

July 25, 2009
By Ron Curry

Thank you for the opportunity to express my thoughts on issues that are important to you and EPA Region 6.

I would like to begin by stating some of my general thoughts on the environment and environmental regulators. A person must be an advocate for the sustainability of the environment and at the same time manage regulations and statutes so that they are not used against the environment. There must be transparency in the development and enforcement of all laws, regulations and rules. The regulated community must be given clear direction for achieving environmental compliance. Definitive enforcement should be used to achieve compliance. All communities that are affected by an entity's entrance into their environment should be considered stakeholders.

These baseline policies have served New Mexico well in the last seven years.

Your questions.

What is your experience with air pollution?

(I will use the term "I" throughout this document, but it is not to imply that I accomplished all this on my own. We have been a team here in New Mexico.)

I have experience with air pollution issues ranging from the oil and gas industry to coal fired generation stations. Air pollution also exists indoors and we have launched programs to combat that issue especially in school facilities. I have fought against the construction of Desert Rock, a proposed new coal fired plant in NW New Mexico within the Navajo Nation and also against the reopening of the ASARCO smelter in El Paso. We also signed a settlement with the Public Service Company of New Mexico, the Sierra Club and the Grand Canyon Trust requiring PNM to install \$320 million in air quality upgrades at the San Juan coal plant. Natural

Gas collection plants in New Mexico pose an especially challenging threat to air quality. I helped negotiate and sign a \$59 million agreement to reduce pollution at gas plants operated by DCP Midstream and have filed suit in federal court against Marathon for similar violations. An interesting note, we have been told often by industry representatives that we should be more like Texas when it comes to compliance. This is advice I have chosen to ignore. I have worked hard to establish early ozone monitoring programs in certain areas of New Mexico and successfully passed legislation that will allow us to limit ozone pollution from sources *before* health standards are exceeded.

Air pollution requires constant monitoring as conditions can change quickly. A problem in NM that needs to be addressed is the open-ended length of some of our "minor source" air quality permits. Lifetime is too long for permits.

What experience do you have with water pollution?

Water quality is our main mandate at NMED. 90% of our drinking water in the state comes from ground water. The largest source of ground water contamination in NM is from septic tanks. We developed new regulations in 2005 in an effort to better manage this problem.

We have concerns about New Mexico's large dairy farms classified as Confined Animal Feedlot Operations or CAFO's and we are in the process of developing a "dairy rule". 65% of dairy operations in NM have contaminated ground water beneath their operations. NM is the 5th largest milk producing state in the nation. I believe monitoring wells are an essential tool to fight this type of contamination.

The Cities of Santa Fe and Albuquerque are beginning to draw drinking water supplies from the Rio Grande. I have worked closely with both municipalities to ensure that their water supplies are safe.

Los Alamos National Laboratory, the birthplace of the atomic bomb, has extensive issues with legacy contamination both in aquifers and surface waters. I helped negotiate and signed a historic, fence to fence clean up order for the lab in 2005 that includes enforceable deadlines leading to full clean up by 2015.

Unfortunately, New Mexico is one of only four states not to have federal surface water quality NPDES designation. I have fought for this since 2004. We have been thwarted by an organized industry effort that is mis-guided. We will continue to work for this important tool and if not successful we will seek other methods to protect our surface waters and closed basins. I have testified twice in front of Congress for Clean Water Restoration Act.

Good water quality is not only essential for the environment, it essential for sustainable economic health.

What experience do you have in enforcement?

I have directed the most definitive enforcement efforts since the establishment of the New Mexico Environment Department. Enforcement is an essential tool to achieve compliance. An important element for effective enforcement is publicity. Everyone affected by the action needs to be made aware of the infractions and their costs.

I can provide a long list of actions if required. Also, I refer you to our press release archives at the website www.nmenv.state.nm.us.

TCEQ is in many ways a rogue agency---operating in violation of many provisions of the CAA and CWA---how would you bring them into control and at what point would you consider revoking the delegation to implement federal laws?

The Obama Administration and with the direction of Administrator Jackson will certainly

set policy in this area. The RA must clearly define for the Administrator in what ways a state is operating outside the law and then seek the proper remedy.

On a related note, since taking office in 2003 the Richardson Administration and the New Mexico Environment Department in particular have been national leaders on fighting federal environmental rollbacks from the Bush Administration.

Are you familiar with Region VI efforts to address non-point source water pollution problems? Given the fragility of water resources in the region, how would you non-point water pollution?

Yes.

New Mexico has over 150 impaired streams; most of these impairments are due to non-point sources. We have worked hard to use the Clean Water Act and federal funding sources to address these impaired streams. We have also used state funds for these stream restorations for the first time in New Mexico history. Governor Richardson's River Ecosystem Restoration Initiative has spent several million dollars in the past three years restoring streams and rivers across the state.

New Mexico has several closed basins, which also must be protected and has been made more difficult considering the morass of conflicting legal decisions at the federal level. I have fought for the federal Clean Water Restoration Act to clear up this troubling issue and restore protections to all of New Mexico's streams. Also, the State of New Mexico with the support of several environmental organizations is in the process of seeking statewide Outstanding National Resource Waters (ONRW) designations, the highest level of protection possible under the clean water act. These would be useful tools throughout Region VI.

Many landfills in Texas have been grandfathered and continue to be granted expansions over unlined, non-Subtitle D compliant dumps with very limited water monitoring. What would you do as RA to address these issues?

New landfills or expansions should never be unlined. All landfills should have monitors up and down gradient. No exceptions. The message must be made clear by the RA that the states should adopt this policy.

Would your appointment contradict President Obama's pledge to avoid putting lobbyists in charge of regulatory agencies? Have you ever consulted for industries regulated by local, state or national environmental agencies? If so, which companies or other entities have you been employed by? What matters have you be prohibiting from participating in because you lobbied on that particular matter or specific issue area?

No, my appointment would not in any way violate the President's pledge.

Yes, I have worked briefly as a paid consultant. My clients included Public Service Company of New Mexico, 1999, wrote first Environmental Strategic Plan for the Company. CRI, 2001, represented in front of NM Legislature to lobby against a bill that would have allowed oil and gas wastes to go into municipal landfills.

None. However, when I leave my position as Secretary, I am essentially banned from representing any company I regulated in front of the NM Legislature or the NMED. This is a good law.

There have been a lot of complaints about TCEQ's permitting process over the last several years by citizens' groups, particularly about the lack of public participation. As RA, what do you think EPA could do to improve the process?

I participated in the "public" process regarding the re-permitting of ASARCO. I was quite appalled that the TCEQ process so completely failed the public involvement test. Certainly in New Mexico the public process is very inclusive. The RA would have to oversee the process so that the intent of the particular federal act, like the CAA is not compromised.

Despite 20 years of trying to achieve "attainment" for ozone pollution, neither D/FW nor Houston are close to that goal. As RA, what would you do differently, if anything to attempt to finally bring both metro areas into compliance with the Clean Air Act?

There would need to be a complete understanding by the business community as to the importance of ozone to their future. Economic development can be stymied if proper ozone management is not attained. The RA should be willing to lead the state and communities to a comprehensive plan for attainment. New Mexico has seen some success in the Four Corners Area in NW New Mexico. Obviously, the metro areas of Houston and D/FW are bigger and more populated, but there are models that can be followed.

President Obama and EPA Administrator Lisa Jackson have identified Environmental Justice as an important component for their environmental decision-making. Please tell us what the term means to you and some examples of how you've worked toward the goal of environmental justice.

Environmental Justice at the New Mexico Environment Department is the fair treatment and meaningful opportunities for involvement of all New Mexicans regarding the development and enforcement of environmental laws and regulations.

The above is directly from our website, but let me elaborate.

Environmental Justice has been a hallmark of my work as Secretary of the Environment Department. Under my leadership, along with Derrith Watchman Moore, Deputy Secretary at the time, Governor Richardson signed an executive order (2005) requiring all state agencies to address EJ issues. I adopted the first EJ provision in the country in our solid waste regulations, which requires special consideration to be given to proposed landfills in low-income communities. I ordered multi media inspections of facilities in low-income areas of NM including the south valley of Albuquerque, Mesquite and Sunland Park. And I gave the Camino Real landfill only a one-year permit because I was concerned about cumulative impacts in the community of Sunland Park. Environmental Justice is the disproportionate siting of industrial facilities in low-income minority communities and will continue to be a priority for me as R6 Administrator. I agree with Administrator Jackson that EJ must be removed from the margins and be factored into every decision. There are also letters attached that further discuss New Mexico's accomplishments in this area.

The Midlothian cement plants have been identified as a large source of regional air pollution in North Texas. What strategies or technologies would you consider as RA to reduce their emissions of Nitrogen Oxides and air toxics in general?

TECQ's lack of transparency and responsiveness to public input has hindered the ability of citizen's to participate in meaningful public processes. As RA, I would explore the options for opening up the permitting process to more public scrutiny and stricter controls to reduce emissions. I also do not support the Bush Administration's dangerous mercury cap and trade scheme. Cap and trade has its place, but not with a toxic, birth defect causing pollutant like mercury.

Houston is nationally recognized as a pollution hot spot for air toxics because of its concentration of petro-chemical facilities. What, if anything would you do as RA to help reduce the cumulative emission from these facilities?

EPA can establish priority areas for enforcement attention and I believe that petro-chemical facilities fall into that category. The EPA successfully launched a refinery initiative in the Clinton administration that helped us to reduce emissions at the refineries in Bloomfield, Gallup and Artesia, NM. We also established a gas plant initiative in NM to address air pollution problems particularly with sour gas plants in the southern part of the state that have problematic sulfur emissions. A similar approach can be used to systematically address problems with the petrochemical plants near Houston.

Several metro areas in Texas are on the brink of violating the national ambient PM standard. Do you believe the current standard is scientifically defensible and what pro-active measures could you take as RA to prevent these areas from becoming non-attainment fro PM pollution?

Fine particulates are a serious health issue and I believe that EPA should adopt a stronger standard in the Obama Administration. If appointed to be the RA for Region 6 I will advocate for a stronger standard.