

New Mexico Legislature

RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

Representative John A. Heaton, Chair

Testimony of
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Thank you Mr. Chairman and Members of the Committee for inviting me here today.

My name is H. L. Plum, Acting Assistant Manager, Office of Regulatory Compliance, Carlsbad Area Office, U. S. Department of Energy, Carlsbad, NM. My office is responsible for addressing a wide variety of environmental compliance and permitting issues as they apply to the operations at the Waste Isolation Pilot Plant, more commonly known as WIPP. Of particular interest to the DOE is the Hazardous Waste Facility Permit, the operating permit that allows WIPP to receive and dispose of hazardous waste that was mixed with TRU waste during military weapons production for the past 50 years. This permit was issued to DOE October 27, 1999. This permit is now approximately 9 months old. Such permits are not stagnant and never changing, but should be considered living documents subject to change through a specific modification process that involves negotiation with the regulatory body issuing the permit, i.e., the NMED. This is necessary to keep the permit current, to clarify operational changes needed, and to modify operations as needed due to change in equipment, materials, or simply, new requirements. Every industry so regulated must do this to remain competitive and cost effective in its operations. This is a process that is inevitable regardless whether you are WIPP, a chemical processing facility, or a production facility. It is a necessary process that keeps the regulator and the public informed of the work being conducted at the facility.

Mr. Chairman, the DOE has over 10 years experience working with the NMED to achieve the awarding of the WIPP hazardous waste operating permit. Although I have been at WIPP for a short time, I do have experience working with the NMED and its predecessor, the NM Environmental Improvement Division (NMEID) for over 20 years. This experience has included but is not limited to supporting the NM Environmental Improvement Division before the New Mexico Legislature regarding the need for the State of New Mexico to become an authorized State to write and to approve the Hazardous Waste Act. The purpose for this action was to establish a hazardous waste program in New Mexico and to adopt regulations equivalent to, but no more stringent than, those adopted by the US Environmental Protection Agency (EPA).

Why would industry want to subject itself to the onerous burdens of Federal hazardous waste regulations as had been promulgated under the Resource Conservation and Recovery Act, a federal law passed May 19, 1980? Simply put, the federal program was enforceable in the State of New Mexico. More importantly, it was being enforced in New Mexico by EPA Region 6 in Dallas, Texas. And every permit action, every enforcement action, all discussions, each question had to be addressed by an individual living and working in the EPA offices in Dallas, Texas. Not in New Mexico. This was a severe burden for business in New Mexico due to the cost of travel to Dallas, Texas for every such action. The reality was that Santa Fe is closer and that the individuals in the NMED are better informed of the operating conditions faced by industry in New Mexico.

In 1980, New Mexico did not have the industry it now has; we were dependent on extractive industries such as oil, gas, and mining, the military, energy production, and national laboratories. By 1982, both industry and NMEID understood the burden of

travel to Dallas to obtain permits and to negotiate with EPA. There were new, fledgling industries such as electronic firms (chip manufactures), but they were not the market force known today. Many New Mexican's were interested in developing new business in the state, but were keenly aware that it needed to be done in a manner protective of human health and the environment. This had resulted in the establishment of the NMEID, which was later to become the NMED. The NMEID was taking its first steps to develop its program.

I have included an attachment indicating the growth of federal environmental laws since 1954. The majority of these are applicable in the State of New Mexico and the state has passed legislation that mirrors the requirements of many of these federal laws. These laws have led to the development and expansion of state and federal agencies responsible for promulgating and enforcing regulations that institutionalize the requirements of these laws. The economic burden placed on industry by all of this legislation has been great. But industry has adapted to the requirements, and recognizes its responsibility to protect human health and the environment.

So what is my purpose here today? It is not to complain to you about the NMED, its management, or its staff. Yes, we would like to have processing of documents to occur in a more timely manner, and, yes, other issues could be brought up. But these problems are symptomatic of the overall problem. What I want to ask of you, Mr. Chairman, and members of the Committee is that you properly fund the NMED to perform the functions that you have asked that it do. It is this concern, the need for adequate funding of NMED's program requirements, which I am asking for your full support.

Without proper administrative support, facilities, and qualified staff chosen competitively by the ability to offer remuneration that will interest qualified individuals to apply for this work and to live in the great State of New Mexico, the NMED will remain a crippled agency. Without this consideration, they cannot meet the demands of existing industry or, for that matter, new industry that may be attracted to New Mexico by its people or the beauty of the environment that is available.

But what of the regulated community? What is its responsibility? It has continually supported the NMED in its endeavors to obtain funding through payment of fees for the development of permits. These fees are then to be placed into the NMED's operational budget account per the New Mexico Hazardous Waste Act and not into the State of New Mexico General Fund. When industry supported this fee proposal it did so based on the need to obtain permits to perform industries work. This was to support the NMED's need to augment its budget, support additional staff requirements, and allow for the modernization of its operations with an agency wide integrated computer technology system to allow the tracking of work, coordination of activities, accountability of those responsible for completing a variety of actions, accurate accounting of time required to perform application review, electronic transfer of documents such as permits to and from the regulated community, modifications, and other needed communications. All of this we were told would lead to an improvement in the timeliness of the review of documents submitted to the NMED. But this has not generally occurred. What appears to have

occurred is the reduction in general funding to the NMED in an amount equal to what has been received from the regulated community through permit fees. That is, there appears to have been no significant budget increase and subsequently the ability to make needed improvements within the NMED has been limited.

It appears from the outside that the NMED is essentially faced with a flat budget. It is hard to mature a program with such a budget, much less attract and retain the quality of people required to implement such a program or make other needed changes. One of the commitments made by the NMED to become an authorized State to enforce the EPA's hazardous waste program was to provide a "...description of the State agency staff who will carry out the program..." (40 CFR 271.6(b)(1)). This further included "An itemization of the estimated cost of establishing and administering the program..." (40 CFR 271.6(b)(2)), and "An itemization of the sources and amounts of funding...available to the State Director to meet the costs listed..." (40 CFR 271.6(b)(3)).

Mr. Chairman, what I am here today to ask is that you review the information cited above that was provided by NMED and any updates that NMED may have provided. If this information is dated, I am requesting that you have NMED provide to you the current information as required by 40 CFR 271.6 for implementation of the hazardous waste program and for all other similar programs that they administer. The purpose of this request is to assist the Radioactive and Hazardous Materials Committee in its efforts to determine the appropriate level of general funding required to meet the level of commitment made by the State of New Mexico when it agreed to administer not only the hazardous waste program, but all programs administered by the NMED. Mr. Chairman, I then ask that you then consider how this commitment will be met. Although I do not suggest that it is an appropriate avenue of relief, a determination must be made regarding the ability of the State of New Mexico to conduct these programs. If it is determined that it cannot adequately fund these programs, consideration must then be given to seek other means of funding these programs or to return specific programs to the U. S. Environmental Protection Agency.

To survive in today's environment industry must receive the support of the regulatory entities such as the NMED. Almost all operations are governed by requirements that permits must be applied for, received, and that operations be maintained within stated parameters. This requires diligence on the part of the regulated entity and the regulator. It is my belief that NMED does make an honest attempt to meet the demands made upon its limited staff.

I have, however, witnessed this process in the State of New Mexico for 20+ years and believe that I speak as an informed individual. Have all things gone smoothly? No, sir. But there has been honest effort and improvement through time. The ability of the NMED to continually improve and to meet new and existing demands to complete its responsibilities continue to be hampered due to lack of appropriate public funding. As an example, WIPP is a single entity in southern New Mexico. The operating permit for WIPP requires audits to be conducted at all facilities that will send materials to WIPP for disposal. NMED staff attends such audits; each audit takes approximately two weeks to

complete. There are 23 such facilities. It currently takes greater than 60 days for the audit to occur and, barring findings during the audit, the approval letter to be written. The NMED has had one individual assigned to perform the role of permit writer, auditor, coordinator, and other tasks related to the WIPP permit. This means that all operations hinge on the availability of this one person for the next three years alone, just to perform the audit function the first time. In NMED's defense, we are told that an additional staff member has been hired to augment this part of NMED's program; even so, it will take the new hire about a year to become familiar enough with the program to be fully integrated have and have full responsibility for assignments made. This is an example of the constraints placed on one program.

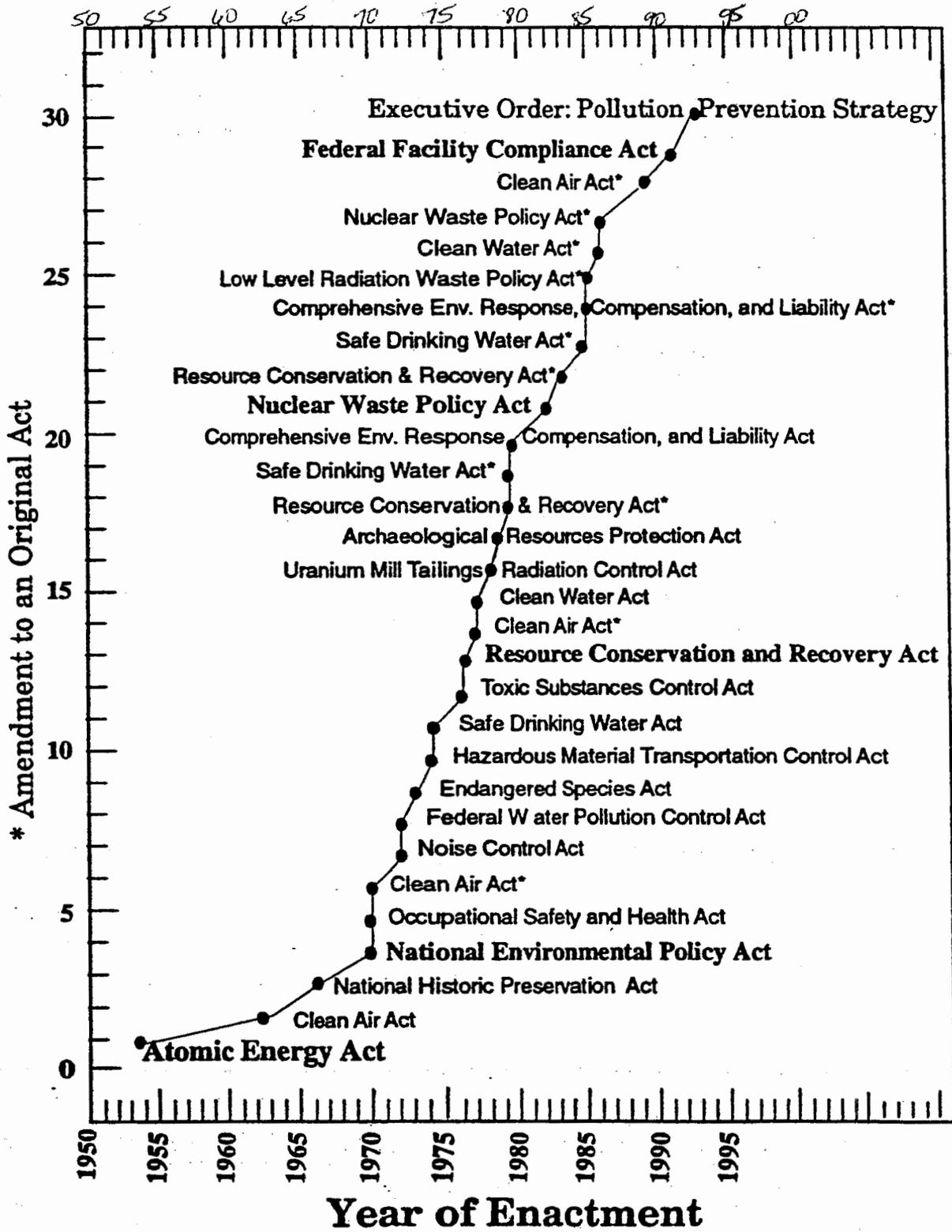
I believe that WIPP has established a good professional relationship with the NMED. Due to the conflicts that do occur during the process of developing a permit application and the award of an operating permit, this is an achievement in and of itself. But WIPP is now an operating facility, and we continue to improve our ability to address issues in a professional manner. This does not lessen the desire to see an improvement in the time required to complete work on requests made to NMED. But it is simply not possible with the level of staff at its current level. Therefore, I must strongly support the position that the NMED must be adequately funded to perform the work it is required to do through the commitments made by the State of New Mexico.

Mr. Chairman, for the State of New Mexico to grow and prosper economically we must have a well-managed and efficient NMED. This can only occur if it is well funded to develop the needed administrative infrastructure and appropriate level of well-educated and highly motivated staff. For the State of New Mexico to grow and prosper, it must also grow economically. Only in this manner can we encourage the best and brightest in New Mexico to stay and to assist in the growth of this prosperity. Change is inevitable. Gone are the halcyon days of the extractive industries. The State of New Mexico must broaden its economic horizons to replace these industries. But to do this requires a strong and responsive NMED.

Mr. Chairman, the decisions of Legislative committees such as this have far reaching impact. I ask that you and the members of the Hazardous and Radioactive Committee consider what I have said and that you aggressively debate these issues during your considerations of the need to properly fund the NMED to perform the work that you have requested it to do. By developing this program you will lead to the attractiveness of the State of New Mexico to new industry that will lead to the economic viability and continue the support of the economic base that exists today.

Thank you for your time and consideration of these comments.

Cumulative Number of Laws and Amendments



Accumulation of environmental statutes since 1954