

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

**June 1, 2016
Room 311, 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 Wednesday, June 1, 2016, at 10:09 a.m. in Room 311 of the State Capitol. Legislators and staff introduced themselves to the audience.

Present

Rep. Cathrynn N. Brown, Chair
Rep. Eliseo Lee Alcon
Sen. Ted Barela
Sen. Carlos R. Cisneros
Rep. Stephanie Garcia Richard
Rep. G. Andrés Romero
Rep. Larry R. Scott

Absent

Sen. Daniel A. Ivey-Soto, Vice Chair
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Sen. Richard C. Martinez
Rep. James G. Townsend

Advisory Members

Sen. William F. Burt
Sen. Ron Griggs
Sen. John Pinto
Sen. Nancy Rodriguez
Rep. Nick L. Salazar
Sen. Clemente Sanchez
Rep. Jim R. Trujillo

Rep. David M. Gallegos
Sen. Stuart Ingle
Rep. Rod Montoya
Sen. William H. Payne

Staff

Gordon Meeks, Legislative Council Service (LCS)
Monica Ewing, LCS
Renée Gregorio, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, June 1

Department of Environment (NMED) Update

Secretary Ryan C. Flynn, NMED, introduced Kathryn Roberts, director, Resource Protection Division, NMED, who supervises the reopening of the Waste Isolation Pilot Plant (WIPP) as well as cleanup efforts at Los Alamos National Laboratory (LANL) and Kirtland Air Force Base (KAFB). In addition, he introduced two staff members in the audience: Allison Majure, director of communications, and Michaelene Kyrala, legislative liaison.

Secretary Flynn said that the public comment period ended just yesterday on the revised LANL consent order and added that he and Ms. Roberts would be covering details about the public comment period and comments received, an overview of the revised consent order, the NMED's perspective and next steps.

He explained that the consent order is an agreement among the NMED, the federal Department of Energy (DOE) and the DOE's contractor at LANL, Los Alamos National Security. The consent order governs the cleanup of legacy contamination at the Los Alamos site, where early on there really was no regulatory framework in place to deal with the radioactive waste generated there. He said that cleanup discussions began in the early 2000s and the consent order was established in 2005. Secretary Flynn described a consent order as defining the scope of the problem at hand, the areas of investigation and types of sites to be analyzed as well as the process that is to be used for cleanup. The consent order does not dictate what the remedies will be, he clarified, but defines scope and process. The manner of actually removing the contaminants is determined through a regulatory process, which is not part of the consent order.

Originally, the 2005 consent order required that all cleanup work be completed by the end of 2015, but the DOE determined that this could not be done, which was not a surprise, Secretary Flynn added. He opined that the current estimate from the DOE for cleanup is conservative and said that cleanup is an immense public health challenge that will cost a huge amount of money. The DOE's estimate, which comes in at \$3.8 billion, assumes mostly "cap-and-cover" remedies. Secretary Flynn stated that the actual cleanup cost will likely exceed \$4 billion and take over 10 years to complete.

Secretary Flynn described the process involved in the public comment period for the revised consent order, which included meeting individually with stakeholders, non-governmental organizations and the public over a 45-day period, which was then extended by 15 days. The NMED's intention is to apply lessons learned. The enhancements made to the revised consent order have been devised to accelerate the pace of cleanup and to provide a plan for increased funding, he explained. In addition, Secretary Flynn said, what is most needed is more active remediation at the site and there is a regulatory process that must be followed. This process can prevent progress on cleanup, which is what has happened in the past. He spoke of the importance of receiving added funding for the cleanup, saying that the state received a good amount through federal American Recovery and Reinvestment Act of 2009 funding, but the

moderate annual increases are far below what is necessary. He compared the funding that New Mexico receives annually (currently at \$189 million) with what a site such as Hanford receives (\$2 billion).

Ms. Roberts reviewed the four key areas of enhancement used in the revised consent order: a campaign approach, cleanup versus investigation, an annual planning process and data quality objectives. The campaign approach allows for sites to be grouped into one campaign that consists of one or more deliverables and that extends though several fiscal years in scope, she said. Secretary Flynn added that campaigns are essentially manageable chunks that allow for projects to be completed within a sensible framework that also allows for greater accountability and transparency and an ease in seeing the way forward. This is particularly helpful because there are over 1,200 cleanup sites.

The NMED's focus on cleanup over investigation (which was necessary in 2005 but not now) centers on the need to complete actual remediation now, Ms. Roberts added. The DOE's requirements must ultimately be approved by the NMED, so, although the DOE could choose another remedy, that remedy would eventually have to be approved by the NMED. The two agencies can agree on what remedy is most appropriate and move forward with that work without getting tied up in the regulatory process, Secretary Flynn explained. Ms. Roberts indicated that it is a more robust process if the NMED and the DOE collaborate on both deliverables and the work to be done. Secretary Flynn lauded Ms. Roberts' background as being both technical and academic — she worked for the NMED's Hazardous Waste Bureau on that 2005 consent order and later at LANL before returning to the NMED. She understands being the regulator as well as being regulated, which is essential to the process the NMED is now able to put into play, he said.

Ms. Roberts spoke next of the annual planning process, which allows the NMED and the DOE to update milestones and create target dates annually and adjust timelines based on changing conditions, priorities and funding. The work is scheduled for the current fiscal year and two years beyond the current year. She explained that in 2005 no one knew about the chromium plume at LANL and resources had to be shifted to address this emerging problem; revision of the consent order allows for a dynamic process that includes necessary flexibility.

The focus on data quality objectives promotes a well-established process for conducting corrective action work under the federal Resource Conservation and Recovery Act of 1976 (RCRA). The NMED is the final decision-maker as to whether the DOE has met its objectives, but this enhancement requires that methods and procedures used during field work will be part of the reports. Also, work plans will be in place that describe the objectives of the work at hand.

Other enhancements that Ms. Roberts cited include the relationship between the consent order, which covers all legacy practices, and the RCRA permit, which covers current operations. The current consent order clarifies what happens to the site if the consent order work is not completed; all incomplete work will move over into the RCRA permit process so that there is no

gap and the work is covered by one document or the other, she stated. Also, all deliverables in the revised consent order are subject to stipulated penalties for non-performance.

Secretary Flynn reviewed what has not changed between the 2005 consent order and the revised one: all work is carried over from 2005 to the revised consent order; public participation continues; stipulated penalties continue as just mentioned; and cleanup continues rigorously. He added that the NMED makes the final call on whether cleanup has been accomplished at the appropriate level.

He then gave an overview of the comments received on the revised consent order, focusing mainly on comments related to public participation. Those comments included complaints that a public hearing has not occurred on these changes. He pointed out that a public hearing is not required in the law. He also spoke of how much money and time are required for public hearings, saying he feels that direct one-on-one and public meetings are much more productive. Secretary Flynn said that the NMED will post all written comments on its website.

In conclusion, Secretary Flynn indicated that the revised consent order focuses on cleaning up contamination aggressively, provides a plan for the completion of such work, clearly articulates what the enforceable penalties are for each year and provides more flexibility to both the NMED and LANL to ensure success in cleaning up legacy waste. He said that the NMED's next steps are to review and compile comments received, determine changes needed, negotiate with the DOE on the revised document and finalize it by early July.

Committee members engaged in questioning, and the following points arose:

- the state and the DOE work hand-in-hand to devise remedies to address contamination immediately; the regulatory process is slower; the goal is that the final remedy will complement the current process;
- the fact that New Mexico is taking the waste of the nation at WIPP needs to be an argument for the necessity of receiving higher funding levels;
- although the DOE has concerns about the NMED's proposal to increase penalties in the revised consent order, the NMED feels strongly that there needs to be a consequence for not meeting deadlines;
- it is difficult to set a deadline for completion of work on the revised consent order; setting a deadline before fully investigating the problems and knowing what the final remedies are can result in failure;
- kudos from committee members regarding the campaign approach, which makes it more likely that projects can be more clearly articulated and funding for these more successful;
- any decision the NMED makes at LANL gets litigated and a lot of taxpayer dollars go into these lawsuits; and
- through engagement among the NMED's staff, the Albuquerque-Bernalillo County Water Utility Authority and the U.S. Air Force, progress on cleanup of the KAFB fuel

spill is immense: three wells running, a pump-and-treat system in place, ground water treatment systems in place and a study on how to address the light non-aqueous phase liquid ground water contaminant issue through a ground water extraction well system, all leading to the ultimate reduction of the contamination.

Interim Work Plan and Meeting Schedule

Mr. Meeks reviewed the proposed work plan for the 2016 interim. Committee members requested the addition of a few more items of concern, including: an update on the Gold King Mine spill; an update on chromium cleanup at LANL; a report on the final revised consent order; an update on the deep borehole method of waste storage; and an update on the Eddy-Lea Energy Alliance. In addition, places were determined for each meeting date, which include: July 12 in Albuquerque, August 2 in Carlsbad and October 31 in Santa Fe. On motion and second, the work plan and meeting schedule were approved by the RHMC.

Adjournment

There being no further business, the committee adjourned at 12:02 p.m.