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State of New Mexico
ENVIRONMENTAL IMPROVEMENT BOARD
Harold Runnels Building, N-2150
1190 St. Francis Drive, P. O. Box 5469
Santa Fe, New Mexico 87502

Environmental Improvement Board Meeting
January 5, 2009
10:00 a.m.

New Mexico Energy, Minerals and Natural Resources Department
Chino Building, Porter Hall
1220 S. St. Francis Drive
Santa Fe, New Mexico 87505

15 **Members Present:**

16 Gregory Green, Chair
17 Harold Tso, Secretary
18 Gay Dillingham, Member
19 Abbas Ghassemi, Member
20 Soren Peters, Member
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22 **Members Absent:**

23 Kathi Bearden, Vice-Chair
24 Dolores Herrera, Member
25

26 **Others Present:**

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28 Nancy Norem, PNM
29 Don Hill, NMED/RCB
30 Misty Braswell, NMED/OGC
31 Marcelle von Reenen
32 Mary Uhl, NMED/AQB
33 Butch Tongate, NMED/OHSB
34 Jeff Reynolds, ACF
35 Ernie C' de Baca, PNM
36 Sam Cudney, NMOGA
37 Jennifer Pruett, NMED/PSTB
38 Andrew Knight, NMED
39 Deborah Seligman, NMOGA
40 Sonia Phillips, Xcel Energy
41 Tannis Fox, NMED/OGC
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Rick Alvidrez, PNM
Daniela Bowman, NMED/RCB
John Parker, NMED/RCB
Bruce Frederick, Esq., NMELC
Beverly Fiske, NM Dairy Producers
Jennifer Marshall, NMELC
Louis Rose, Esq., NMOGA
Georgette Reeves
Juan Velasquez
S. Yamada
Allison Kuper, NM Restaurant Assoc.
Cecilia Abeyta, NMAB
T. J. Trujillo, Dairy Producers
Adrian Terry, Atty. General's Office

43 The Chair called the meeting to order at 10:00 a.m.

45 **Item 1. Roll Call**

47 Roll was taken and it was noted that a quorum was present.

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Item 2. Approval of the Agenda

Action: Mr. Tso moved approval of the meeting agenda. Mr. Ghassemi seconded. The motion passed unanimously.

Item 4. Public Comment

None.

Item 3. Approval of the December 1, 2008 meeting minutes

Action: Mr. Tso moved approval of the December 1, 2008 meeting minutes. Ms. Dillingham seconded. The motion passed unanimously.

Item 5. Board Approval of the Open Meetings Act Resolution – 2009.

Mr. Tso noted an error in the Resolution with respect to the Board’s meeting day.

Action: Mr. Ghassemi moved approval of the Open Meetings Act Resolution as corrected. Mr. Tso seconded. The motion passed unanimously.

Item 6. Board decision in re: setting a date for continuation of the hearing in EIB 08-14 (R), Proposed amendments to 11.5.2, 11.5.3 and 11.5.4 NMAC, Illegal Drug or Alcoholic Beverage Use regulations, OHSB. Tannis Fox, NMED/OGC; Butch Tongate, NMED/OHSB.

Ms. Fox requested that the Board set a date for the continuation of the hearing in this matter.

Action: After discussion, the Chair stated that he would review the Board’s future schedule and a decision would be made within a week as to a date for the continuation of the hearing and that all parties would be informed of that decision.

Item 7. Request for hearing in re: Petition to Adopt New Regulations and Amend Various Sections of 20.2.1, 20.2.2, 20.2.70 and 20.2.72 NMAC to Create a Statewide Cap on Greenhouse Gas Emissions and Promulgate Other Requirements, EIB 08-19 (R). Bruce Frederick, Esq., NMELC; Tannis Fox, NMED/OGC for Eric Ames, NMED/OGC.

The Chair noted that since there were several individuals who wished to discuss issues of concern with respect to this Petition, he would set aside time for those interested parties to voice their concerns and added that rebuttal would follow.

Mr. Frederick, representing the New Mexico Environmental Law Center (NMELC), introduced NMELC client John Fogarty of New Energy Economy (NEE). Mr. Fogarty briefly mentioned NEE’s position regarding the Petition in this case and its perceived need for the Board to act with

97 dispatch. Mr. Frederick then set out his general summary of the amendments and also noted the
98 pressing need for the Board to be proactive in this situation. He went on to request an April, 2009
99 hearing date.

100
101 Sandra Ely, speaking on behalf of NMED, stated that the Department's position with respect to a
102 hearing date is that given the scope of the hearing, the Department would oppose a hearing date
103 any earlier than July, 2009. She indicated that bills relating to these same issues would be
104 introduced during the 2009 Legislative Session and it would be premature to conduct a hearing
105 until the sixty day Session is over and disposition of those bills is known. She additionally noted
106 that there appeared to be some inconsistencies in the Petition as it relates to the Western States
107 Climate Initiative that would need to be resolved prior to scheduling a hearing.

108
109 Tannis Fox, an attorney with the Department's Office of General, requested that the Board also
110 consider a request to require that participants in this case file notices of intent to present technical
111 testimony (NOIs) thirty days prior to the hearing date instead of the usual fifteen day filing
112 deadline and further requested that complete written witness testimony be included in the NOI
113 filings.

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115 There was discussion among Board members and various participants regarding an estimate of the
116 length of the hearing being contemplated.

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118 The following individuals made public comment regarding the Petition to Adopt New Regulations:

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120 Rick Alvidrez, Esq., on behalf of Public Service Company of New Mexico
121 Ernest C'de Baca, on behalf of Public Service Company of New Mexico
122 Louis Rose, Esq., on behalf of the New Mexico Oil and Gas Association
123 Jeff Reynolds, on behalf of the Association of Commerce and Industry
124 Sonia Phillips, on behalf of Xcel Energy
125 Cecilia Abeyta, on behalf of the New Mexico Farm and Livestock Bureau
126 T. J. Trujillo, Esq., Dairy Producers of New Mexico

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128 All public comment participants requested that the Board deny the Petition for Hearing.

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130 A lengthy discussion followed among the parties regarding Board authority issues in this matter, as
131 well as scheduling problems should the Board decide to conduct a hearing.

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133 Mr. Frederick then set out Petitioner's rebuttal to positions taken by the public comment
134 participants in their requests to deny the Petition for Hearing.

135
136 Following Mr. Frederick's rebuttal, several of the public comment participants stated their
137 disagreement with Mr. Frederick's characterization of the immediate need for a hearing and also
138 noted that there are important scheduling issues that need to be addressed.

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140 Ms. Fox then suggested that it might be appropriate to name a hearing officer to prepare a briefing
141 schedule for the parties which would relate only to the question of Board jurisdiction and
142 authority.

143

144 A lengthy discussion among the Board, Petitioner and the public comment participants in this case
145 ensued.

146
147 Following discussion, the Chair suggested that the Board allow any interested party to file a brief
148 on the specific issue of the Board's jurisdiction and authority to enact the proposed regulations.
149 He added that briefs would not be mandatory but could be filed in the discretion of each interested
150 party and that the briefs would need to be available for board members' review prior to the April 6,
151 2009 meeting.

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153 Discussion by the Board continued.

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155 **Action: Ms. Dillingham moved that a hearing in EIB 08-19 (R) be set on the**
156 **Board's August 3, 2009 agenda; briefs relating to Board jurisdiction**
157 **and authority issues be scheduled for discussion on the April 6, 2009**
158 **agenda subject to filing deadlines to be set out in a scheduling order;**
159 **direct interested parties that notices of intent to present technical**
160 **testimony must be filed thirty days prior to the August 3, 2009 meeting**
161 **and further that three days be set aside for the hearing in August and,**
162 **if necessary, continue the hearing at the Board's September 8, 2009**
163 **meeting. Mr. Ghassemi seconded.**

164
165 **Roll Call Vote:**
166 **Mr. Peters** yes
167 **Mr. Tso** no
168 **Mr. Ghassemi** yes
169 **Ms. Dillingham** yes
170 **Mr. Green** yes

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172 **The motion passed.**

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174 The meeting recessed for lunch at 12:30 p.m. The Chair noted that the meeting would resume at
175 1:30 p.m.

176
177 The meeting resumed and discussion regarding the appointment of a Hearing Officer in EIB 08-
178 19 (R) was held.

179
180 **Action: Mr. Green moved that the Board appoint Ms. Dillingham to act**
181 **as Hearing Officer in EIB 08-19 (R). Mr. Ghassemi seconded.**
182 **The motion passed unanimously.**

183
184 **Item 8. Hearing and possible decision in re: Proposed amendments to 20.3.1,**
185 **20.3.3, 20.3.4, 20.3.7, 20.3.13 and 20.3.15 NMAC, EIB 08-16 (R),**
186 **Radiation Protection Rules. Misty Braswell, NMED/OGC; Daniela**
187 **Bowman, NMED/RCB.**

188
189 At 1:40 p.m., the Chair announced that the hearing in the above-referenced case would
190 commence and Mr. Ghassemi would act as Hearing Officer for this matter. Kathy Townsend
191 Court Reporters transcribed the hearing. All Notices of Intent to Present Technical Testimony

192 were filed and are available for review, as well as public comment correspondence and the
193 hearing transcript in the office of the Environmental Improvement Board Administrator, New
194 Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Room N2150, Santa
195 Fe, New Mexico 87505.

196
197 At 3:15 p.m. the hearing concluded and the meeting reconvened.

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199 The Board discussed the process for the approval of the statement of reasons in EIB 08-16 (R)
200 since the next meeting would not take place until April 6, 2009 and the Radiation Control Bureau
201 would need to process required documentation in this matter prior to that date.

202
203 **Action:** **Ms. Dillingham moved that the Board approve the Environment**
204 **Department's proposed amendments to 20.3.2, 20.3.3, 20.3.4, 20.3.7,**
205 **20.3.13 and 20.3.15 NMAC, in EIB 08-16 (R); allow the Department**
206 **to make minor typographical and non-substantive changes that might**
207 **be necessary and, authorize the Statement of Reasons and Order to be**
208 **signed by the Chair on behalf of the Board. Mr. Peters seconded.**

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210 **Roll Call Vote:**
211 **Mr. Peters** yes
212 **Mr. Tso** yes
213 **Mr. Ghassemi** yes
214 **Ms. Dillingham** yes
215 **Mr. Green** yes

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217 **The motion passed unanimously.**

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219 **Item 9. Election of Board Officers.**

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221 There was a lengthy discussion relating to election scheduling.

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223 **Action:** **Ms. Dillingham moved that election of officers be held at the April**
224 **6, 2009 meeting. Mr. Ghassemi seconded.**

225
226 **Roll Call Vote:**
227 **Ms. Dillingham** yes
228 **Mr. Ghassemi** yes
229 **Mr. Peters** no
230 **Mr. Tso** no
231 **Mr. Green** yes

232
233 **The motion passed.**

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235 **Item 10. Other business**

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237 None.

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239 **Item 11. Next meeting:** 10:00 a.m. April 6-7, 2009, State Capitol Building, Room
240 317, 490 Old Santa Fe Trail, Santa Fe, NM 87501

241
242 **Item 12. Adjournment**

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244 **Action: Mr. Tso moved that the meeting adjourn. Ms. Dillingham seconded. The**
245 **motion passed unanimously.**

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247 The meeting adjourned at 3:50 p.m.

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Gregory Green, Chair