

State of New Mexico
Environmental Improvement Board

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Gary E. Johnson
Governor

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD
MINUTES OF THE REGULAR MEETING OF
November 9, 2000

Chairperson Jimi Gadzia called the regular meeting of the Environmental Improvement Board to order at approximately 9:35 a.m., at the Albuquerque Convention Center, East Complex Dona Ana Room, 401 2nd Street, NW, Albuquerque, New Mexico.

Members Present on November 9, 2000

Jimi Gadzia, Chair
David Salopek, Secretary
Laurence H. Lattman, Member
Kevin Sweazea, Member

Members Present on December 8, 2000

Jimi Gadzia, Chair
Dr. Hilary Noskin, Vice Chair
Laurence H. Lattman, Member
Kevin Sweazea, Member

others present on November 9, 2000:

Patrick Simpson	EIB Attorney	Stanley Fitch	NMED/Radiation and Licensing
Tamella Lakes	EIB Administrator	Paul Ripley	Ethicon Endo Surgery
Eric Ames	NMED/OGC	Salley Cudney	Environmental Services
Louis Rose	Montgomery & Andrews	Steve Hattenbach	NMED/OGC
Linda Taylor	NMCVA	Gale Henslee	XCEL Energy
Hugh W. Church	American Lung Association	Edward V. Pineda	Resident of Rio Rancho
Deborah Seligman	NM Oil and Gas Association	Mike Addy	Albuquerque Vault Company
David Searle	Marathon Oil Company	Rita Trujillo	NMED/AQB
Dave Pavlich	Giant Industries	Gail Cooke	NMED/AQB
Erik Aaboe	NMED/AQB	Lany Weaver	NMED/AQB
Eugene C. Bassett	E.C. Bassett Curst	Kim Kirby	NMED/AQB
Amy Rice	Corrales Resident for Clean Air & Water	Cecilia Williams	NMED/Commun. Services Bur.
Paul Wade	CTS	Sandra Ely	NMED/AQB
Arun Kanchan	Trinity Consultants	Jennifer Taylor	NMPIRY
Leland Maez	Los Alamos National Lab.	John Bartlit	NM Citizens for Clean Air & Water
Bill Floyd	NMED/Radiation & Licensing	Bruce Nicholson	Air Quality Services

others present on December 8, 2000:

Patrick Simpson	EIB Attorney	Linda Taylor	NMCVA
Tamella Lakes	EIB Administrator	Gail Cooke	NMED/AQB
Eric Ames	NMED/OGC	John Bartlit	NM Citizens for Clean Air & Water
Louis Rose	Montgomery & Andrews	Edward V. Pineda	CRCAW
Hugh W. Church	American Lung Association	R.C. Cudney	ESI
Deborah Seligman	NM Oil and Gas Association		

Item 1 - Approval of the Agenda

Mr. Sweazea moved to approve the agenda. Mr. Salopek seconded the motion. The motion passed unanimously.

Item 2 - Approval of the Minutes of the October 13, 2000, meeting.

Mr. Salopek moved to approve the minutes of the October 13, 2000, meeting as amended. Mr. Sweazea seconded the motion. The motion passed unanimously.

Item 3 – The Environment Department’s Second Request for a Hearing to amend 20.7.30 NMAC – Liquid Waste Treatment and Disposal Fees, Environment Department, Petitioner.

Ms. Cecilia Williams, Chief, Community Services Bureau, requested a revised hearing date to amend the Liquid Waste Treatment and Disposal Fee regulations. The deadline was missed for publishing the hearing notice in the New Mexico Register. Ms. Williams stated that nothing in the Department’s letter to the Board has changed.

Ms. Williams stated that a few non-substantive changes had been made to the regulations since the last request for hearing. The first change was to return to the original numbering system. The Bureau received verbal permission from the State Records Center for this change. Language was taken from the existing technical regulations and added to the objective in 20.7.11.6 NMAC, a definition for “notice of non-approval” was added, and the last non-substantive change was to add a periodic review in 20.7.11.15 NMAC.

The Department requested a revised hearing date be set for the Board’s regular February 9, 2001 meeting.

Mr. Sweazea moved to set a hearing date for the Board’s February 9, 2001 meeting. Mr. Salopek seconded the motion. The motion passed unanimously.

Item 4 – The Environment Department’s Request for a Hearing to consider adoption of a modification to air Quality Regulations 20 NMAC 2.72 – Construction Permits and 20 NMAC 2.75 – Construction Permit Fees.

Ms. Rita Trujillo, Air Quality Bureau, stated that the Board first adopted the permit fee rule in 1989. At that time the fees were not enough to run the program. In the hearing the Bureau plans to give testimony regarding budgetary requirements for changing the permit fee regulations. The Bureau is also proposing to repeal the old regulations and replace it with the new regulations. This needs to be done because the new regulations

are completely different.

Ms. Trujillo stated that the revised regulation is complexity based, a more complex permitting action will cost more than a less complex action. The Bureau feels that the regulation is fair and unambiguous. It also includes annual fees and a filing fee for notices of intent. Included in the proposal are six different options for the Board to consider. The Bureau worked with a group of stakeholders for over a year, but there are still some areas where there is disagreement. The Bureau would like to request that a hearing be held in conjunction with Board's regular January meeting.

Ms. Trujillo stated that the Bureau would also like to hold a hearing on the same day to revise 20 NMAC 2.72 – Construction Permits to incorporate expedited review.

Mr. Sweazea moved to set a hearing date for 20 NMAC 2.72 and 20 NMAC 2.75 – Construction Permit Fees amendments for the Board's January 12, 2001 meeting. Dr. Lattman seconded the motion. The motion passed unanimously.

Mr. Edward Pineda strongly recommended that the Board and the Department get the notice and information out to the public on the upcoming hearing.

Mr. Patrick Simpson, Counsel for the Board, stated that notice of Board hearings are published in a statewide newspaper and posted on the Environment Department web site. Environmental Improvement Board meetings and hearings posted on the web site provides an address and telephone number that an individual can use to request a copy of the paperwork that will be involved in the meetings and hearings. In addition, the Department maintains an interested person's list. Copies of all agenda's, that include the date, time and place of the meetings are sent out to that list every month. Mr. Simpson stated that Mr. Pineda could give the Board Administrator his name and address if he was interested in being on that notification list.

Mr. Pineda stated that the Department's current notification system is marginally expectable, but not fully equitable. The regular citizen, if he or she did not know someone that knew about a meeting or hearing, would not be informed. This puts the average citizen at a disadvantage.

Item 5 – The Environment Department's Request for a Hearing for Consideration of Proposed Regulation 20.3.16 NMAC – Fees for Licenses of Radioactive materials.

Mr. Bill Floyd, Program Manager for the New Mexico Radiation Protection program, stated that a bill was introduced at the last Legislative session to establish a dedicated fund under the radiation protection act that will support the radiation protection program. New Mexico is the only state that does not currently have a fund to support this program.

The Radiation Technical Advisory Council has met seven times in the past year to get input from the public. Comments were taken from the public as well as the regulated

community. As a result of those comments the fees were reduced from what was originally proposed by the Department. Mr. Floyd requested a hearing be held in conjunction with the Board's regular March or April meeting.

Mr. Simpson stated that there might be some controversy regarding the proposed fee increase.

Ms. Williams stated that in the Secretary's letter to the Board the Department stated that a full day would be needed for the hearing. The regulations are new; this is the first time that the fees will be collected.

Mr. Sweazea moved to set a hearing date for the Radiation Protection Regulations. The hearing will immediately follow the Board's regular March 9, 2001 meeting and an entire day will be set aside for the hearing. Mr. Salopek seconded the motion. The motion passed unanimously.

Item 7 – Other Business.

Mr. Edward Albert Pineda, Citizen of Rio Rancho, stated that the citizens are put in a non-equitable position in relation to national and local authorities. In some cases the procedure and the system that is now in effect gives unjustified and socially detrimental privileges to industry and big corporations. The system needs to be changed.

Item 8 – Next Meeting.

Mr. Sweazea moved to set the Board's next meeting for January 12, 2001 at 9:30 a.m. in Albuquerque, New Mexico. Dr. Lattman seconded the motion. The motion passed unanimously.

Item 6 – Hearing to amend 20 NMAC 2.72 – Construction Permits, 2.74 – Permits, and 2.79 –Permits Nonattainment Areas, Industry Working Group and Environment Department, Petitioners.

Mr. Salopek moved to appoint Mr. Kevin Sweazea as Hearing Officer. Dr. Lattman seconded the motion. The motion passed unanimously.

The hearing to amend 20 NMAC 2.72, Section 206.A and proposed Section 206.B will continue on December 8, 2000 at 9:30 a.m. in Albuquerque, New Mexico. The Board directed the Administrator to publish the meeting and hearing notice as soon as a room is scheduled.

Mr. Sweazea moved to treat the Notice of Intent filed by CVA as a petition for regulatory change and direct the Hearing Officer to work with the parties to set a date when the other two petitions can be heard at a public hearing. Dr. Lattman seconded the motion. The motion passed unanimously.

Minutes of the continuation of the November 9, 2000 meeting.

Dr. Noskin stated that she has faith in the ability of the public to understand a lot of

things, but the groups that Ms. Taylor represents also have valid concerns regarding public notice. The Department does a very good job for the majority of the regulation. Adding in written notice by mail and e-mail as a voluntary effort shows determination on the part of the Department to try to get more notice to more people. The Department should implement a pilot project, move the ads and over a period of time see if they did receive more information and comment as a result. From an administrative standpoint the Department should see how much more a second ad would cost, the regulations do not limit the Department to having just one advertisement.

Dr. Noskin stated that she is hesitant to regulate this requirement, it should be left up to the discretion of the Department. The Department wants to do a good job and this is something that could be handled through discussion.

Dr. Noskin stated that the summary of estimated emissions and the ambient impact should be included in the notice. The preliminary intent should also be included. This information could be confusing to the general public, but sometimes numbers do catch more interest than just words, and the additional information would cause some people to call the Department for an explanation or to request more information.

Dr. Noskin stated that Mr. John Bartlit should be asking the Legislature for more money for the Department. Dr. Noskin does not believe that 180 gave the Department much more time to process permits than 90 days, and the Department is using the time more wisely. Giving the Department 120 days would not change the process, instead the Department would benefit more by an increase in staffing and better pay.

Mr. Sweazea stated that the evidence presented indicated that the applicant's notice is very extensive and will spark the most interest from the public. The first notice, combined with the second, in the event anyone indicates an interest, gives the people more time to deal with the issue on an educated basis.

Mr. Sweazea moved to approve 206.A, 1 through 7 with the change to 206.A.3 to include the language "a summary of estimated emissions and ambient impact" and to include the words "preliminary intent to issue" and to approve the proposed section 206.B. Dr. Noskin seconded the motion.

Chairman Gadzia asked the Department if there is any way to track the changes that are being made to the regulations. Chairman Gadzia is concerned that the public may not be getting enough information in the notice in the first 30 days.

Mr. Ames stated that the Department would track the changes and report back to the Board at a later meeting.

VOTE

Jimi Gadzia	Yes
Hilary Noskin	Yes
Kevin Sweazea	Yes
Laurence Lattman	Absent
David Salopek	Absent

Dr. Lattman left the meeting at 4:05 p.m.

The vote passed.

The meeting adjourned at 5:22 p.m.

Jimi Gadzia, Chair

David Salopek, Secretary