

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
10:00 a.m., October 6, 2008
State Capitol Building, Room 317
490 Old Santa Fe Trail
Santa Fe, New Mexico 87501

Members Present: Gregory Green, Chair
Kathi Bearden, Vice-Chair
Harold Tso, Secretary
Gay Dillingham, Member
Abbas Ghassemi, Member
Dolores Herrera, Member

Members Absent: Soren Peters, Member

Others Present:

Robert Spillers, NMED/AQB	Debra McElroy, NMED/AQB
Mary Uhl, NMED/AQB	Allan Merns NMED/AQB
Jody Fisher NMED/AQB	Bill Blankenship, LANL
Carlos Romero, NMED	Dennis McQuillan, NMED
Curt Frischkorn, NMDOT	Dave Colbrain, NMED/HWB
Cecilia Abeyta, NM Farm Bureau, et al.	James Bearzi, NMED/AQB
Joni Arends, CCNS	Tatiana Englemann, NM Pecan Growers
Gail Cooke, NMED/AQB	Bill Grantham, NMED/OGC
Leslie Barnhart, NMED/OGC	Jeff Reynolds, FMI-Chino
Daniela Bowman, NMED/RCB	Jennifer Dann, Kirtland AFB
Chris Segura, Kirtland AFB	Link Summers
Adrian Terry, Atty. General's Office	

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

Item 1. Roll Call

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

Item 2. Approval of Agenda

Action: Ms. Bearden moved approval of the meeting agenda. Ms. Dillingham seconded. The motion passed unanimously.

Item 3. Approval of September 2, 2008 meeting minutes

Action: Ms. Dillingham moved approval of the September 2, 2008 meeting minutes. Ms. Bearden seconded. The motion passed unanimously.

Item 4. Executive Session in re: status report by Adrian Terry, Asst. Atty. General, Board counsel, and Board discussion of *Hanosh v. EIB*, Third Judicial District Court, Cause No. CV 2007-2708, Dona Ana County, NM.

Action: Ms. Bearden moved that the Board recess into executive session to hear Mr. Terry's report regarding *Hanosh v. EIB*, Third Judicial District Court, Cause No. CV 2007-2708, Dona Ana County, NM and hold Board discussion in the case. Ms. Dillingham seconded.

Mr. Terry suggested that Ms. Bearden's motion include "... into executive session, pursuant to NMSA 1978 §10-15-1 (H) Exception 7, to hear ...". Ms. Bearden agreed to the friendly amendment.

Roll Call Vote

Ms. Dillingham	yes
Mr. Ghassemi	yes
Ms. Bearden	yes
Ms. Herrera	yes
Mr. Tso	yes
Mr. Green	yes

The motion passed unanimously.

Following the roll call vote, the Board went into executive session.

The Board returned to the public meeting. Ms. Bearden, Vice-Chair, asserted that the only matter discussed by the Board while in executive session was the *Hanosh v. EIB* case.

Item 5. Board decision in re: appeal of Court of Appeals decision in *Hanosh v. EIB*, Third Judicial District Court, Cause No. CV 2007-2708, Dona Ana County, NM.

Action: Ms. Dillingham moved that the Board file a Petition for Writ of Certiorari with the New Mexico Supreme Court in *Hanosh v. EIB*, Third Judicial District Court, Cause No. CV 2007-2708, Dona Ana County, NM. Mr. Ghassemi seconded.

Roll Call Vote

Ms. Herrera	yes
Mr. Tso	yes
Mr. Ghassemi	yes
Ms. Dillingham	yes
Ms. Bearden	yes

Item 8. Request for Hearing in re: Proposed amendments to 20.3.1, 20.3.3, 20.3.4., 20.3.7, 20.3.13 and 20.3.15 NMAC, EIB 08-16 (R), Radiation Protection Rules. Bill Grantham, NMED/OGC; Daniela Bowman, NMED/RCB.

Mr. Grantham stated that he and Ms. Bowman were before the Board to request a hearing in EIB 08-16 (R), Radiation Protection Rules at the Board’s January 5, 2009 meeting. The Board, Mr. Grantham and Ms. Bowman discussed the timelines relating to this hearing and the need for the January agenda setting.

Action: Ms. Herrera moved that the Board set a hearing in EIB 08-16 (R), Radiation Protection Rules on the January 9, 2009 meeting agenda. Mr. Tso seconded.

It was agreed that Mr. Ghassemi would act as Hearing Officer in this case.

The motion passed unanimously.

Item 9. Hearing and possible decision in re: EIB 08-11 (R), Adoption of 20.2.9 NMAC Field Citations. Leslie Barnhart, NMED/OGC; Mary Uhl, Bob Spillers and Debra McElroy of NMED’s Air Quality Bureau.

At 11:10 a.m., the Chair announced that the hearing in the above-referenced matter would commence and because Mr. Peters had been delayed in Dallas, he would act as Hearing Officer for this matter. Kathy Townsend Court Reporters transcribed the hearing. All Notices of Intent to Present Technical Testimony were filed and are available for review, as well as public comment correspondence and the hearing transcript in the office of the Environmental Board Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Room N2150, Santa Fe, New Mexico 87505.

The hearing concluded at 2:30 p.m. and the meeting resumed.

The Board conducted lengthy deliberations regarding the proposed field citation procedures and the ramifications of those procedures on the State’s citizens and businesses.

The following changes were made to the proposed regulation 20.2.90 NMAC:

Action: Mr. Tso moved that the following language be added to § 109 of 20.2.90 NMAC, “The Department shall issue a warning, without penalty, as a field citation for the first offense.” Ms. Bearden seconded.

Roll Call Vote

Ms. Herrera	no
Mr. Ghassemi	no
Ms. Dillingham	no
Ms. Bearden	yes
Mr. Tso	yes
Mr. Green	no

The motion failed.

Action: Ms. Bearden moved that the following language be added to § 109 of 20.2.90 NMAC, “The Department may issue a warning, without penalty, as a field citation for the first offense.” Ms. Dillingham seconded.

Roll Call Vote

Mr. Ghassemi	yes
Ms. Herrera	no
Ms. Dillingham	yes
Ms. Bearden	yes
Mr. Tso	no
Mr. Green	yes

The motion passed.

Action: Ms. Bearden moved that the following language amend paragraph (A) § 110 of 20.2.90 NMAC, “. . .The request must be made in writing to the Secretary within fifteen working days after the field citation, with completed assessment of penalty, if any, has been issued and shall include a copy of the field citation.” Mr. Ghassemi seconded.

Roll Call Vote

Ms. Bearden	yes
Ms. Herrera	yes
Mr. Tso	no
Mr. Ghassemi	yes
Ms. Dillingham	yes
Mr. Green	yes

The motion passed.

Action: Mr. Green moved that the following language amend § 111, 20.2.90.111 NMAC, “Penalties. First time violators of the field citation who demonstrate cooperation in compliance may be fined up to one hundred dollars per violation. First time violators of the field citation rule who fail to demonstrate cooperation in compliance may be fined up to five hundred dollars per violation. Multiple time violators of the field citation rule who demonstrate cooperation in compliance may be fined up to five hundred dollars per violation. Multiple time violators of the field citation rule who fail to demonstrate cooperation in compliance may be fined up to one thousand dollars per violation. Provided, however, that penalties assessed in a field citation shall not exceed one thousand dollars per day per violation or a maximum of fifteen thousand dollars. In determining the amount of penalty to be assessed pursuant to this section, the person issuing the field citation shall take into account the seriousness of the violation, any good-faith effort to comply with the applicable requirements

and other relevant factors.” Mr. Ghassemi seconded.

Roll Call Vote

Mr. Tso	no
Mr. Ghassemi	yes
Ms. Dillingham	yes
Ms. Bearden	yes
Ms. Herrera	no
Mr. Green	yes

The motion passed.

Action: Ms. Dillingham moved the adoption of 20.2.90 NMAC, Field Citations, as amended by the Board. Ms. Bearden seconded.

Roll Call Vote

Ms. Dillingham	yes
Ms. Bearden	yes
Mr. Ghassemi	yes
Ms. Herrera	no
Mr. Tso	no
Mr. Green	yes

The motion passed.

Prior to the commencement of the Board’s agenda Item 10 hearing, Mr. Tso excused himself from participation in this hearing citing the appearance of a conflict of interest because his daughter works for the Hazardous Waste Bureau.

Item 10. Hearing and possible decision in re: EIB 08-12 (R), Hazardous Waste Rule Amendments 20.4.1 NMAC. Chuck Noble, NMED/OGC; John Keiling, NMED/HWB. Soren Peters Hearing Officer

At 3:05 p.m. the Chair announced that the hearing in the above-referenced matter would commence and that he would act as Hearing Officer for this matter. Kathy Townsend Court Reporters transcribed the hearing. All Notices of Intent to Present Technical Testimony were filed and are available for review, as well as public comment correspondence and the hearing transcript in the office of the Environmental Board Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Room N2150, Santa Fe, New Mexico 87505.

The hearing concluded and the meeting resumed.

The Board discussed at length the proposed amendments requested by the Bureau. There was considerable discussion regarding tabling this matter and making a decision at the November 3, 2008 meeting. Additionally, there was discussion relating to time-line issues and receipt of documents problems as well as discussion about reopening the hearing record to allow the introduction of additional information in this case.

Action: Mr. Ghassemi moved that the Board reopen the hearing record in EIB 08-12 (R), Hazardous Waste Rule Amendments. Mr. Ghassemi explained that the reason for his motion was to have an opportunity to ask several clarifying questions of the Department’s representatives. Ms. Dillingham seconded. The motion passed unanimously.

Mr. Green asked whether the Department had any objections to reopening the record. Mr. Noble indicated that there were no objections and further that a tape recording of the reopened hearing was acceptable to the Department.

Mr. Ghassemi initiated discussion with the Department staff specifically relating to 20.4.1.1003 NMAC. There was a brief discussion regarding the impact and possible ramifications of the amendments that are being requested.

The Chair closed the hearing record.

Action: Ms. Herrera move to accept the regulations proposed by the Department in EIB 08-12 (R), Hazardous Waste Rule Amendments to 20.4.1 NMAC. Ms. Dillingham seconded.

Roll Call Vote

Mr. Ghassemi	abstained
Ms. Bearden	yes
Ms. Herrera	yes
Ms. Dillingham	yes
Mr. Green	yes

The motion passed.

Item 11. Other business

None

Item 12. Next meeting: 10:00 a.m. November 3, 2008, State Capitol Room 317.

Item 13. Adjournment

Action: Ms. Bearden moved to adjourn the meeting. Ms. Dillingham seconded. The motion passed unanimously.

Gregory Green, Chair