

Approved: November 4, 2004
ENIRONMENTAL IMPROVEMENT BOARD
MINUTES OF THE OCTOBER 5, 2004

The New Mexico Environmental Improvement Board (EIB) Meeting was held on October 5, 2004, at the New Mexico Department of Health in Las Cruces, New Mexico.

Item #1: Roll Call

Members Present: Ms. Gay Dillingham, Chair
Mr. Clifford Stroud, Vice Chair
Mr. Gregory Green, Secretary
Mr. Harold Tso, Member
Mr. Ken Marsh, Member
Ms. Gwen Wardwell, Member
Ms. Dolores Herrera, Member

Others Present: Geraldine Madrid-Chavez Mary Smith, AGO
Lany Weaver, NMED Richard Minzner
Leslie Barnhart, NMED Randi McGinn
Georgia Cleverly

Item #2: Approval of Agenda

ACTION: Ms. Herrera made a motion to approve the agenda as presented. Mr. Marsh seconded. Motion carried unanimously.

Item #3: Public Comment Period – 9:30 – 10:00 am.

None at this time.

Item #4: Approval of the September 7 & 8, 2004 Meeting Minutes

After an addition to the minutes the following action was taken:

ACTION: Mr. Stroud made a motion to approve the September 7 & 8, 2004 meeting minutes as amended. Mr. Green seconded. Motion carried unanimously.

Item #5: Deliberation and possible decision in the matter of Air Quality Permit issued to Northeast New Mexico Biomass L.L.C. (NENMB) Permit #2939. (EIB 04-03P)

ACTION: Mr. Stroud made a motion to go into closed executive session pursuant to section 10-15-1(H)(3) of the Open Meeting Act to

deliberate in the matter of petition for hearing by Northern New Mexico Biomass L.L.C. NSR Air Quality Permit #2939 EIB 04-03. Ms. Wardwell seconded. A roll call was taken and the results are as follows:

Mr. Green	Abstain
Mr. Stroud	Yes
Ms. Wardwell	Yes
Mr. Tso	Yes
Ms. Herrera	No
Mr. Marsh	Abstain
Mr. Dillingham	Yes

Motion carries with a No vote by Ms. Herrera and 2 abstentions by Mr. Green and Mr. Marsh.

Ms. Herrera certified that she received the transcripts in the above listed hearing and read them.

Mr. Dillingham stated the matters discussed in closed session were only those stated in the motion.

ACTION: **Mr. Marsh made a motion to sustain permit issued Northern New Mexico Biomass L.L.C. NSR Air Quality Permit #2939. Mr. Stroud seconded. A roll call was taken and the results are as follows:**

Mr. Green	Abstain
Mr. Stroud	Yes
Ms. Wardwell	Abstain
Mr. Marsh	Yes
Mr. Tso	Yes
Mr. Herrera	Yes
Ms. Dillingham	Yes

Motion carries with 2 abstentions by Mr. Green and Ms. Wardwell.

Item #6: **Deliberation and possible decision to consider proposed amendments and lifting the Partial Stay to the Convenience Store Rule in Title 11, Chapter 5, Part 6 of the New Mexico Administrative Code. (EIB 03-12)**

Mr. Tso certified that he had received and read the minutes of the previous meeting. Mr. Minzner requested to address the Board before deliberation began. Mr. Minzner requested Mr. Stroud and Mr. Green recuse themselves from deliberations and decision-making in the above case. (EIB 03-12) Mr. Stroud announced he would recuse himself and Mr. Green stated he would not recuse himself.

Deliberation and discussion began and the Board took the following actions:

ACTION: **Mr. Green made a motion to remove the letter dated September 22, 2004 from Ms. McGinn’s office from the record. Mr. Marsh seconded. Motion carried unanimously.**

At this time Ms. Dillingham announced that members of the audience requested that items #7 & #8 of the agenda be switched.

ACTION: **Ms. Dillingham made a motion to switch items #7 & #8 of the agenda. Ms. Wardwell seconded. Motion carried unanimously.**

The deliberation continued.

ACTION: **Mr. Green made a motion to lift the stay prior to the amendments. Ms. Wardwell seconded. A roll call was taken and the results are as follows:**

Mr. Marsh	No
Mr. Green	Yes
Ms. Wardwell	Yes
Ms. Herrera	No
Mr. Tso	No
Ms. Dillingham	No

Motion fails.

ACTION: (Check Transcript for this motion regarding removing the word primary)

ACTION: **Ms. Dillingham made a motion to add language at the end of paragraph D (convenience store definition) “other agricultural activities for operations. Mr. Green seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion to pass section 11.5.6.7 E as amended. Ms. Wardwell seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion to re-letter “E” thru “N” in section 11.5.6.7. Mr. Marsh seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion under Employee Training section 11.5.6.8 (B)(1) to accept the language as amended. Mr. Marsh seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion in section 11.5.6.8 (B)(4) accept the language as amended. Ms. Wardwell seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion in section 11.5.6.8 (C) to move the time from 5:00pm to 9:00pm throughout the whole section of the late night security measures. Ms. Wardwell seconded. A roll call was taken and the results are as follows:**

Mr. Marsh	No
Mr. Green	Yes
Ms. Wardwell	Yes
Ms. Herrera	No
Mr. Tso	No
Ms. Dillingham	No

Motion fails.

ACTION: **Ms. Dillingham made a motion to accept the Environment Department's language in 11.5.6.8 (C) under late night security measures changing the time from 5:00 pm to 11:00pm throughout the late night security measures section. Mr. Tso seconded. A roll call vote was taken and the results are as follows:**

Mr. Marsh	Yes
Mr. Green	No
Ms. Wardwell	No
Ms. Herrera	Yes
Mr. Tso	Yes
Ms. Dillingham	Yes

Motion carries with 2 No votes by Ms. Wardwell and Mr. Green.

ACTION: **Ms. Wardwell made a motion to leave 11.5.6.8 section E-1-A as originally written. Mr. Green seconded. A roll call vote was taken and the results are as follows:**

Mr. Green	Yes
Ms. Wardwell	Yes
Mr. Tso	No
Ms. Herrera	No
Mr. Marsh	No
Ms. Dillingham	No

Motion fails.

ACTION: **Ms. Herrera made a motion to accept the Environment Department's language on 11.5.6.8 section E-1-A. Mr. Tso seconded. A roll call vote was taken and the results are as follows:**

Mr. Green	No
Ms. Wardwell	No
Mr. Tso	Yes
Ms. Herrera	Yes
Mr. Marsh	Yes
Ms. Dillingham	Yes

Motion carries with 2 No votes by Mr. Green and Ms. Wardwell.

ACTION: **Mr. Green made a motion to accept section 11.5.6.8 (B) (2) as amended. Mr. Marsh seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion to accept section 11.5.6.8 E-2-D as amended. Mr. Marsh seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion to accept section 11.5.6.8 F-2-B as amended. Mr. Marsh seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion to accept section 11.5.6.8 G-1-D as amended. Mr. Marsh seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion not to accept section 11.5.6.8 H and keep as originally written. Ms. Herrera seconded. Mr. Marsh offered a friendly amendment to move this provision under the late night security measures section. Mr. Green accepted the amendment and asked to insert the employer shall not have more than \$50.00 in the cash register from 11:00pm to 5:00am and for all other hours to protect employees safety the employer should maintain small amounts of cash in any cash registers. Ms. Herrera accepted the amendments. Motion carried unanimously.**

ACTION: **Ms. Dillingham made a motion to adopt section 11.5.6.8 G-2 as proposed by the Environment Department. Mr. Tso seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion to accept section 11.5.6.8 I-1-E as amended. Ms. Herrera seconded. Motion carried unanimously.**

ACTION: **Ms. Wardwell made a motion to keep the language in section 11.5.6.8 J as originally written. Mr. Green seconded. A roll call vote was taken and the results are as follows:**

Mr. Green	Yes
Ms. Wardwell	Yes
Mr. Tso	No
Ms. Herrera	No
Ms. Marsh	No
Ms. Dillingham	No

Motion fails.

ACTION: **Mr. Green made a motion in section 11.5.6.8 J (Pay Phones) to include the owner shall provide adequate lighting to the pay phone area and strike the rest. Mr. Wardwell seconded. A roll call vote was taken and the results are as follows:**

Mr. Green	Yes
Ms. Wardwell	Yes
Mr. Tso	Yes
Ms. Herrera	Yes
Ms. Marsh	Yes
Ms. Dillingham	Yes

Motion carries unanimously.

ACTION: **Mr. Green made a motion in section 11.5.6.21 to accept the amended as proposed. Ms. Herrera seconded. Motion carried unanimously.**

ACTION: **Ms. Dillingham made a motion leave 11.5.6.8 J as amended and K as written alone. Mr. Tso seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion to accept proposed amendments to Part 1 – OSHA regulation: 11.5.1.7, 11.5.1.13, 11.5.1.14, 11.5.1.15, 11.5.1.18, 11.5.1.19 and 11.5.1.23 as recommended. Ms. Herrera seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion the Board not accept the proposed amendment from exhibit A, the Petroleum Marketers Association, which some of those amendments have been addressed in the Environment Department’s amendments and the others should not pass. Ms. Wardwell seconded. Motion carried unanimously.**

ACTION: **Mr. Green made a motion to lift the stay limited to provisions that were not amended. Mr. Marsh seconded. Motion carried unanimously.**

ACTION: **Ms. Dillingham made a motion to accept the proposed statement of reasons by the Environment Department. Mr. Marsh seconded. A roll call vote was taken and the results are as follows:**

Mr. Green	No
Ms. Wardwell	No
Mr. Tso	Yes
Ms. Herrera	Yes
Ms. Marsh	Yes
Ms. Dillingham	Yes

Motion carries with 2 No votes by Mr. Green and Ms. Wardwell.

Item #7: **Hearing and possible decision to consider proposed 20.2.66 NMAC – Cotton Gins. (EIB 04-06)**

A public hearing was held at the New Mexico Department of Health in Las Cruces, New Mexico on October 5, 2004 regarding Petition No. EIB 04-06 at approximately 3:00 pm. In attendance were Gwen Wardwell, Hearing Officer, and the Board Members listed above. This hearing was transcribed and the transcripts will be in the custody of the Administrator. It is available for viewing upon request.

At the conclusion of the hearing Ms. Wardwell announced the record is now closed. The following action was taken after deliberations:

ACTION: **Mr. Stroud made a motion that the proposed regulations 20.2.66 NMAC – Cotton Gins (EIB 04-06) as amended be approved. Mr. Green seconded. Motion carried unanimously.**

ACTION: **Ms. Herrera made a motion to adopt the revision to the State Implementation Plan and allow the Department to make non-substantive changes prior to the filing. Mr. Green seconded. Motion carried unanimously.**

Item #8: **Hearing and possible decision to consider proposed revisions to 20.2.73 NMAC – Notice of Intent and Emissions Inventory Requirements. (EIB 04-05)**

A public hearing was held at the New Mexico Department of Health in Las Cruces, New Mexico on October 5, 2004 regarding Petition No. EIB 04-05 at approximately 4:15 pm. In attendance were Gwen Wardwell, Hearing Officer, and the Board Members listed above. This hearing was transcribed and the transcripts will be in the custody of the Administrator. It is available for viewing upon request.

At the conclusion of the hearing Ms. Wardwell announced the record is now closed. The following action was taken after deliberations:

ACTION: **Mr. Stroud made a motion to approve proposed revision to 20.2.73 NMAC – Notice of Intent and Emissions Inventory Requirements EIB 04-05 to include the correction to a typographical error found in 20.2.73.300 paragraph E – changing the # 4 to # 5 of subsection C as well as approval of revision to the State Implementation Plan as well as any non-substantive changes that the State Record Center would deem necessary. Ms. Wardwell seconded. Motion carried unanimously.**

Item #9: Other Business

Mr. Tso asked for an update of the Rules Committee. Mr. Stroud stated the Committee has not met but will be conducting a conference call soon.

Item #10: Next Meeting

The next regularly scheduled meeting of the Environmental Improvement Board is scheduled for November 4 & 5, 2004.

Item #11: Adjourn

Ms. Dillingham adjourned the meeting at 4:45pm.