

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

**June 2, 2015  
Room 317, State Capitol  
Santa Fe**

The first meeting of the Radioactive and Hazardous Materials Committee (RHMC) was called to order by Representative Cathrynn N. Brown, chair, on Tuesday, June 2, 2015, at 10:08 a.m. in Room 317 of the State Capitol.

**Present**

Rep. Cathrynn N. Brown, Chair  
Sen. Ted Barela  
Sen. Carlos R. Cisneros  
Sen. Richard C. Martinez  
Rep. G. Andres Romero  
Rep. Larry R. Scott  
Rep. James G. Townsend

**Absent**

Sen. Daniel A. Ivey-Soto, Vice Chair  
Rep. Eliseo Lee Alcon  
Rep. Stephanie Garcia Richard  
Sen. Gay G. Kernan  
Sen. Carroll H. Leavell

**Advisory Members**

Sen. Ron Griggs  
Sen. John Pinto  
Sen. Nancy Rodriguez  
Rep. Nick L. Salazar  
Rep. Jim R. Trujillo

Sen. William F. Burt  
Rep. David M. Gallegos  
Sen. Stuart Ingle  
Rep. Rod Montoya  
Sen. William H. Payne  
Sen. Clemente Sanchez

**Staff**

Gordon Meeks, Legislative Council Service (LCS)  
Renée Gregorio, LCS  
Taylor Smith, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and written testimony are in the meeting file.

## **Tuesday, June 2**

After committee members introduced themselves, Representative Brown spoke of how the Waste Isolation Pilot Plant (WIPP) is within the boundaries of her district and the status of WIPP would of course be highlighted during the committee's interim work. She then asked Mr. Meeks to introduce the legislative staff in attendance, with special attention being given to the LCS's law intern, Mr. Smith.

### **Department of Environment (NMED) Update**

Ryan Flynn, secretary of environment, introduced members of his staff, including Katie Roberts, division director, Resource Protection Division; Jeffrey M. Kendall, general counsel; and Allison Majure, director of communications.

Secretary Flynn indicated that he would focus his presentation on the NMED's settlement agreement with the federal Department of Energy (DOE). He stated that he had some good news on progress at WIPP, which is that panel 6 and panel 7, room 7, have been closed. He added that there were approximately 422 containers with a problematic mix of materials, and that even though these containers have not been exhibiting the same problems as the breached drum, the closure will prevent any release. Secretary Flynn praised the work of WIPP employees and stated that operations at the facility would likely occur in the near future. He emphasized that the events at WIPP presented an unprecedented issue to deal with and that meaningful progress is now being realized.

In reviewing what led up to the current settlement agreement with the DOE, Secretary Flynn spoke of the two main events, the vehicle fire of February 5, 2014 and the radiological release of February 14, 2014. He reiterated that because of the fire, WIPP personnel were not working in the underground at the time of the release, which was fortunate. The release has been a major issue for the NMED to deal with, he emphasized, and there have been several detailed reports produced about these events. He added that the most important detail is that a small amount of radiation was released, well below the threshold of concern of adverse effects to humans or the environment. He explained that radiation escaped because a damper in the ventilation system did not shut, but that otherwise the system performed as it should. Typically, the ventilation is unfiltered, but when the alarm sounded at the time of the release, the mine shifted to filtered air through its high-efficiency particulate arrestance, or HEPA, filters. Because one damper did not completely shut, a small amount of unfiltered air escaped. Secretary Flynn stated firmly, however, that there is no margin for error at this facility, that actually WIPP is no longer a pilot project and that all such incidents are preventable. He pointed out the specific location of these events on a diagram and described the rupture of the container as a "flash", with the heat then causing the material in the drum to disintegrate quickly. He added that the investigations of the release were performed through fire modeling, which essentially provided a reconstruction of the release.

As part of the settlement agreement with the DOE, two compliance orders were issued, one to WIPP for \$17.7 million for 13 permit violations and one to Los Alamos National Laboratory (LANL) for \$36.6 million for 18 permit violations. WIPP's violations included a failure to notify the NMED of the release in a timely fashion as well as improper acceptance and disposal of incompatible and ignitable waste. LANL's violations included improperly treating hazardous waste without a permit, mixing incompatible waste (nitrate salt-bearing waste stream with oxidizer or organic kitty litter) and failing to adequately characterize waste. Secretary Flynn emphasized that the NMED's focus is on holding people accountable and in compliance and that the NMED prefers to head off issues before they happen rather than having to fine for violations.

Secretary Flynn next gave the highlights for the agreement, which include \$73.25 million for various supplemental environmental projects as follows:

- \$34 million for improving WIPP transportation routes in Department of Transportation-designated Region 2 in southeastern New Mexico;
- \$12 million for improving Los Alamos transportation routes;
- \$10 million for water line replacement at LANL;
- \$9.5 million to improve engineering structures and monitoring capabilities to manage storm water flows near LANL;
- \$5 million for an emergency operations center in Carlsbad and for training; and
- \$2.75 million for an independent three-year review for compliance and operations.

Secretary Flynn said that the settlement agreement puts in place a system to ensure compliance and shows that complacency will not be allowed to creep into the safety culture again. Also, the Mine Safety and Health Administration (MSHA) had not audited WIPP for many years. The corrective actions at both LANL and WIPP will ensure that the issues that led to the radiological release and the fire are corrected in full before WIPP reopens. He admitted that although there have been many gains and productive conversations with WIPP, the dialogue with LANL has not been as successful, even though meetings with technical staff have occurred and progress has been made as related to necessary corrective actions. Within the next three to four months, these corrective actions will be identified and incorporated into the final agreement, he added.

Funding for projects related to the settlement agreement will not be diverted from existing operational or cleanup budgets for WIPP or LANL, Secretary Flynn assured the RHMC. Input from host communities, the federal government, the New Mexico congressional delegation, legislators, city officials, task forces and agencies all influenced the settlement agreement, he said. The NMED, as is typical with all settlement agreements, ensured that there is a connection between the violations and the projects suggested for corrective action, in this case largely health- and safety-related projects. Secretary Flynn spoke about addressing the issue of expiration of funding for the WIPP transportation routes, which occurred at the end of 2012. He said that Secretary of Transportation Tom Church estimates that over \$49 million is needed annually to maintain these routes, but that at present between \$5 million and \$10 million can be delegated to

these projects. He concluded by stating that the governor, agency leadership and the New Mexico congressional delegation are working together to return to Congress to request renewed funding for these transportation routes to ensure safety on WIPP routes.

In response to committee members' questions and concerns, the following issues were raised and discussed.

- Although the MSHA had not been conducting regular inspections at WIPP, it is now doing so.
- The \$12 million for routes at LANL would include maintenance of existing routes only.
- There is not enough funding at present to maintain the existing transportation routes to WIPP, so alternate routes will not be funded at this time.
- At present, waste is accumulating at the sites at which it is generated, which is accruing liability for the DOE for not addressing streams of waste at storage facilities across the country. The Waste Control Specialists site in Texas was taking on waste, but only for temporary storage; it has now ceased taking waste.
- The Yucca Mountain site is for high-level waste; the WIPP site is for defense-related transuranic (TRU) waste, which is a lower-level stream of waste. Non-defense TRU waste is identical to the waste that WIPP currently takes; there is not a scientific distinction between the two types of waste. Also, greater-than-class-C waste is very similar to TRU waste.
- Although the 21 employees who tested positive for radiological contamination received a dose that was not deemed "clinically significant", some also suffered injuries related to smoke inhalation.
- The NMED wants to keep facilitating relationships with community members to encourage direct interaction with NMED employees to increase trust.
- The Kirtland Air Force Base fuel spill has not been handled well historically within the NMED, but the NMED is now engaging in more direct communication with affected communities and requiring the United States Air Force to implement interim cleanup measures.
- Although there is a need to maintain Highway 599, as it is a WIPP route with much residential growth since it was built, the settlement agreement does not include this route, as the needs in the southeastern area of the state are seen as more pressing.
- *\*\*The NMED will give LCS staff a copy of the Northern New Mexico Citizens Advisory Board's recommendation to the DOE for dispersal to RHMC members as well as a map of WIPP routes.*
- The NMED agrees with the goal of providing storage for spent nuclear fuel, but it is still in the information-gathering stage regarding the sites for such storage facilities.
- WIPP is the only storage facility in the nation for the permanent storage of TRU waste.
- The NMED has learned that it has been, at times, afraid to take action even if such action is believed to be appropriate; that it can be reluctant to make permit

modifications; that it needs to be prepared for criticism and pushback due to changes that might be viewed as politically unpopular; and that engagement is the key to success.

### **2015 Interim Work Plan/Schedule**

Mr. Meeks reviewed the draft of the work plan, meeting dates and potential meeting locations. The chair proposed meeting in Albuquerque in August and in Los Alamos in September, he added. Among the suggestions for the scope of work were to cover WIPP issues in Carlsbad; the federal nuclear energy initiative in Los Alamos; the NMED secretary's report in November; renewable energy initiatives in August in Albuquerque along with legacy waste and the Kirtland Air Force Base spill; small modular reactors in Carlsbad; and a utility infrastructure presentation from PNM in November.

Committee discussion included the importance of continuing the dialogue on LANL violations, hearing from Sandia National Laboratories in Albuquerque and addressing the handling and monitoring of more everyday hazardous materials. On a motion and second to adopt the work plan, the RHMC adopted its plan without objection.

### **Adjournment**

Before adjourning, the chair directed committee members' attention to the information memorandum from the LCS on interim committee process and asked members to review this. There being no further business, the committee adjourned at 12:30 p.m.