

State of New Mexico
ENVIRONMENTAL IMPROVEMENT BOARD
Harold Runnels Building, N-2150
1190 St. Francis Drive, P. O. Box 26110
Santa Fe, New Mexico 87502

Environmental Improvement Board Meeting
January 3-5, 2007 Meeting
9:00 a.m.

New Mexico Commission of Public Records
Garrey Carruthers Building
State Library, Archives and Records Center
Piñon Room #2027
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

Members Present: Gay Dillingham, Chair
Gregory Green, Vice-Chair
Dolores Herrera, Secretary
Soren Peters, Member
Harold Tso, Member

Members Absent: Kathi Bearden, Member
Ken Marsh, Member

Others Present:

Chuck Noble, NMED/OGC	Melanie Teeter, NM Homebuilders Assn.
Andy Berger, NMED/AQB	Rita Trujillo, NMED/AQB
Bill Grantham, NMED/OGC	Tracy Hughes, NMED/GC
Robert Spillers, NMED/AQB	E. Gifford Stack, NMED/SWB
Carlos Romero, NMED/EHD	Tom Brandt, NMED/EHD
Dennis McQuillan, NMED/EHD	Brian Schall, NMED/EHD
Patrick Shay, Rodey Law Firm	Jeff Vinyard, Culligan Water
Roderick Ventura, Esq., SWOP	Ana Marie Ortiz, NMED/EHD
Susan Kery, Esq., Infiltrator Systems	Pete Ostwald, Kinteco
Ralph Baker Dotson, AAA Allied Septic	Dennis F. Hallahan, Infiltrator Systems
Don Becker	David Holmes, Infiltrator Systems
Blake Johnston, Infiltrator Systems	Eugene Bassett, POWRA
Dave Gustafson, POWRA	Link Summers, POWRA
Zachary Shandler, AG's Office	

Chair Gay Dillingham called the meeting to order at 9:15 a.m.

Item 1. Roll Call

The Board administrator took the roll and noted a quorum was present.

Item 2. Approval of Agenda

Mr. Tso stated that since the entire Board was not present agenda Item 5, Election of EIB Officers, should be deferred until the April, 2007 meeting. There was discussion regarding that issue. The Chair asked Mr. Shandler for his advice relating to Item 5. Mr. Shandler noted that the word “shall” was used in the text of rule and that it was his view that elections should be held. He mentioned however that the Board was free to follow or disregard his advice. The Chair stated that in the event elections were held she wanted the minutes to reflect that the reason elections had not been held in December was due to the omission of the election item from that agenda.

Action: Mr. Tso moved that the election of Board officers be deferred until the April, 2007 Board meeting. Mr. Tso stated that he was making this motion because he felt that all of the Board members should be present for the election as well as allowing the Board to take into consideration the outcome of the Board member legislative confirmation hearings. Ms. Dillingham seconded the motion for discussion. The motion failed, two votes in the affirmative; three votes in the negative.

Mr. Tso moved that the agenda be approved. Ms. Herrera seconded. The motion passed unanimously.

Item 3. Approval of December 5, 2006 meeting minutes.

Ms. Dillingham noted an amendment to the minutes relating to the omission of Board elections on the December meeting agenda.

Action: Mr. Green moved that the minutes of the meeting be approved as amended. Mr. Tso seconded. The motion passed unanimously.

Item 4. Public Comment

None.

Item 5. Election of EIB officers.

Mr. Tso stated that he had no desire to be anything other than an active member of the Board. Mr. Peters stated that he also had no desire to be anything other than a Board member.

Action: Mr. Green moved that the Board adopt the same slate of officers that held their respective positions in 2006. Mr. Peters seconded. The motion passed unanimously.

Item 6. Items 6 and 7 as shown on the agenda were heard in reverse order.

Item 7: Request for hearing re: the revised Solid Waste Management Plan, 20.9.4 NMAC, EIB 06-03 (R). Tracy Hughes, NMED/GC; E. Gifford Stack, NMED/SWB.

There was Board discussion regarding the length of the hearing as well as matters in which the Bureau and various stakeholders had negotiated areas of agreement and as a result, less time would be required for hearing those issues that are in dispute. There was also discussion as to whether or not all parties had been notified that they have the right to appear and participate in the public hearing process. It was noted that notification was as widespread as is reasonably possible.

The Chair noted that in addition to this hearing there were also two Air Quality Bureau hearings to be scheduled in April.

Action: The Chair moved that the revised Solid Waste Management Plan, 20.9.4 NMAC, EIB 06-03 (R) be heard at the April 3-5, 2007 meeting. Mr. Green seconded.

Ms. Herrera requested that the meeting be held in Albuquerque. Mr. Stack and Mr. Ventura indicated that they had no objection to the hearing being held there.

The motion passed unanimously. Ms. Herrera was designated to act as Hearing Officer for the hearing.

Item 6: Adoption of EIB Open Meetings Act 2007 Resolution.

Action: Mr. Green moved for the adoption of the Opening Meetings Act 2007 Resolution. Mr. Tso seconded. The motion passed unanimously.

Item 8. Request for hearing re: Adoption of 20.2.85 NMAC (mercury emissions) and Revisions to 20.2.71, 77 and 84 NMAC, EIB 06-15 (R). Bill Grantham, NMED/ OGC; Andy Berger, NMED/AQB.

Andy Berger noted that this request for hearing was the same matter upon which a hearing had been requested last summer and then withdrawn from the Board's calendar. He stated that substantive changes had been made to the proposed and revised rules as a result of comments from stakeholders and from the EPA. He requested that the hearing be held during the Board's April, 2007 meeting. There was a lengthy Board discussion regarding issues relating to the hearing schedule and bureau deadlines.

Mr. Shandler suggested that the Board discuss the number of days in April that should

reasonably be scheduled for all of the proposed hearings. It was agreed that the April meeting should begin April 3 and run, if necessary, through April 5, 2007.

Action: The Chair moved that EIB 06-15 (R) be set for hearing on the Board's April 3-5, 2007 agenda.

Ms. Dillingham again reminded the Board that the Solid Waste Management Plan would also be heard at the April 3-5, 2007 meeting.

Mr. Tso seconded. The motion passed unanimously. Mr. Peters was designated to act as Hearing Officer for this hearing.

Item 9. Request for hearing re: Revisions to 20.2.78 and 20.2.82 \ NMAC, EIB 06-16 (R). Bill Grantham, NMED/OGC; Robert Spillers, NMED/AQB.

Mr. Spillers explained that the hearing that was being requested related to amending regulations 20.2.78 NMAC, Emission Standards for Hazardous Air Pollutants and 20.2.82 NMAC, Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants. He stated that amendments were necessary in order to incorporate by reference new rules, corrections and revisions to the National Emission Standards for Hazardous Air Pollutants promulgated by the EPA.

Action: Mr. Green moved that EIB 06-16 (R) be set for hearing on the Board's April 3-5, 2007 agenda. Mr. Peters seconded. The motion passed unanimously. Mr. Peters was designated to act as Hearing Officer for this hearing.

Item 10. Request for Hearing re: Revisions to 20.2.99 NMAC, Conformity to the State Implementation Plans, Programs and Projects and Sunland Park, NM 1 hour Ozone Nonattainment Area, EIB 06-17 (R). Bill Grantham, NMED/OGC; Rita Trujillo, NMED/AQB.

Ms. Trujillo noted that the Bureau's request was actually for two hearings, not one.

The first hearing relates to revising 20.2.99 NMAC and the second deals with revising

Sunland Park's one hour ozone nonattainment area. She stated that these revisions, in both instances, have been mandated by the EPA and were not anticipated to be at all controversial. She asked that the hearings be held in May in Sunland Park. She also mentioned that the hearings could be conducted by one Board member acting as hearing officer instead of

requiring the entire Board to be present. There was Board discussion relating to EPA requirements and the implementation of the revisions sought by the Bureau. There was additional discussion regarding hearing dates and schedule availability of a possible hearing officer. Mr. Shandler mentioned that anyone acting as hearing officer would need to submit a hearing report to the Board for ratification at the June Board meeting in order to meet the Bureau's EPA deadline of mid-June.

Action: **The Chair moved that hearings on EIB 06-17 (R) and 06-18 (R) be heard during the month of May, 2007, on a date and time to be established at a later date and further, that Board members Gregory Green or Kathi Bearden will act as hearing officer or, in the event she is available, Felicia Orth will act as hearing officer. Mr. Green seconded. The motion passed unanimously.**

Mr. Green requested that the Bureau provide Board members with information relating to the mercury emissions standards that had been discussed earlier.

Item 11. Adoption of the Statement of Reasons in EIB 06-08 (R), Tire Recycling Regulations, 20.9.2 NMAC. Zach Shandler, Board Counsel.

Mr. Shandler asked Board members to refer to the Statement of Reasons in EIB 06-08 (R) that had been distributed in the Board's meeting packet. He requested, if the document was satisfactory, that an affirmative motion be made to adopt the Statement of Reasons as presented.

Action: **The Chair moved that the Statement of Reasons in EIB 06-08 (R) be adopted as presented. Mr. Green seconded. Mr. Tso noted that he was not present at the hearing in this matter and would abstain from voting. The motion passed unanimously.**

Item 12. Hearing in re: the petitions to consider proposed amendments to the Liquid Waste Disposal and Treatment Rules, 20.7.3 NMAC, EIB 06-06; 06-07 and 06-13 (R). Hearing Officer: Gregory Green

The Chair announced that the hearing would commence and that Vice-Chair, Gregory Green, would preside as Hearing Officer for this agenda item. Kathy Townsend Court Reporters transcribed the hearing. All Notices of Intent to Present Technical Testimony were timely filed and are available for review, as well as public comment correspondence and the hearing transcript in the office of the Environmental Improvement Board Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Rm. 2150, Santa Fe, New Mexico 87505.

The hearing commenced at 10:10 a.m.

The Chair called the Board meeting back to order at 4:00 p.m., announcing that deliberations in this matter would commence.

Board deliberations were transcribed by Kathy Townsend Court Reporters. A copy of the transcribed deliberations is available for review in the office of the EIB Administrator.

Following Board deliberations and discussions the following actions were taken:

- Action: Mr. Tso moved the acceptance of the language proposed by the Department in Section 20.7.3.7, Subsection E. Mr. Green seconded. The motion passed unanimously.**
- Action: Mr. Tso moved the acceptance of the language proposed by the Department in Section 20.7.3.701, Subsection E. Mr. Green seconded. The motion passed unanimously.**
- Action: The Chair moved the approval of the language proposed by the Department in Section 20.7.3.807. Mr. Peters seconded. The motion passed unanimously.**
- Action: Mr. Tso moved the acceptance of the language proposed by POWRA in Section 20.7.3.808 Subsection I.2. Mr. Peters seconded. The motion passed unanimously.**
- Action: Mr. Green moved the acceptance of the language proposed by the Department and POWRA in Section 20.7.3.904, Subsection A. Mr. Peters seconded. The motion passed unanimously.**
- Action: Mr. Green moved the acceptance of the Department's definitions, in their entirety, in Section 20.7.3.7. Mr. Tso seconded. The motion passed unanimously.**
- Action: Mr. Green moved the acceptance of the Department's language in Section 20.7.3.201, Subsection H. Mr. Peters seconded. The motion passed unanimously.**
- Action: Mr. Green moved the acceptance of the Department's language in Section 20.7.3.201, Subsections L through N. Mr. Tso seconded. The motion passed unanimously.**
- Action: Mr. Green moved the acceptance of the Department's language in Section 20.7.3.201, Subsection O. The Chair**

seconded. The motion passed unanimously.

Action: Mr. Green moved the acceptance of the Department's language in Section 20.7.3.201 Subsections R.1 and R.2. Mr. Peters seconded. The motion passed unanimously.

Action: Mr. Green moved the acceptance, in its entirety, of the Department's language in Section 20.7.3.202. Mr. Peters seconded. The motion passed unanimously.

Action: Mr. Green moved the acceptance, in its entirety, of the Department's language in Section 20.7.3.203. Mr. Tso seconded. The motion passed unanimously.

Action: Mr. Green moved the acceptance of the Department's petition in all remaining sections up to, but not including, Section 20.7.3.401. Mr. Peters seconded. The motion passed unanimously.

Action: Mr. Peters moved the acceptance of the Department's language in Section 20.7.3.401. Mr. Green seconded. The motion passed unanimously.

Action: Mr. Green moved the acceptance of the Department's petition in the remaining Sections 20.7.3.402 up to, but not including, 701.

Action: Mr. Green moved the acceptance of the Department's language in Sections 20.7.3.701 and 20.7.3.702. Mr. Peters seconded. The motion passed unanimously.

Action: Mr. Green moved the acceptance of the Department's language in Section 20.7.3.703. Mr. Peters seconded. The motion passed unanimously.

Action: Mr. Green moved the acceptance of the Department's petition in the remaining Sections 20.7.3.704, up to, but not including, 20.7.3.801. Mr. Tso seconded. The motion passed unanimously.

Action: Mr. Green moved the acceptance of the Department's language in Section 20.7.3.801. Mr. Tso seconded. The motion passed unanimously.

Action: Mr. Green moved the acceptance of the Department's language in Section 20.7.3.802 through 20.7.3.806. Mr. Tso seconded. The motion passed unanimously.

Action: Mr. Green moved the acceptance of the Department’s language in Section 20.7.3.808 through 20.7.3.904 with the exception of POWRA language already adopted in 808.I.2, above. Mr. Peters seconded. The motion passed unanimously.

Action: Mr. Green moved that the Department be permitted to make “clean-up” changes in the text, such as correcting typographical errors, re-numbering and other non-substantive changes as may be required in formatting. Mr. Peters seconded. The motion passed unanimously.

Action: Mr. Green moved that the Board reject any outstanding issues from POWRA’s petition. Mr. Peters seconded. The motion passed unanimously.

Item 13. Other business

None

Item 14. Next meeting – April 3-5, 2007 – Albuquerque

Item 15. Adjournment

Action: Mr. Green moved for adjournment at 5:10 p.m. Mr. Peters seconded. The motion passed unanimously.

Signature on file

Gay Dillingham, EIB Chair