

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

**July 11, 2006
Sierra Conference Room, Thomas McDonald Student Memorial Center
Western New Mexico University
Silver City, NM**

The second meeting of the radioactive and hazardous materials committee was called to order by Representative John A. Heaton, vice chair, on Tuesday, July 11, 2006, at 10:00 a.m. in the Sierra conference room of the Thomas McDonald student memorial center at western New Mexico university in Silver City, New Mexico.

Present

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

Absent

Sen. Phil A. Griego, Chair
Rep. Donald E. Bratton
Sen. John T.L. Grubestic

Advisory Members

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

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

Staff

Evan Blackstone
Jeret Fleetwood

Guests

Sen. Ben D. Altamirano

The guest list is in the meeting file.

Committee Business

The committee began by introducing members and the staff to the audience. Representative Heaton noted that Senator Griego had recently had a death in the family and would not be attending the meeting.

Welcome

James Marshall, mayor of Silver City, welcomed the committee to Silver City and thanked the members for holding the meeting in southwestern New Mexico. Mr. Marshall noted that Silver City has recently been addressing issues related to hazardous materials, pointing out that the city had recently used homeland security funds to purchase its own hazardous materials cleanup truck. He explained that, until recently, hazardous material cleanup had to be done by a truck from Las Cruces.

Senator Ben D. Altamirano also welcomed the committee to Silver City and discussed some of the economic development projects currently underway in Silver City, particularly revitalization of the city's downtown area.

Dr. John Counts, president of western New Mexico university, also welcomed the committee to Silver City and to western New Mexico university. He provided the committee with a brief background of the school and listed some of its recent achievements. Dr. Counts also noted that the school serves as a community college in western New Mexico, with off-campus sites in Deming and Gallup.

On a motion made, seconded and unanimously passed, the minutes of the June 1, 2006 meeting were approved as submitted.

Copper Mining Update

Tony Trujillo and Richard Peterson of Phelps Dodge mining company provided the committee with an update on copper mining in New Mexico. Mr. Peterson began by summarizing the economic impacts the copper mining industry has on New Mexico and Grant county. He noted an improvement in Phelps Dodge's financial results since 2002, explaining that the company's net income improved from a net loss of \$338 million in 2002 to a net income of \$1.56 billion in 2005. Mr. Peterson stated that the combined direct and indirect economic impact in New Mexico of Phelps Dodge's New Mexico operations in 2005 was \$741 million.

Next, Mr. Peterson discussed the worldwide copper market, informing the committee that Phelps Dodge is one of the world's leading copper producers. He also pointed out some of the end markets for refined copper, such as construction, transportation, electronics and various consumer products. Mr. Peterson went on to discuss mine production of the 10 largest copper producers across the globe and explained how the Asia-Pacific market has significantly increased the global demand for copper between 1994 and 2004.

Mr. Peterson highlighted the job creation by Phelps Dodge mining company within Grant county. Both Mr. Peterson and Mr. Trujillo listed the increasing number of employees at the

company's Chino and Tyrone mines and emphasized statistics that show mining is actually a safer industry for workers than manufacturing, construction and the education and health service fields.

Mr. Trujillo and Mr. Peterson discussed the dismantling of the smelters at the company's idle Hurley and Hidalgo facilities. They testified that the facilities are no longer required for copper production and highlighted the experience the company has with dismantling and salvage operations.

Next, Mr. Peterson discussed reclamation efforts at the company's Tyrone mine. He noted that 75 to 80 full-time employees are performing accelerated reclamation on the Tyrone site and provided the committee with slides showing the various stages of reclamation at the site. He also noted that reclamation crews will focus their attention on the Chino mine site once work on the Tyrone site is completed.

Finally, Mr. Trujillo and Mr. Peterson discussed a self-disclosure report released by Phelps Dodge in which the company disclosed violations of federal and state hazardous waste regulations. The report shows that in April, three Phelps Dodge mining operations voluntarily self-disclosed certain violations, including water quality regulations. While implementing a new system designed to help the company find such violations, Phelps Dodge discovered that hazardous waste regulation violations had occurred at three of the company's facilities: a refinery in El Paso, Texas, and the Tyrone and Chino mines in New Mexico. Mr. Trujillo and Mr. Peterson discussed the nature of the violations at each facility and emphasized that all problems were promptly corrected.

Questions and comments focused on:

- technologies that have replaced smelters to refine copper;
- molybdenum use in Asia;
- by-products of copper refining;
- projected increases in demand for copper worldwide;
- job opportunities for mine employees once the copper supply in the mines is exhausted;
- dependency of the mining industry on oil;
- impacts of the mining industry on air quality; and
- acquisition of Canadian mining operations by Phelps Dodge.

Mining Issues in New Mexico: Overview and Upcoming Legislative Issues

Mike Bowen, executive director of the New Mexico mining association (NMMA), provided the committee with a presentation regarding the importance of mining to New Mexico. He emphasized that mining is the bedrock of everyday life and that civilizations have been shaped by the use of minerals. Mr. Bowen stated that the United States consumes one-fourth of the globe's mineral production and imports a large amount of minerals. He informed the committee that New Mexico is ranked third in the nation for copper production, first in the production of potash and fifth in molybdenum production. He also discussed the economic

impacts of the mining industry in New Mexico, which include providing 6,000 jobs for New Mexicans.

T.J. Trujillo of the NMMA legislative committee provided the committee with an overview of NMMA's legislative priorities it plans to pursue during the 2007 legislative session. First, Mr. Trujillo encouraged the committee to once again endorse the Uniform Environmental Covenants Act for the upcoming session. He explained that the bill would provide the legal infrastructure for creating, changing and enforcing land use restrictions that assist in the cleanup of contaminated property. Mr. Trujillo noted that 10 states have enacted the Uniform Environmental Covenants Act and that the bill passed the New Mexico house of representatives in 2005 and 2006. The committee discussed various obstacles to the bill's passage, including allowing environmental covenants to apply to ground water. Representative Heaton expressed his desire that a compromise be reached on controversial language in the bill to ensure its passage in the next session.

The second legislative priority raised by Mr. Trujillo was the issue of regulatory justice. Mr. Trujillo explained that NMMA's view of regulatory justice is the need for New Mexico to establish a regulatory framework aimed at creating a formal decision-making methodology that is more uniform from agency to agency, balanced and fair to all parties, more conducive to careful deliberations and transparent. Mr. Trujillo stated that NMMA is working with other industry groups, trade associations and businesses that are concerned about executive agencies continuing to expand regulatory programs through rule making. He informed the committee that regulatory justice legislation includes concepts such as applying the Administrative Procedures Act to all agencies, establishing uniform inspection procedures and creating time frames for issuing licenses and permits. Representative Heaton requested that Mr. Trujillo provide the committee with a letter that contains specifics regarding the regulatory justice legislation the NMMA plans to present.

The final legislative priorities Mr. Trujillo discussed were the New Mexico department of environment's (NMED) intention to assume primacy over the National Pollutant Discharge Elimination System (NPDES) and potential Water Quality Act amendments. The NMED plans on introducing enabling legislation to assume NPDES primacy in the 2007 session, and Mr. Trujillo pointed out that NMMA believes the draft bill fails to adequately balance environmental stewardship over surface water quality with the reasonable needs of the business community. Lastly, Mr. Trujillo stated the New Mexico legislature may need to clarify its legislative intent on a few key concepts within the Water Quality Act, including the definition of "surface waters of the state".

Leroy Apodaca, president of NMMA, stated that he echoes the concerns addressed by Mr. Trujillo and the NMMA will continue to work with regulatory agencies in New Mexico although some problems exist.

Questions and comments focused on:

- whether the mining industry is currently working with NMED to reach some agreement on NPDES primacy.

Disposal of Hazardous Waste at the Camino Real Landfill: Update

Ron Curry, NMED secretary, provided the committee with an update on issues relating to the disposal of hazardous waste at the Camino Real landfill by Phelps Dodge. He explained that Phelps Dodge had recently recharacterized some of its waste streams and discovered that some of the waste being shipped to the Camino Real Landfill met the definition of hazardous waste. Mr. Curry pointed out that Phelps Dodge stopped shipping the waste after the recharacterization and that the company has taken steps to prevent such occurrences in the future. He emphasized that NMED has been on a positive course with Phelps Dodge, and that there has been a great deal of communication between NMED and Phelps Dodge, and he provided the committee with copies of NMED's correspondence with Phelps Dodge on the matter.

Secretary Curry also noted that the Camino Real landfill is no longer accepting waste from Phelps Dodge, but indicated that he does not anticipate any criminal charges being brought by the environmental protection agency or NMED against any of the parties involved. However, Secretary Curry stated that he does expect compliance orders and administrative notifications to be issued by NMED.

Secretary Curry went on to testify that, due to its location in southern New Mexico, the Camino Real landfill will always be controversial. He highlighted that the landfill is very well-run and that in its recent permit renewal application went above and beyond what is required for a permit reauthorization.

Dr. Mark Turnbough, representing the Camino Real landfill, explained to the committee that the landfill conducted a community impact assessment as a companion to its permit renewal application. The assessment evaluates the impacts of repermitting and includes community concerns addressed at hearings held by the landfill owner. The assessment studies traffic and noise levels, dust production and various other factors to determine the impacts the landfill has on the surrounding community.

Questions and comments focused on:

- Camino Real landfill's pending permit reauthorization;
- Camino Real landfill's previous use of a medical incinerator;
- new ownership of the landfill; and
- Camino Real landfill's location near an elementary school.

Environmental Justice

Secretary Curry and Derrith Watchman-Moore, NMED deputy secretary, explained to the committee the details of the concept of environmental justice and how the NMED decided to address the issue. They discussed that when they were first appointed, they heard multiple and repeated concerns that some citizens did not have a voice in the regulation process. They saw a need to fill a gap when it came to finding ways to communicate in the complicated regulatory

process. Secretary Curry and Deputy Secretary Watchman-Moore emphasized that environmental justice is not a new concept and it is geared to allow input from people who cannot pay for political influence or who do not have political clout. They stated that environmental justice tries to ensure that people are not disenfranchised when they have issues affecting their communities.

Secretary Curry and Deputy Secretary Watchman-Moore indicated that part of the desired communication involved listening sessions that were designed to bring people from New Mexico communities together to voice their concerns. Deputy Secretary Watchman-Moore informed the committee that NMED held four listening sessions throughout the state in 2004. They pointed out that the listening sessions were held in evenings to allow those who work during the day to attend them and that Spanish and Navajo translators were also present at the sessions. In 2005, a final report was issued with recommendations on the implementation of environmental justice, including enhancement of public notice and better coordination within state government to discuss environmental justice. Deputy Secretary Watchman-Moore stated that NMED was not ready to put environmental justice into statute, so the governor issued an executive order on environmental justice. She explained that the goal of the order is to provide for communication with the public in the development, implementation and enforcement of environmental laws, regulations and policies, regardless of race, color, ethnicity, religion, income or educational level.

Mary Day, the NMED's environmental justice and outreach issues liaison, added to Secretary Curry and Deputy Secretary Watchman-Moore's discussion of environmental justice. She explained that their work is to put together a process whereby the public can be heard. Ms. Day emphasized that the purpose of environmental justice is to make it feasible for the public to participate. She stated the challenge is to fit their outreach efforts with the characteristics of the state.

Questions and comments focused on:

- the standardization of environmental justice into regulations;
- the fairness of putting the burden on communities to come up with scientific data for environmental justice to be relevant; and
- whether environmental justice delays the permitting process.

Public Comment

Representative Heaton provided members of the public an opportunity to comment on issues discussed thus far by the committee.

Earl Montoya, a member of a community working group on contamination issues concerning Phelps Dodge, explained that there is a lack of communication between NMED and local citizens. He also noted that studies conducted regarding the effects of copper on humans indicate that copper dust, a by-product of copper refinement, could cause gastric problems in humans, particularly children, at contamination levels of one part per million. However, Mr. Montoya stated that the level of acceptable copper contamination in New Mexico was set at 3.1

parts per million, which is too high, and that copper contamination is still a problem in the Hurley community.

Carlos Provencio, a community organizer with the community working group, noted that it took 10 years for cleanup of area mines to begin. He also suggested that there is a need for more of the community to become involved in environmental issues.

Sally Smith, a member of the Gila resources information project, explained that she believes that the mining industry and companies such as Phelps Dodge exert tremendous influence over government and its decisions. She stated that representatives of Phelps Dodge had glossed over some of the pollution issues in their testimony. For instance, Ms. Smith indicated that the sulfuric acid that is produced by copper refinement is actually not entirely recycled, but instead contaminates some of the wells in the area.

Sewage and Treatment Disposal Systems and Implementation of Revised Rules for Septic Tanks: Local Concerns

Horace Jaramillo, public works director for Grant county, provided the committee with testimony regarding septic tank rules and their effect on local governments. He explained that his primary focus is to reach out to local colonias communities in Grant county to help assist with ground water pollution in those areas. Mr. Jaramillo went on to note that while there are a number of mandates coming from federal and state government, the duty to carry out the mandates often falls on local governments. He stated that the responsibility for rural infrastructure resides with local governments and that they need assistance in improving infrastructure to meet cleanup and disposal standards. Mr. Jaramillo emphasized that although there are wastewater treatment plants in the area, there is no place to dispose of the leftover sludge. He explained that the county simply does not have enough money to build such a facility for the sludge disposal. Mr. Jaramillo also noted that septic haulers are concerned with sludge disposal.

Debbie Rogers, a local realtor, explained to the committee that the changes in septic tank rules mean that septic systems must be inspected and brought up to compliance before a property's sale can be completed. She indicated that while the changes are likely well-intended, they could use some improvement. For example, Ms. Rogers stated that she had an offer of \$40,000 for a home, but the septic system would have required upgrades worth about \$8,000, which the prospective buyers could not afford. As a result, the home price had to be reduced to \$33,000, significantly less than the seller intended. Ms. Rogers also pointed out that many homes cannot be sold in northern New Mexico during winter months because the frozen ground makes inspections impossible. Finally, Ms. Rogers indicated that it is simply not practical for septic systems to be brought into compliance within 15 days of the inspection.

Rod Humphries, a local septic inspector and pumper, explained that he has problems disposing of septic and grease trap waste because of a lack of places to do so. He noted that while it has been suggested that waste could be transported to the nearby community of Playas, it

would simply cost transporters too much to transport the waste. Mr. Humphries emphasized that Grant county needs its own facility to be able to handle septic waste.

Ana Marie Ortiz, environmental health division director for NMED, provided the committee with a brief overview of problems associated with septage disposal. She explained that there are very few places around the state that will accept septage sludge. Some municipal wastewater treatment plants and several permitted disposal facilities are authorized to accept septage. She showed the committee the locations of the existing septic disposal facilities in New Mexico and discussed other methods of disposing of septic waste, such as soil incorporation and land application.

Ms. Ortiz went on to address the concerns of Mr. Jaramillo, Ms. Rogers and Mr. Humphries. She stated that NMED is working with stakeholders who wish to develop and permit new facilities, developing comprehensive septage regulations for pumping, hauling and disposal and that NMED is conducting public outreach and education. Furthermore, NMED requested public comment in May from everyone on its mailing list regarding certain areas of the new septic tank regulations. She noted that, in particular, the rule regarding bringing systems into compliance within 15 days would likely be changed.

Discussion concerned:

- legislation to empower counties to dispose of sludge that cannot go into the community systems.

Public Comment

Allyson Siwik, executive director of the Gila resources information project, provided the committee with testimony regarding the need to protect New Mexico's water resources. She stated that under current federal policies, which reduce federal Clean Water Act protection, unregulated dumping of pollutants can occur in closed basins and in some ephemeral and intermittent waters. These circumstances, Ms. Siwik pointed out, call for the state to take strong action to protect these waters. She stated that the wisdom of protecting all waters of New Mexico should be affirmed and the state should therefore reject proposals by the NMMA, the New Mexico oil and gas association and other industry representatives that would gut state protections and limit state jurisdiction.

Ms. Siwik emphasized that the state should ensure that the oil and gas and mining industries do not contaminate New Mexico's waters and are accountable to the people and the health of New Mexico's communities. She stated that the Pollutant Discharge Elimination Act is a step in the right direction, but that the Gila resources information project has some serious misgivings about some provisions in the proposed act. Ms. Siwik urged the committee to address its concerns in the next legislative session.

There being no further business, the committee adjourned at 5:05 p.m.

