

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

**September 19, 2006
Pecos River Village Conference Center
Carlsbad**

**September 20, 2006
New Mexico Junior College
Hobbs**

The fourth meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:05 a.m. on Tuesday, September 19, 2006, by Representative John A. Heaton, vice chair.

Present

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

Absent

Sen. Phil A. Griego, Chair
Sen. John T.L. Grubestic

Advisory Members

Sen. Mary Jane M. Garcia
Rep. Nick L. Salazar
Rep. Mary H. Skeen

Rep. Thomas A. Anderson
Sen. Clinton D. Harden, Jr.
Sen. William H. Payne
Sen. John Pinto

Staff

Evan Blackstone
Jeret Fleetwood

Guests

Rep. Donald L. Whitaker (September 20)

The guest list is in the original meeting file.

Tuesday, September 19 — Pecos River Village Conference Center, Carlsbad

The committee began by introducing members and staff to the audience. Representative Heaton welcomed to the committee Representative Mary Skeen, who was recently appointed to serve in the legislature.

Bob Forrest, mayor of Carlsbad, welcomed the committee to Carlsbad and discussed continuing efforts at economic development in southeastern New Mexico. He explained that the Waste Isolation Pilot Project (WIPP) plays a large role in maintaining Carlsbad's low unemployment rate and relatively high median income. Mr. Forrest also noted that the potash mining industry and the planned National Enrichment Facility (NEF) outside of Hobbs also contribute significantly to Carlsbad's economy. Finally, Mr. Forrest pointed out that several projects in Carlsbad were made possible through legislative funding and he thanked the members of the committee for their support.

WIPP: Status, Permits, Updates

Dr. David Moody, project manager for WIPP, began by thanking the legislature and the Carlsbad community for their support of WIPP in its nearly seven and a half years of operation. He informed the committee that the Environmental Protection Agency (EPA) recertified WIPP in March 2006 and that WIPP received its five thousandth shipment on September 10, 2006. He went on to explain the disposal status of transuranic (TRU) waste at the facility and the progress of legacy TRU waste cleanup at sites across the nation.

Dr. Moody also explained that WIPP recently was authorized to accept remote-handled TRU waste and is preparing to receive shipments of the waste. He provided the committee with an overview of the major differences between remote-handled and contact-handled waste, the amount of remote-handled waste that WIPP is equipped to receive, the method the federal Department of Energy (DOE) will use to ship the waste and the steps that the facility must take in order to begin receiving the remote-handled waste. He noted that WIPP was originally designed for the safe handling and disposal of remote-handled waste and additional facilities to store the waste do not have to be built.

James Bearzi, chief of the New Mexico Department of Environment's (NMED) Hazardous Waste Bureau, explained the proposed changes to WIPP's permit to receive remote-handled waste and the current status of the permit. Mr. Bearzi stated that the proposed changes include a new waste analysis plan, increased container storage areas and increased capacity for the disposal of waste. The draft permit was issued in late 2005 and the public hearing period on that draft ended in early June 2006. Mr. Bearzi said the next steps for completion of the permitting process involve submission of the public hearing officer's report, public comment on the hearing officer's report, a final decision by the secretary of environment, permit issuance and an audit of remote-handled waste characterization. Mr. Bearzi emphasized that NMED's relationship with WIPP has never been better. Representative Heaton complemented NMED and highlighted the success of the permit modification process.

Questions and comments included:

- the estimated date of the first remote-handled waste shipments to WIPP;
- public meetings addressing urban myths regarding radioactive waste;
- waste characterization issues at Los Alamos National Laboratory;
- the maximum number of shipments per week that WIPP can accommodate;
- storage methods for remote-handled and contact-handled waste;
- the shipping method for remote-handled waste;
- sources of remote-handled waste; and
- waste transport and storage safety and security concerns.

Hazardous Waste Act Amendments

Mr. Bearzi provided the committee with proposed amendments to the Hazardous Waste Act regarding criminal penalties for used oil violations. He explained that currently, used oil, such as that generated by automotive service businesses, oil transporters and processors, is regulated by both NMED and the EPA. Mr. Bearzi went on to note that there is a relaxed regulatory burden on used oil. For example, there are: no recordkeeping by generators, no storage amount or time limits on generators and no fees. However, the relaxed regulatory burden also encourages recycling and reuse of used oil. He stated that amending New Mexico's statutes to provide criminal penalties for used oil violations is necessary for NMED to receive EPA certification for the program and eliminate the current problem of double regulation. Lastly, Mr. Bearzi explained that the criminal penalties would be enforced by the attorney general and will not apply to inadvertent spills that are promptly cleaned up. The committee directed staff to provide members with drafts of the proposed legislation prior to the committee's final meeting.

Questions and comments included:

- fines for inadvertent oil spills;
- caps for fines;
- whether other types of oil, such as vegetable oil, would be covered by statutory changes; and
- whether the proposed changes will be in a bill for the 2007 session.

Federal Delegation: Introduction of Statute on National Pollutant Discharge Elimination System (NPDES) Primacy

Cindy Padilla, director of the Water and Wastewater Management Division of NMED, and Marcie Leavitt, chief of NMED's Surface Water Quality Bureau, provided the committee with an update regarding the status of NMED's pursuit of legislation authorizing the department to take over NPDES permitting authority from the EPA. Ms. Padilla explained that NMED would not be pursuing primacy during the 2007 legislative session. She and Ms. Leavitt provided the committee with an overview of the NPDES system and steps NMED has taken to involve various stakeholders in developing language for a bill to allow NMED to assume primacy.

Questions and comments included:

- reasons for NMED's decision not to pursue NPDES primacy in 2007; and
- the definition of "waters of the United States".

Mine Safety: Update on Implementation of HB 687 (2006) and Proposed Interagency Mine Emergency Response Plan

Rebecca Boam, state mine inspector, provided the committee with a brief overview of the powers and duties of the state mine inspector and a brief history of the development of mine safety standards. Specifically, Ms. Boam focused on HB 687, passed in 2006, which addresses a range of mine safety issues. She explained that one component of the legislation mandates the development of a mine emergency response plan. Ms. Boam went on to note that there are currently five underground mining operations in New Mexico and that each has submitted an emergency notification and implementation plan to the mine inspector's office. She also pointed out that some safety and communications equipment is required by the bill, and that those mines that have not purchased the equipment have had to submit implementation plans detailing their plans to do so.

Ms. Boam went on to indicate that one of the major issues regarding the implementation of mine safety requirements is the use of self-contained self-rescuers (SCSR). She explained that the size and weight of the SCSR units required by the legislation have become a contentious issue for miners. She noted that the current units are much smaller and lighter than the units required by the bill. Also, no other states have gone to the oxygen tank standards that New Mexico now has.

Ms. Boam also discussed the procedures put in place by the bill for notices of violations, appeals and fines. She pointed out that mining operations will work with the federal government on fine appeals and that the federal government can overturn decisions made by the state. Finally, Ms. Boam noted that no funding for the enforcement of mine safety plans was included in the legislation mandating mine safety standards. She stated that her office submitted a new budget request in July but it has not yet been heard.

Questions and comments included:

- the number of mine inspectors in New Mexico;
- on-site mine inspections;
- summarized benefits of the new legislation;
- the federal government as primary mine inspector; and
- protection for whistleblowers.

Potash Mining Industry Concerns

David Waugh, a representative of Mosaic Potash, Inc., provided the committee with additional information on the Mining Safety Act. He informed the committee that all the mining operations in New Mexico supported the Mining Safety Act legislation last session. Mr. Waugh pointed out that although the mining industry has made an overall investment of \$4 million toward mine safety, the state mine inspector is substantially underfunded to handle the new

requirements of the act. He also explained the New Mexico Mining Association's (NMMA) position regarding the new requirement that miners wear SCSR units in underground mines. He explained that certain mines require a particular type of SCSR unit. For example, Mr. Waugh pointed out that the use of explosives in underground coal mines depletes a mine of oxygen, making units that simply filter harmful particles out of the air useless. He went on to demonstrate how much larger and heavier the newly required SCSR units are compared to the previous units, the filter self-rescuers (FSR). He suggested that the mine safety requirements be amended to allow miners to continue to wear FSR units on their belts while keeping a cache of SCSR units available nearby.

Mr. Waugh went on to emphasize the importance of communications systems in mines, pointing out that such systems are typically the first thing to fail in a mine emergency. However, he noted that recent incidents at underground mines have led a number of states to enact similar mine safety requirements and have created a nationwide shortage on mine safety equipment and communications systems.

Questions and comments included:

- fire models to determine oxygen depletion and ventilation in coal mines;
- the level of carbon monoxide concentration the units are able to handle; and
- the distance of the mining work area to the rescuer unit caches.

Public Comment

John Horton, a lobbyist for Associated General Contractors, noted his concerns about the NPDES program. He explained that some concern exists within his industry that the laws granting NMED primacy over the NPDES program could be used to delay some construction projects. Mr. Horton also noted that permit fees and extra time for inspections need to be built into project costs, so discussions regarding NPDES legislation should involve those factors at some point.

Wednesday, September 20 — New Mexico Junior College, Hobbs

Representative Heaton began by providing the audience with a brief overview of the committee's history and charge. Members of the committee also introduced themselves.

Robert Rhodes, vice president of New Mexico Junior College, welcomed the committee to the college and to Hobbs.

Harry Teague, chair of the Board of County Commissioners in Lea County, also welcomed the committee to Hobbs. He thanked the committee for coming to southeastern New Mexico, and noted that construction of the NEF by Louisiana Energy Services (LES) has provided exciting economic development in the community.

On a motion made, seconded and unanimously approved, the minutes of the August 9,

2006 meeting were approved as submitted.

NEF Status: Report from LES

Marshall Cohen, vice president of communications and government relations for LES, updated the committee on the progress of construction of the NEF in Eunice. Mr. Cohen began by providing a general overview of the NEF. He informed the committee that it is a \$1.5 billion investment that will provide five percent of all electricity in the United States. Mr. Cohen went on to state that LES received a combined construction and operating license from the Nuclear Regulatory Commission on June 23, 2006.

Mr. Cohen next provided the committee with an overview of how uranium is actually enriched, how enriched uranium fits into the process of producing nuclear energy and the planned capacity of the NEF to produce enriched uranium. He explained in detail the use of gas centrifuge technology. Mr. Cohen also outlined the time line for construction of the NEF, noting that construction has already begun on the facility and should be completed by 2013. Mr. Cohen pointed out that LES is placing an emphasis on local contractors for much of the plant's construction.

Mr. Cohen also discussed the economic impact that both construction and operation of the NEF should have on Lea County and southeastern New Mexico. LES estimates it will spend between \$265 million and \$462 million on goods and services in the local economy through construction. Additionally, approximately \$9.6 million worth of goods and services would be purchased by LES annually. The NEF operations will employ 300 full-time employees and the company is working with New Mexico Junior College to develop future educational and training opportunities for students interested in employment at the NEF.

Mr. Cohen briefly discussed the settlement agreement reached by LES and the governor, NMED and the attorney general, which places limits on the storage of depleted materials, increases financial assurance for depleted materials outside of storage limits and allows for additional state inspections.

Mr. Cohen concluded by thanking the New Mexico Legislature, the governor, New Mexico's congressional delegation and the local community for their support and hard work on the project.

Questions and comments included:

- the construction time line;
- competition with the United States nuclear energy industry for good employees;
- the final destination for enriched uranium;
- uranium waste depositories in the United States;
- the storage of depleted uranium cylinders at NEF;
- the transition from a temporary building at NEF to a permanent facility;
- the use of the current, temporary NEF building as an assisted living facility;

- the training of NEF employees in European facilities;
- the lack of a deconversion facility for uranium in New Mexico;
- the source of uranium to be enriched;
- taxable income for New Mexico from NEF; and
- potential uses for enriched uranium.

Sonia Phillips of Excel Energy provided the committee with an update regarding plans to build a new power plant to address energy issues in southeastern New Mexico. She explained that the plant, which is the result of a partnership between Excel Energy and Lea County Power Partners, will be dry cooled, which uses roughly 10 percent of the water that water-cooled plants use. Ms. Phillips also indicated that the planned plant will produce about 550 megawatts of electricity.

Questions and comments included:

- how one megawatt provides enough power for about 1,000 homes; and
- the lack of power transmission capacity in southeastern New Mexico.

NEF Permits Update

Ron Curry, secretary of environment, provided the committee with an update regarding permits for the NEF. He began by explaining the importance of the Rocky Mountain Low-Level Waste Compact, which regulates the flow of low-level waste in and out of compact states. Secretary Curry informed the committee that the NEF cylinders fall under the jurisdiction of the compact and that NMED has been in good discussions with LES. He emphasized that compacts are the only instrument that can prohibit interstate commerce with regard to low-level waste and shipment into a compact state must be approved by that state. He pointed out that NMED has asked LES to start talking to the compact states and that LES has been very cooperative in responding to the department's request.

Next, Secretary Curry outlined the major permits that have been issued for the facility, including the site storm water, effluent pond and storm water retention basin permits. He went on to note that the groundbreaking of the NEF was the result of good, healthy, honest negotiation. Although NMED has worked very closely with LES on the facility, Secretary Curry stated that NMED does not partner with an industry. Rather, NMED's role is a regulatory one.

Secretary Curry went on to explain that a request had been made to NMED from residents of Lea County and some in neighboring Texas asking to deny permits to LES. He noted that a public meeting, not a hearing, had been scheduled for October 5, 2006 in Eunice. Secretary Curry indicated that a hearing may still be held after the public meeting.

Finally, Secretary Curry noted that the NEF enjoys a fair amount of local support and acknowledged the importance of the facility to southeastern New Mexico.

Questions and comments included:

- interstate compacts regulating the shipment of some radioactive waste across state lines; and
- whether the compacts require the agreement of all member states or simply between the involved states to ship waste.

Waste Control Specialists

Dean Kunihiro, senior vice president for licensing and regulatory affairs, provided the committee with an update on the licensing actions of Waste Control Specialists (WCS), a radioactive waste disposal operation in Texas near the New Mexico border. Mr. Kunihiro explained that the WCS facility has two license applications pending, including one for the disposal of low-level radioactive waste. He went on to note that the licensing procedure involves three rounds of technical review and comments. Mr. Kunihiro also pointed out that the facility already has a number of waste canisters on-site, and that the company is simply awaiting license approval to move the canisters to a permanent location. He stated that WCS remains optimistic that the process will move forward successfully.

Finally, Mr. Kunihiro emphasized that as WCS works to conclude its permitting process it has received a large amount of community support, both in Texas and in Lea County. He also indicated that he expects approval of the company's license to come sometime in 2007.

Questions and comments included:

- how Texas is the sole authority to issue permits for the facility;
- Texas membership in waste disposal compacts;
- the safety of containers in their temporary location outside of the WCS permanent facility;
- the involvement of other states in the compact that allows transport of waste to the facility; and
- movement of waste by rail to the facility.

Representative Heaton ended the meeting by thanking all members for attending and the presenters for their time. He went on to note the increasing importance of reprocessing nuclear fuel. Representative Heaton explained that Congress had recently appropriated money to develop a list of potential sites for a reprocessing facility, and that a partnership among Lea County, Eddy County, the City of Hobbs, the City of Carlsbad and a number of private interests had been formed to move forward with a proposal to locate such a facility in southeastern New Mexico.

There being no further business, the committee adjourned at 12:00 noon.