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Environmental
Victories

Year End 2006

Green Fire Report

A publication of the New Mexico Environmental Law Center, a non-profit, public-interest law firm dedicated to protecting New Mexico's environment and communities



New Environmental Justice Provisions for Solid Waste Facilities

In a proceeding that has taken several years from start to finish, the New Mexico Environmental Improvement Board has adopted amendments to the State Solid Waste Management Regulations that include provisions designed to ensure environmental justice in the regulation of major solid waste facilities such as landfills and incinerators. Although the Board did not accept all of the recommendations made by the Law Center, our clients, and other environmental justice advocates, the amendments to the Regulations **do provide significant protection for low income communities and communities of color.**

The proceeding that led to the Environmental Improvement Board's action began several years ago

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A Win for New Mexico's Groundwater

New Mexicans' groundwater is one step closer to being safeguarded from high levels of uranium – and not a minute too soon.

In November, just after two uranium companies filed for exploratory permits in New Mexico, the state's Court of Appeals unanimously upheld the health-based uranium groundwater standard advocated by the Law Center and adopted by the Water Quality Control Commission in 2004. The new standard of 30 micrograms/liter (μl), which is the same as the US Environmental Protection Agency's drinking water standard, was revised from a 5,000 μl standard set in the 1970s during the last uranium boom in New Mexico.

Shortly after the new standard was adopted, it was challenged by the NM Mining Association and the NM Oil and Gas Association, which asserted that uranium mining operators would be unable to meet the standard. Law Center attorney Eric Jantz, who represented ENDAUM in the appeal, has a different take on the situation.

"The old standard was basically a license to pollute," says Jantz. "The new standard recognizes the threat that uranium poses to people who drink contaminated water. **The New Mexico Court of Appeals unanimously agreed with us that human health is more important than uranium companies' right to pollute groundwater.**"

It is unknown at this time whether the industry groups will appeal to the NM Supreme Court. ☙



Above: photos from Church Rock, NM, near where HRI proposes to sink hundreds of uranium mining wells. From the top: a resident of Church Rock. Next: Resident and ENDAUM Board member Larry King with his cattle. Next: A resident of Church Rock. Next: En route to school. Bottom: Chris Shuey of SRIC talks with King. Photos courtesy of Osy Werner.

For an in-depth discussion of the new uranium boom, see *Voices from the Earth*, Fall 2006 (Vol. 7, No. 3) at www.sric.org. For more information on this case, or to link to the *Los Angeles Times'* "Blighted Homeland," (a four-part series which details the past, present and future of uranium mining in Navajo communities through articles and photo essays) and the *Santa Fe Reporter's* "Yellowcake Blues," (a cover story about ENDAUM's fight) see the Law Center website, www.nmenvirolaw.org/news.

Solid Waste Regulations, continued from page 1

when the State Environment Department proposed amendments to the Regulations, including amendments designed to promote environmental justice. Those proposed amendments were the subject of several rounds of comments to the Department and negotiations between many interested parties. The Law Center represented two clients in the proceedings, the SouthWest Organizing Project and the South Valley (of Albuquerque) Coalition of Neighborhood Associations. The other principal environmental justice advocate throughout the process was the Environmental Justice Working Group of the Southwest Network for Environmental and Economic Justice.

As adopted, the amendments to the Regulations provide that an applicant for a permit to site a new major solid waste facility, or to expand an existing major facility, will have to determine whether the proposed or existing facility is in a "vulnerable area." The only exception to this is if the area where the existing or proposed facility is located has been designated for that type of facility through a zoning process that included consideration of environmental justice issues.

The amendments define "vulnerable area" to mean an area within a four mile radius of the proposed or existing facility that has:

- 1) at least 50 people within New Mexico;
- 2) a greater percentage of low income households (defined as having an income less than 150% of the federal poverty guidelines for a family of four) within any square mile area than are in the state as a whole; and
- 3) at least three regulated facilities (defined as including various facilities that can affect the environment significantly) other than the facility at issue.

If the proposed or existing facility that is the subject of the permit application is located in a vulnerable area, the applicant for the permit to site or expand the facility will have to demonstrate that issuance of the permit will not have a disproportionate impact on any socioeconomic group. In addition, if the existing or proposed facility is located in a vulnerable area, and if there is significant opposition to the siting or expansion of the facility, the amendments require that the applicant prepare a community impact report to determine what the impact of granting the application will be on the community.

Both of these requirements are entirely new, and **they will do much to protect low income communities and com-**

munities of color where more than three regulated facilities are already located from the impacts of major solid waste facilities. The Law Center, its clients, and the Environmental Justice Working Group intend to work to ensure that these mandates are fulfilled, and that the purpose of achieving environmental justice for these communities is achieved. ☙

2007 LEGISLATIVE SESSION PROVIDES OPPORTUNITIES AND THREATS

The New Mexico Legislature convenes at noon on January 17, 2007 for a 60 day session. Our attorneys will be working to enact legislation to protect communities and the environment and to prevent enactment of legislation that would harm them. Regrettably, we anticipate that the measures that will be introduced that would adversely affect communities and the environment will outnumber those that would favor our communities and the environment.

There is at least one piece of legislation that we anticipate working to pass. It is titled the **Surface Owner Protection Act**, and it would provide protection for the owners of the surface of the land who do not own the mineral estate beneath the surface. Under current law, as decided by the New Mexico courts, the mineral estate is dominant, which means that the owner of minerals such as oil and gas can come onto the surface of the land and use appropriate means to extract the minerals. Current law also provides that the mineral owner does not have an obligation to provide notice to the surface owner or to compensate the surface owner for damages to the surface unless the mineral owner's negligence, or carelessness, causes damage beyond what would normally be expected for the extraction operation. The Surface Owner Protection Act would change that by requiring that the surface owner be provided with notice, and that damages be paid to the surface owner even if the extraction of minerals is not done in a negligent manner.

One of the most environmentally dangerous pieces of legislation that we expect to be introduced is a bill that would limit the state to protecting surface waters (rivers, streams, lakes, etc.) that are within the federal definition of "waters of the United States." That is the definition that identifies waters protected by the United States under the federal Clean Water Act, and it has been narrowed significantly during recent years by the Bush administration and



the federal courts to include only waters that are connected with interstate waters. Because many of the water basins in New Mexico are not connected to interstate waters, the State Environment Department has estimated that **passage of such legislation would mean that between 20% and 40% of New Mexico's surface waters could not be protected.**

All four of the Law Center's attorneys will be lobbying on these and other items during the legislative session. If any of our readers learn about positive or negative bills on which we should be working, please bring them to our attention. We appreciate your help. Find out about other legislative initiatives at our website, www.nmenvirolaw.org/news. ☀

FARE THEE WELL...

The Law Center bids farewell to Office Manager Allison Dellinger and Earl James, our Director of Programs and Development.

For 10 years, Allison kept the Law Center office running smoothly. We half-jokingly dubbed her our "global troubleshooter," as she worked as our legal secretary, knower of all things that run on electricity, board and staff wrangler, receptionist, fundraiser, event planner and handywoman, to name but a few of her jobs. In addition, Allison served as our staff liaison to several local and statewide groups, including Santa Fe Earth Day and the New Mexico Food and Agricultural Policy Council. But she brought much more than efficiency and the spectacular ability to multi-task to our office; Allison also contributed a conscientious spirit, commitment to our mission, and true caring for her colleagues and for the people with whom we work.

During Earl's six years at the Law Center, he worked to increase our annual budget by nearly \$250,000, expand the Center's outreach through networking and coalition building, and strengthen the Board of Director's fundraising capacity. His coalition-building work brought many benefits to New Mexico in the areas of environmental health and environmental advocacy. In 2004 he convened the New Mexico Environment and Health Coalition to advocate for statewide programs addressing the impact of pollution on the health of New Mexicans. Earl also helped to reinvigorate an environmental legislative working group, bringing together environmental advocates from all around the state each year to select priority legislation for support by all groups.

We wish Allison and Earl all the best in their future endeavors. ☀

THE LAW CENTER THANKS ITS INSTITUTIONAL FUNDERS: EMA FOUNDATION ♦ FORD FOUNDATION ♦ IMPACT FUND ♦ LANNAN FOUNDATION ♦ MCCUNE CHARITABLE FOUNDATION ♦ THE RICHARD AND RACHEL FUND, A NEW MEXICO COMMUNITY FOUNDATION DONOR ADVISED FUND ♦ NEW-LAND FOUNDATION ♦ NEW MEXICO INTEREST ON LAWYERS' TRUST ACCOUNTS (IOLTA) FUND ♦ OPPENHEIMER BROTHERS FOUNDATION ♦ SANTA FE COMMUNITY FOUNDATION DONOR ADVISED FUNDS - BAEBLER FUND, THE HAROLD AND NORMA BROWN FUND FOR THE ENVIRONMENT AND THE JUST WOKE UP FUND ♦ SOLIDAGO FOUNDATION ♦ TURNER FOUNDATION

Mission

The New Mexico Environmental Law Center is a nonprofit, public interest law firm that provides free and low-cost legal services on environmental matters throughout New Mexico. The mission of the Law Center is to protect New Mexico's environment and communities. Founded in 1987, the Law Center works with clients -- often individuals, neighborhood associations, environmental organizations, Tribes and Pueblos -- seeking to protect the environment. The work of the Law Center is made possible by tax-deductible contributions from individuals, businesses, foundations and limited earned income.

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2006 NEW MEXICO ENVIRONMENTAL AWARDS



Left: Young Law Center supporters help out with our raffle. *Middle:* Staff Attorney Eric Jantz hands out the Toxic Turkey. *Right:* Winner Bob Tafanelli accepts his award as Law Center Board President Richard Deertrack and Executive Director Douglas Meiklejohn look on.

Photos courtesy of Ossy Werner.

KARL SOUDER WATER PROTECTION AWARD

Attorney David Benavides, Santa Fe – for his work to protect acequia culture in northern New Mexico.

GRIFF SALISBURY ENVIRONMENTAL PROTECTION AWARD

Conservation Biologist Robert Tafanelli, Las Cruces – for his decades of work to promote conservation in southern New Mexico.

JEANNE GAUNA COMMUNITY ENVIRONMENTAL ADVOCACY AWARD

Sacred Alliance for Grassroots Equality (SAGE) Council, Albuquerque – for its 10-year fight to protect sacred sites near Albuquerque.

TOXIC TURKEY

Louisiana Energy Services (LES), Eunice – for construction of a uranium enrichment facility without a plan to dispose of its radioactive waste.

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We would also like to thank our event coordinator Saray Pierpont and our great volunteers:

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*The Board and Staff of the
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Environmental Law Center
wish you and your family
a happy, healthy and just
2007, filled with clean
air, water and land.*



*Thank you for making our
work possible.*