system, legally required standby system or optional standby system; or

(2) a storage tank facility that is otherwise ineligible for delivery or deposit if the delivery or deposit is necessary to test or calibrate a tank.

[~~D.~~] J. Notwithstanding the provisions of Subsection A of this section, the board may adopt rules for the management of hazardous waste and hazardous waste transformation that are more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended, if the board determines, after notice and public hearing, that such federal regulations are not sufficient to protect public health and the environment. As used in this subsection, "transformation" means incineration, pyrolysis, distillation, gasification or biological conversion other than composting.

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[~~E.~~] K. The board shall adopt rules concerning the management of used oil that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.

[~~F.~~] L. In the event the board wishes to adopt rules that are identical with regulations adopted by an agency of the federal government, the board, after notice and hearing, may adopt such rules by reference to the federal regulations without setting forth the provisions of the federal regulations."

Section 3. Section 74-6B-3 NMSA 1978 (being Laws 1990, Chapter 124, Section 3, as amended) is amended to read:

"74-6B-3. DEFINITIONS.--As used in the Ground Water Protection Act:

A. "above ground storage tank" means a single tank or a combination of tanks, including underground pipes connected thereto, that are used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. The term does not include any:

(1) farm, ranch or residential tank used for

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storing motor fuel [~~or heating oil~~] for noncommercial purposes;

(2) pipeline facility, including gathering lines, that are regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979 or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(3) surface impoundment, pit, pond or lagoon;

(4) storm water or wastewater collection system;

(5) flow-through process tank;

(6) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or [~~the~~] oil field service industry operations;

(7) tank [~~associated with an emergency generator system~~] used for storing heating oil for consumptive use on the premises where stored;

(8) pipes connected to any tank that is described in Paragraphs (1) through [~~(8)~~] (7) of this subsection; or

(9) tanks or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business;

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B. "board" means the environmental improvement board;

C. "corrective action" means an action taken in accordance with rules of the board to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment;

D. "department" means the department of environment;

E. "operator" means any person in control of or having responsibility for the daily operation of a storage tank;

F. "owner":

(1) means:

[~~(1)~~] (a) in the case of a storage tank in use or brought into use on or after November 8, 1984, a person who owns [~~the~~] a storage tank used for storage, use or dispensing of regulated substances; and

[~~(2)~~] (b) in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, a person who owned the tank immediately before the discontinuation of its use; and

(2) excludes, for purposes of tank registration requirements only, a person who:

(a) had an underground storage tank taken out of operation on or before January 1, 1974;

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(b) had an underground storage tank taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984; or

(c) had an above ground storage tank taken out of operation on or before July 1, 2001;

G. "person" means an individual or any legal entity, including all governmental entities;

H. "regulated substance" means:

(1) a substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including a substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976; and

(2) petroleum, including crude oil or a fraction thereof, that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute;

I. "release" means a spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into ground water, surface water or subsurface soils in amounts exceeding twenty-five gallons;

J. "secretary" means the secretary of environment;

K. "site" means a place where there is or was at a previous time one or more storage tanks and may include areas contiguous to the actual location or previous location of the

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tanks;

L. "storage tank" means an above ground storage tank or an underground storage tank; and

M. "underground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The term does not include any:

(1) farm, ranch or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel [~~or heating oil~~] for noncommercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines, regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979 or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(4) surface impoundment, pit, pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

(7) liquid trap, tank or associated gathering lines directly related to oil or gas production and gathering

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operations;

(8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

(9) tank [~~associated with an emergency generator system~~] used for storing heating oil for consumptive use on the premises where stored;

(10) tank exempted by rule of the board after finding that the type of tank is adequately regulated under another federal or state law; or

(11) pipes connected to any tank that is described in Paragraphs (1) through (10) of this subsection."

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING A NEW SECTION OF THE ENVIRONMENTAL IMPROVEMENT ACT TO CREATE THE NUCLEAR WORKERS ASSISTANCE FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. A new section of the Environmental Improvement Act is enacted to read:

"[NEW MATERIAL] NUCLEAR WORKERS ASSISTANCE FUND CREATED.--The "nuclear workers assistance fund" is created in the state treasury. The fund shall consist of money earned from investment of the fund and otherwise accruing to the fund and up to one-half of one percent of any award for an initial claim, including a claim for medical benefits, filed by the department on behalf of the claimants with the federal office

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of workers' compensation program, under the federal Energy Employees Occupational Illness Compensation Program Act of 2000, 42 USC 7384 et seq., or up to five percent of any award after the department files objections to a recommended decision denying an award, which shall be transmitted to the state treasurer for credit to the nuclear workers assistance fund. Balances remaining in the fund at the end of a fiscal year shall remain in the fund and shall not revert to the general fund. The department shall administer the fund, and money in the fund is appropriated to the department for the purpose of the administration of a program to assist nuclear workers seeking claims under the federal Energy Employees Occupational Illness Compensation Program Act of 2000, 42 USC 7384 et seq. Money from the fund may be drawn on warrants of the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or the secretary of environment's designee."

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO MINING; PROVIDING FOR AN APPEAL PROCESS FOR PENALTIES FOR FAILURE TO GIVE EMERGENCY NOTICE; PROVIDING FOR A CORRECTION IN A SECTION OF THE MINING SAFETY ACT; CHANGING REQUIREMENTS FOR RECERTIFICATION OF MINE PERSONNEL.

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

Section 1. Section 69-5-17 NMSA 1978 (being Laws 1933, Chapter 153, Section 23, as amended by Laws 2007, Chapter 301, Section 6 and by Laws 2007, Chapter 302, Section 6) is amended to read:

"69-5-17. FATAL AND SERIOUS MINE ACCIDENTS--ASSISTANCE--INVESTIGATION--NOTIFICATION--CIVIL PENALTY.--

A. The state mine inspector shall proceed immediately upon notification to the site of any mine accident causing the loss of life or requiring activation of a mine

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rescue team and shall assist in the rescue of persons within the mine. The state mine inspector shall participate in the accident investigation with any other federal, state and local agency and company representatives.

B. Whenever an accident occurs in or about a mine or the machinery connected to a mine, the operator of the mine shall give notice within thirty minutes of ascertaining the occurrence of the accident to the mine accident emergency operations center at the statewide telephone number established by the state mine inspector stating the particulars of the accident.

C. Nothing in this section shall be construed to relieve the operator of the mine from any reporting or notification requirement under federal law.

D. As used in this section, "accident" means "accident" as provided in 30 C.F.R. 50.2.

E. The state mine inspector shall impose a civil penalty of up to one hundred thousand dollars ($100,000) on the operator of the mine if it is determined that the operator failed to give immediate notice as required in this section. The inspector may waive imposition of the civil penalty at any time if the inspector finds that the failure to give immediate notice was caused by circumstances outside the control of the operator.

F. The penalties imposed by the state mine

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inspector for violations of this section shall be derived from criteria-based penalty points. A penalty conversion table developed by the state mine inspector shall serve as a guide for determining penalty assessments.

G. A person who receives a notice of violation that includes a penalty assessment under this section may, within twenty days after receipt of the notice, submit a written petition to the state mine inspector to review the notice. Within sixty days after receipt of the petition, the state mine inspector shall issue a final order upholding, amending or rescinding the notice. Within twenty days after the date of notice of the final order by the state mine inspector, a person who is the subject of the notice may file a written appeal of the order with the mining safety board. The mining safety board shall adopt rules to govern the appeal process."

Section 2. Section 69-8-5.1 NMSA 1978 (being Laws 1986, Chapter 54, Section 1, as amended) is amended to read:

"69-8-5.1. TRAINING FEES.--The [~~state mine~~] inspector is authorized to charge fees to mining companies for mine safety training given to their personnel. The amount of the training fees shall be arrived at by the [~~state mine~~] inspector after consultation with the [~~mining safety advisory~~] board. Fees collected shall be deposited in the state mine inspector fund to assist in the funding of the [~~state mine~~] inspector."

Section 3. Section 69-14-4 NMSA 1978 (being Laws 1933,

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Chapter 153, Section 42, as amended by Laws 2007, Chapter 301, Section 17 and by Laws 2007, Chapter 302, Section 17) is amended to read:

"69-14-4. CERTIFICATION PERIOD--RECERTIFICATION--DISCIPLINE--APPEAL.--

A. Certification for mine personnel shall be issued for a period of five years. All mine personnel certified by the state mine inspector prior to [~~the effective date of this 2007 act~~] June 15, 2007 shall have their certification period extended five years. Each certified person has the responsibility to notify the state mine inspector of any change in address or change in mine employment within thirty days of the change. Failure to provide current information may result in suspension of certification.

B. Certified persons may apply for recertification within twelve months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. Recertification will require the applicant to submit an application and appropriate documentation as required by the state mine inspector [~~at least thirty days prior to the testing date~~]. The mining safety board shall adopt rules for requirements for recertification.

C. The state mine inspector may refuse to certify or recertify or may suspend or revoke any certification held or

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applied for under Chapter 69 NMSA 1978 upon grounds that the applicant or certified person:

(1) gave false or forged evidence to the state mine inspector to obtain certification;

(2) is grossly negligent or incompetent in duties as a certified person;

(3) has failed to maintain certification;

(4) has violated or aided or abetted any person in a violation of the Federal Mine Safety and Health Act of 1977 or the state mine safety laws; or

(5) has been disciplined in another state that certifies mine personnel.

D. If the state mine inspector contemplates taking any of the actions in Subsection C of this section for any of the reasons provided in that subsection, the state mine inspector shall provide written notice to the applicant or certified person. The notice shall include a statement that the state mine inspector has sufficient evidence that, if not rebutted or explained, will justify the state mine inspector in taking the contemplated action, that indicates the general nature of the evidence and that provides the applicant or person at least twenty days to submit written evidence to rebut or explain the allegations.

E. If, after the response period ends, the state mine inspector takes any action of a type specified in

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Subsection C of this section, the state mine inspector shall serve upon the applicant or certified person a written notice of the action containing a statement that the applicant or certified person may file a petition for review with the mining safety board pursuant to the Mining Safety Act."

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO MINING; CHANGING REQUIREMENTS FOR RECERTIFICATION OF MINE PERSONNEL.

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

Section 1. Section 69-14-4 NMSA 1978 (being Laws 1933, Chapter 153, Section 42, as amended by Laws 2007, Chapter 301, Section 17 and by Laws 2007, Chapter 302, Section 17) is amended to read:

"69-14-4. CERTIFICATION PERIOD--RECERTIFICATION--DISCIPLINE--APPEAL.--

A. Certification for mine personnel shall be issued for a period of five years. All mine personnel certified by the state mine inspector prior to [~~the effective date of this 2007 act~~] June 15, 2007 shall have their certification period extended five years. Each certified person has the

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responsibility to notify the state mine inspector of any change in address or change in mine employment within thirty days of the change. Failure to provide current information may result in suspension of certification.

B. Certified persons may apply for recertification within twelve months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. Recertification will require the applicant to submit an application and appropriate documentation as required by the state mine inspector [~~at least thirty days prior to the testing date~~]. Requirements for recertification shall be adopted by rule by the mining safety board.

C. The state mine inspector may refuse to certify or recertify or may suspend or revoke any certification held or applied for under Chapter 69 NMSA 1978 upon grounds that the applicant or certified person:

(1) gave false or forged evidence to the state mine inspector to obtain certification;

(2) is grossly negligent or incompetent in duties as a certified person;

(3) has failed to maintain certification;

(4) has violated or aided or abetted any person in a violation of the Federal Mine Safety and Health Act

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of 1977 or the state mine safety laws; or

(5) has been disciplined in another state that certifies mine personnel.

D. If the state mine inspector contemplates taking any of the actions in Subsection C of this section for any of the reasons provided in that subsection, the state mine inspector shall provide written notice to the applicant or certified person. The notice shall include a statement that the state mine inspector has sufficient evidence that, if not rebutted or explained, will justify the state mine inspector in taking the contemplated action, that indicates the general nature of the evidence and that provides the applicant or person at least twenty days to submit written evidence to rebut or explain the allegations.

E. If, after the response period ends, the state mine inspector takes any action of a type specified in Subsection C of this section, the state mine inspector shall serve upon the applicant or certified person a written notice of the action containing a statement that the applicant or certified person may file a petition for review with the mining safety board pursuant to the Mining Safety Act."

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