

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

**November 4-5, 2004
Environmental Monitoring and Research Center
Carlsbad**

The November 2004 meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:15 a.m. on Thursday, November 4, 2004, by Representative John A. Heaton, chair.

PRESENT

Rep. John A. Heaton, Chair
Sen. Richard C. Martinez, Vice Chair
Rep. Donald E. Bratton
Sen. Mary Jane M. Garcia
Sen. Gay G. Kernan
Sen. Don Kidd (11/4)
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Rep. Pauline J. Ponce
Rep. Jeannette O. Wallace

ABSENT

Sen. Phil A. Griego
Rep. Manuel G. Herrera

Advisory Members

Rep. Thomas A. Anderson

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

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

Guest legislator:

Senator-elect Vernon Asbill

Staff

Gordon Meeks
Liz Holmes

Guests

The guest list is in the original meeting file.

Representative Heaton introduced the newly elected senator from Carlsbad, Vernon Asbill. The chair welcomed everyone and explained the history of the committee and its mission. He also gave an overview of the Carlsbad area and its attractions, economy and current

issues. Committee members then introduced themselves.

Outgoing Senator Kidd expressed appreciation to his colleagues on the committee and the work he shared with them during his service. Committee members recognized Senator Kidd.

Carlsbad Mayor Bob Forest was introduced, and he made some brief remarks about the community.

Mayor Forest continued describing the community, referring to the Waste Isolation Pilot Plant (WIPP). Mayor Forest said that it only had an approval rate of 30 percent of the community in 1975, and now enjoys a 90 percent approval rating. He mentioned the potential for a PIT manufacturing facility, a fuel rod enrichment plant and other nuclear industry-related opportunities in southeastern New Mexico, which is a corridor for radioactive waste research and management where people work together and collaborate for economic development. The country's best kept secret is New Mexico, and southeast New Mexico is the state's best kept secret. WIPP is the best thing that has happened to southeast New Mexico, he concluded.

Representative Heaton described the host location, the Carlsbad Environmental Monitoring and Research Center (CEMRC).

CARLSBAD ENVIRONMENTAL MONITORING AND RESEARCH CENTER

Jim Conca, director of the center, told the committee that CEMRC will be bidding on the contract to replace the Environmental Evaluation Group and is working with the Carlsbad Center for Excellence for Hazardous Materials Management (CEHMM). He explained the history of monitoring at the WIPP site, including the Gnome project (underground nuclear testing for mining) prior to WIPP. Some radioactive particulates got into the atmosphere from a test explosion in 1964, before WIPP was established, and this previous escape of radioactive particulates needs to be detected as separate and distinctive from any potential release from WIPP in order to detect any potential WIPP radioactive leaks.

He said the center also does whole body scanning for detection of nuclear residue. The sensitivity of equipment at the center can detect if a person is from the Ukraine, as a result of the release of radioactive material in Chernobyl during the 1980s. It can also detect nuclear residue from tobacco smoking and distinguish it as a source distinct from other radioactive releases. The center is also documenting nuclear residue in emergency responders that have to respond to a dirty bomb.

The mission of the center now includes research contracts under the federal Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The center will be working on training responders to deal with the detection and response to incidents involving dirty bombs, e.g., radiation dispersal devices. These are conventional bombs that disperse uranium. They are considered weapons of mass destruction in that they can cause extensive economic disruption. The first people on the scene of an incident involving these bombs are local police and fire personnel. The center will be training these first responders. He then went into some detail about the technical aspects of dirty bombs and the response to their detonation. The effects of dirty bombs are similar to radioactive waste cleanup.

Questions and comments included:

- vulnerability to dirty bombs;

- the role of the center in the cleanup of Iraq; and
- the history of the center.

CENTER FOR EXCELLENCE FOR HAZARDOUS MATERIALS MANAGEMENT

Bill Bartlett, director of the CEHMM, told the committee that the center is a recently formed nonprofit in Carlsbad for the research and development of ways to improve the management of hazardous materials internationally. Mayor Forest initiated the idea for this center in 2003 based on his appreciation of the regional resources available, such as the national laboratories, educational institutions, WIPP, the mining industry, the oil and gas industry and government organizations involved in dealing with hazardous materials. This September, he said, the federal Department of Energy (DOE) made a grant to the newly formed CEHMM. This grant will fund the center's research in repository science and environmental monitoring, development of an information resource center, education and other research. The center will be hiring professional staff with expertise in safety, environmental law, risk assessment and basic sciences.

Questions and comments included:

- the advisory committee of universities and industries working with the center;
- the pipeline explosion a few years ago that resulted in a grant of \$12 million for hazardous materials training;
- bio-diesel opportunities;
- the size of staff; and
- how staff composition of employees or independent contractors may pose a risk of conflict of interest.

The committee approved the minutes of the previous meeting.

ENVIRONMENTAL JUSTICE HEARINGS

Derreth Watchman-Moore, deputy secretary of environment, introduced herself and summarized the department's efforts to address environmental justice. She said the department held four meetings and that about 80 people attended each meeting. The meetings lasted for about eight hours with the intention to assist the public in participating in the environmental decision-making process. The meetings were held in response to a memorial asking the department to focus on grassroots efforts. The hearings were translated into Spanish and Navajo. A major concern that emerged was the adequacy of public notice when the department is considering permit decisions. Many people do not know about the implications of a decision for their community and are never informed of the project. People brought these concerns and many others, such as roads and education, to the hearings.

Questions and comments included:

- how do neighborhoods and communities come forward with adequate technical expertise or legal representation;
- the issue of fairness as it relates to the location of controversial projects in poorer communities;
- the department's approach for getting adequate resources to communities for their participation;

- the potential for dedicating personnel, perhaps ombudsmen, in the agency to work with communities;
- trust; and
- the need for expediting the permit process for economic development objectives.

WASTE ISOLATION PILOT PLANT STATUS

Paul Detwiler, director of the Carlsbad Field Office of the Department of Energy, discussed the shipment of drums from the Idaho National Energy Laboratory (INEL) that were not qualified to be placed at WIPP. The New Mexico Department of Environment (NMED) issued a compliance order against WIPP that carries a fine of \$2.4 million. He explained that the problem is one of accounting for the drums in the waste stream. He said the contractors have to better monitor the process of drum consolidation and repackaging.

Mr. Detwiler explained that the Hanford, Washington, Department of Energy facility uses the Environmental Protection Agency's (EPA) process of waste characterization that involves two waste streams and three audits, but that not all these audits were complete. The NMED attended all the audits, but the EPA did not. EPA only looked at the debris procedures, not for solids. NMED incorrectly assumed that EPA approved the solids process. But there had been no formal approval for the solids. There were 10 to 20 audits in process at the time, he testified, and communications broke down. To avoid this problem in the future, he suggested that the tracking process be formalized.

Questions and comments included:

- the nature of "solid wastes" and an explanation of the characteristics of the waste categories;
- the location of the improperly shipped drums;
- the receipt of more shipments per day than there is room to store them above ground;
- the condition of sludge at Hanford;
- the definition of "high-level" waste and the need for re-categorizing radioactive wastes—the terminology no longer reflects the nature of the different waste characteristics;
- formalities and bureaucratic process compared to the substantive characteristics of waste processing and disposal;
- the status of the central characterization project;
- the need for establishing central control of waste characterization at WIPP;
- potential outcry of the public over mistakes like this;
- cost estimates of characterization and confirmation through the life of WIPP; and
- Texas' proposal to locate a CCF in Texas.

At this point, a number of questions were directed to Ron Curry, secretary of environment, who was present in the audience. A CCF seems to be a characterization and confirmation facility for the waste stream destined for WIPP. The central idea of the questions to Secretary Curry was, "Wouldn't it be better for New Mexico to have a CCF located in New Mexico to give the state more control and regulatory authority over the waste stream?" Secretary Curry said that the idea has potential and that NMED is willing to consider it.

Questions and comments included:

- potential savings of \$4 billion to expedite and improve the efficiency of the characterization and confirmation process;
- whether the INEL waste problem could have been avoided if a CCF were located at WIPP or closer to Carlsbad; and
- how the cost per drum disposed is computed.

Secretary Curry told the committee that the recent events associated with the mistake by INEL has been an "interesting exercise". He said that INEL has had problems in the past with shipments. The problem lies in improper handling of paperwork by the INEL contractor. He was confident that negotiations with INEL over the penalty will be fruitful. He told the committee that his general counsel has said that NMED has the authority to fine the permittee, WIPP, for the problem.

He explained that the incident with the Hanford shipment falls within the domain of EPA rather than NMED. He elaborated that NMED feels WIPP was told specifically by EPA that those drums were not certified and should not have been accepted. The DOE should have notified NMED, not EPA, and DOE should have also notified its contractors at WIPP, which it did not. NMED ended up notifying the WIPP contractors, not DOE. The DOE management in Washington has not complied with its obligations. He concluded that DOE is not communicating.

Questions and comments included:

- how the "WIPP summit" has been postponed or canceled;
- communications between EPA and the Carlsbad Field Office;
- the status of the RCRA permit; a permit modification request is before NMED based on WIPP's desire to change some waste that has formerly been classified as high-level waste that, after investigation, appears to be transuranic (TRU) waste, for which WIPP was built to accept;
- further discussion of the need for restructuring the way that radioactive waste is classified;
- whether Congress could trump the permit modification process based on essentially a mislabeling of waste as high-level simply because of the source of the waste and not its nature, which is TRU;
- whether a definition change would change the criteria;
- the schedule for a Class 3 permit modification;
- the lack of institutional memory in DOE-Washington due to staff turnover;
- the role of the National Academy of Sciences;
- how redefining radioactive wastes could screw up contracts and policies adopted based on the existing definition scheme;
- the notice of deficiency on the permit modification request for remote handled waste and schedule for decision;
- that blame to DOE for the distractions that have disrupted the process;
- the adequacy of resources provided to NMED by DOE; and
- the difficulty of dealing with moving targets put up by the DOE headquarters in Washington; Secretary Curry said he wants more clear, consistent information on positions and policies that DOE frequently changes radically.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Secretary Curry told the committee that New Mexico is one of five states that does not have primacy from EPA to enforce the National Pollution Discharge Elimination System (NPDES). He said that when the villages of Pecos and Espanola were fined under NPDES, they had to deal with the Dallas EPA office, which cost more money and resources than would have been the case if they had dealt with NMED instead. He also cited examples in Los Alamos National Laboratory (LANL). He said the state needs control over its surface waters, and that the Legislative Finance Committee agrees with NMED that the state should receive primacy. He said that business has expressed general concern that NMED is moving too rapidly. A committee has been established to work on putting a proposal together for the 2006 session that will provide for state primacy that will be no more stringent than the federal rules as they exist today, without the regulatory rollbacks proposed by the Bush administration.

The secretary said that the estimated cost for NMED to assume primacy is \$1.14 million, 40 percent of which he would like to obtain from permit fees spread across the estimated \$2,000 permit holders. He explained that NMED is always committed to talking to affected people. The primary affected interests are industry, mining, municipalities and agriculture. The negotiating group will be chaired by Surface Water Bureau Chief Marcy Leavitt.

At the invitation of the chair, members of the audience who had a stake in the outcome of the NPDES primacy made brief remarks.

Randy Traynor, New Mexico Homebuilders and National Association of Office Parks, said that his clients are interested in talking with NMED because EPA has played the "bad cop" to NMED's potential "good cop". But, he said, NPDES applies to all construction sites. New Mexico has more than 10,000 of construction sites now. He said the state now has to comply, so the question is whether the state should take it over, not whether compliance standards will be weakened. EPA will always have oversight. Neither the fees or the standards can be waived.

Copies of the New Mexico Municipal League's conditional endorsement of the idea were passed out and appreciation was expressed for NMED forming a committee to negotiate the proposal. However, Mr. Traynor said he dealt with NMED for seven years on liquid waste issues, and that NMED was not honest in those discussions. He faulted NMED's lack of communication.

Mike Bowen, executive director of the New Mexico Mining Association, said he does not oppose the proposal yet, but that he has concerns. He is particularly concerned that existing permits could end up with more stringent enforcement. He is concerned about the unfriendly makeup of the Water Quality Control Commission and the potential for it to exceed its authority under whatever legislation might be enacted to acquire primacy from EPA. He said he wants a cap on the amount NMED is allowed to charge for fees. He concluded by saying he wants to see the whole package before he could endorse the idea.

Sharon Lombardi, director of the Dairy Producers of New Mexico, said that her organization is subject to several segments of the NPDES program as it is administered by EPA. She said the livestock regulations would affect her members because dairies are defined as livestock operators. The dairies are already permitted for ground water discharges. NPDES would require another permit for the same operation. She said her organization would like to see

all permits required for dairies unified under one administrative mechanism. If the permit process is not done right, it is a nightmare.

Debbie Hughes, director of the Association of Conservation Districts, said that the list of impaired streams, which triggers certain standards for discharges, is not based on scientific data. Rather, it is based on how much money is brought into the state by the number of listed streams. She illustrated her point by telling the committee that NMED has listed arroyos as impaired. Playa lakes, which are ephemeral, isolated bodies of water created from runoff and snow melt, were once listed as navigable waters, she contended. She said that contrary to the secretary's argument for New Mexico having primacy over its surface water, NMED gave a grant for watershed restoration to Purdue University in Indiana.

Questions and comments from the committee included:

- how NMED taking over the regulatory role from EPA would be like a turnkey contract;
- that there are no grants from EPA for primacy assumption to pay for the costs of administration;
- the argument that the devil you know is better than the one you do not;
- how the \$1.5 million fine against the village of Pecos was reduced to \$28,000 as a result of the intervention by NMED;
- NMED wanting to administer another tax to take control away from those that have to pay the tax;
- how NPDES is contrary to the need to make New Mexico more business-friendly in order to create the jobs the governor claims he wants;
- the adequacy of the Underground Storage Tank Fund to pay for 40 percent of the cost of administering NPDES;
- the oil and gas industry's compliance;
- fines used to leverage compliance as opposed to generating revenue;
- the number of employees needed for NPDES administration;
- the permit fee structure; and
- the willingness of the Dallas EPA administrator to come to Santa Fe to help explain the issue.

LOS ALAMOS

Tom Hargis from the Environmental Compliance Division of LANL spoke to the committee about the safety and security violations that caused the temporary shutdown of the lab.

Questions and comments included:

- public hearing on the consent order;
- compliments on negotiating the consent order;
- progress on restarting operations of the lab;
- the number of people affected by the disciplinary actions;
- LANL management contract status and the issuance of a request for proposals;
- the continuity of LANL operations;
- the potential pit facility and potential job losses if the pit facility is located in Savannah River rather than at Los Alamos;

- the nature of security breeches;
- the shift in mission from goal-oriented to process-oriented management; and
- the goal of completing cleanup by 2015.

PROPOSED LEGISLATION

Representative Heaton thanked the various presenters and participants in committee meetings for their attendance, presentations and interest in the committee's business.

Sonia Phillips, Xcel Energy Company, asked the committee for support of a bill on voluntary emissions reductions. She said that she intends to solicit sponsors for re-introduction of the bill this year, with some changes to reflect concerns last year from Senator Payne. She said that her company and others are still negotiating the bill. The governor and Secretary Curry are supporting the negotiations, she said, and she expects a negotiated bill to be ready before the session. She said the proposal will save customers money. Xcel will be seeking approval for a rate rider on customer bills to pay for the costs of emissions reductions up front. Xcel anticipates that EPA will be mandating these reductions in the near future, and Xcel is trying to get ahead of the anticipated regulatory action to save money. It is anticipated that if the industry waits in making the improvements, EPA's orders will end up costing the customer much more in the future. The generators to be improved are in Texas, but most of the customers are in New Mexico. EPA's mandatory reductions would be imposed on all stacks at a total cost of \$750 million. If the company can act ahead of EPA by just reducing emissions on the stacks that are making excessive emissions, Xcel can avoid having to replace each stack—the cost may be as little as \$150 million to \$250 million total.

A representative from the Lea County Electric Co-op said that his organization supports the proposed legislation.

Questions and comments included:

- how to ensure that New Mexico rate payers pay less than those in Texas;
- the EPA's policy; and
- the bill's applicability to all utilities.

Cindy Padilla and Clifford Stack, both with the Solid Waste Bureau of the NMED, presented a bill draft amending the Tire Recycling Act to make it a broader recycling program. They said that a steering committee is working to develop this recycling bill. The approach is to rewrite the Tire Recycling Act to address illegal dumping and abate illegal dumps. The bill will create a recycling advisory alliance and make grants for abatement. The primary goal of the bill is to improve the economics of recycling by focusing on the development of markets for recycled materials. The economic loop must be closed before recycling can succeed. A companion bill will also be prepared for a tax credit on recycling equipment and machinery.

They also reported on the fiscal year grants from the Tire Recycling Fund. Six projects were funded in FY 2005, with three still pending. Only two were funded in FY 2004. Many communities have expressed interest in doing more recycling. Markets are the key. The technology has improved significantly in the past 20 years, and there may be a new wave of recycling advances.

Questions and comments included:

- regional systems to assist small towns in consolidating materials and funding

- recycling facilities;
- the location of recycling facilities;
- the capacity for recycling;
- the secondary market for glass;
- economics for transporting material to recyclers;
- the cost of landfills as tradeoffs to recycling;
- increasing responsibility of waste generators by using manifests to track disposal of tires;
- the federal Healthy Forests Initiative and scope of the recycling bill to include organic material from watershed restoration projects;
- restrictions for civil engineering applications;
- dilution of the money in the Tire Recycling Fund for other purposes;
- enforcement and penalties;
- whether the biggest tire dumps have been addressed;
- the eligibility of Spanish and Mexican land grants to apply for money to close down illegal dumps;
- more incentives for the private sector to participate;
- the disposition of disposal fees collected by retail tire sellers and other generators;
- requirements of scrap haulers for tire transportation;
- illegal dumping caused by the high cost of waste disposal; and
- the notification to tire dealers about the proposed legislation.

The committee voted to endorse the legislation, with no one opposed.

Representative Heaton told the committee that he intended to again sponsor legislation reforming the de novo hearing process under the Water Quality Control Act and the Air Quality Act and asked for the committee's endorsements of those bills. The committee voted to endorse those measures, again with no opposition.

The committee discussed NMED bills that are expected to be introduced but, without hard copies, the committee did not endorse any of these bills. They include: certification for water treatment system operators; revision of the on-site liquid waste rules; restaurant inspection fee increases; hazardous waste fee increases; and appropriations for superfund site cleanup.

The department was asked to distribute copies of its bills as soon as they are available to each member of the committee.

NATIONAL ENRICHMENT FACILITY

Marshall Cohen, Louisiana Energy Services, spoke to the committee about the continuing importance of nuclear power in the international mix of electric power generation fuels and the need for enrichment of uranium for use in commercial power plants that use gas centrifuge technology. Nuclear-fueled power plants provide 16 percent of the world's electricity. The U.S. has one-fourth of the nuclear power plants in the world, accounting for 20 percent of the U.S. electricity and 20 percent of New Mexico's. The Nuclear Enrichment Facility (NEF) will be built in Lea County and have a design lifetime of 30 years. He went over some of the technical parameters of the plant and its technology. The technology has safely operated in Europe for a cumulative 70 years at three sites. He said that Louisiana Energy Services is a limited

partnership to license, construct and operate the NEF. The general partners of Louisiana Energy Services are Urenco and Westinghouse Electric. Limited partners are Exelon, Entergy and Duke Power. He said he expects operations to begin in 2009 and total construction to be complete by 2013. He explained the regulatory roles of the federal Nuclear Regulatory Commission and the NMED. The construction budget will be a little less than \$200 million and it will employ about 210 personnel when operating, with a total tax payment of \$150 million over the total 30-year life of the facility. Deconversion and disposal of the waste byproduct could employ significant personnel near the facility.

Questions and comments included:

- confidence in the nuclear industry;
- fuel originating from out of the United States;
- the success of the NEF in the Netherlands;
- working with the community colleges to train employees;
- recycling the waste stream;
- French practices;
- closure of the plant in the future;
- security measures;
- the need for energy self-reliance; and
- the benefits of nuclear energy to counteract global warming.

The committee instructed staff to compose letters to the NMED regarding:

- the request for broadening the representation of stakeholders in the NPDES negotiations to include the oil and gas industry, large retail establishments and more agriculture; and
- opposition to a permit modification for WIPP that deals with high-level waste.

The committee adjourned at 11:35 a.m.