

Approved October 4, 2005

ENVIRONMENTAL IMPROVEMENT BOARD

MINUTES OF THE September 6th, 2005 MEETING

The New Mexico Environmental Improvement Board (EIB) Meeting was held on September 6, 2005, starting at 9:30 am at the New Mexico State Capitol Building Room 317 in Santa Fe, New Mexico.

Item #1: Roll Call

Members Present: Ms. Gay Dillingham, Chair
Mr. Clifford Stroud, Vice Chair
Mr. Ken Marsh, Member
Ms. Dolores Herrera, Member (9:50 am)
Mr. Harold Tso, Member
Mr. Gregory Green, Secretary

Members Absent: Mr. Soren Peters, Member

Others Present:

Stephen Fox, Citizen	Barbara Claire, EIB Administrator
Link Summers, public	Leslie Barnhart, NMED
Sally Worthington, NMED	Felicia Orth, NMED
Geno Zamora, Gallagher & Kennedy	Tannis Fox, NMED, OGC
Richard T. Murray, public	Stuart Riley, public
Mary Day, NMED	Douglas Meiklejohn, NM Environmental Law Center
Diana Thatcher, public	Mary Smith, EIB Counsel
Lauren Charlap-Hyman, public	

Item #2: Approval of Agenda

ACTION: Member Green made a motion to approve the Agenda as presented. Member Tso seconded. Motion carried unanimously.

Item #3: Public Comment Period

- Link Summers (public citizen) / Liquid Waste Regulations - Mr. Summers gave the Board his comments and observations on the Liquid Waste Rules that came into effect on September 1, 2005. Mr. Summers suggested several corrections to the regulations such as Transfer of Property of the liquid waste system, voluntary and involuntary transfers; the rule is absolute on every transfer. An issue that was not delineated in the new Regulations is how long inspections are good for (90 days); after a seller lists a property for sale and gets the inspection done, problems

arise and then it becomes an awkward timeframe for problematic transactions. The Regulations require an inspector to inform the Department that an owner has 15 days to come into compliance. The inspection form governs the issue of risers, but the language does not address retrofitting all the systems that need or shall or may be installed - not a modification, not a repair, the Regulations do not cover what a riser is. The inspection form states that a holding tank must be watertight and further says each has to be water tested; this could be changed to include a second opinion to avoid abuse of the current requirement. The language in the Appeals Provision says an appeal request must be in writing to the Secretary within 15 working days after notice of the Department's action has been issued, which does not allow sufficient response time. With regard to Transfer of property, the new regulations require the permit be amended to show the new owner of treatment unit in place, but does not require holding tank operators to have a pumping contract in place. Also, effluent filter maintenance is not addressed in the regulations and several definitions, including the definition of 'bedroom' need to be more specifically defined, including the words: shall, may, and might.

- Richard Murray, public citizen / Scientific Summary of Aspartame Toxicity – Mr. Murray is a medical layman who has written a scientific summary on aspartame toxicity and serious accumulative toxins in the body. Mr. Murray stated that the conclusive lab test results by the Ramazzini research laboratory in Italy proving the toxicity of Aspartame will be presented in two weeks at an international conference with public media coverage. It is Mr. Murray's intent to publicize a serious problem that has been covered and it is his contention that New Mexico is at the forefront of issues of toxicity that affect the public at large.
- Stuart Riley, public citizen, NM Democratic Friends, expressed his concerns about the toxicity of Aspartame and about various environmental issues in New Mexico including water quality in Bernalillo County, Rio Grande Water and the chemical and biological contaminants affecting them. He also stated that the health of Valle Vidal and Otero Mesa falls under critical environmental issues, where methane gas drilling is destroying the aquifer and watershed. Chair Dillingham advised Mr. Riley to speak to the Bureau scientists at NMED to express his concerns as well.

Item #4 Approval of the August 2nd, 2005 meeting minutes

ACTION: Member Green made a motion to approve the August 2nd, 2005 minutes as presented. Member Tso seconded. Vice Chair Stroud abstained. Motion carried.

Item #5: Request for a hearing in the Matter of Proposed Amendments to 20.2.70 NMAC, Air Quality Rules, Operating Permits *EIB 05-12 (R)* (Tannis Fox, NMED, OGC, 5 minutes)

Ms. Fox presented the matter to the Board, estimating the hearing time for counsel's testimony would be one day; the petition is a result of a consensus agreement and does not have a conformity deadline attached to it. The Board set a three-day hearing for March 7th through the 9th, 2006; Member Soren Peters will sit as Hearing Officer.

ACTION: **Member Herrera made a motion to grant a hearing in the matter EIB 05-12 on March 7, 8 and 9, 2006. Member Green seconded. Motion carried unanimously.**

Item #6 **Request for a hearing in the Matter of Proposed Amendments to 7.6.2 NMAC, Food Service and Food Processing, Proposed Ban on Aspartame. EIB 05-11 (R) (Stephen Fox, 5 minutes)**

Mr. Stephen Fox presented his petition to the Board to request a hearing in the matter. Lauren Charlap-Hyman spoke to the Board about the adverse health effects of aspartame she has seen with young children and spoke in support of the schools addressing this issue. The Board further discussed the matter, and Member Green made a motion.

ACTION: **Member Marsh made a motion to not grant a hearing in the matter EIB 05-11 on the basis of the lack of Board Authority to rule on it. Member Green seconded. The Board voted 3 yea, 3 no. Motion failed.**

Ms. Gay Dillingham, Chair	Yes
Mr. Clifford Stroud, Vice Chair	No
Mr. Ken Marsh, Member	Yes
Ms. Dolores Herrera, Member	No
Mr. Harold Tso, Member	No
Mr. Gregory Green, Secretary	Yes

After some discussion and deliberation, the Board decided to discuss publicly a confidential memo from the Board Counsel Mary Smith dated September 2, 2005.

ACTION: **Vice Chair Stroud made an motion to waive the client attorney privilege to discuss in public the Board Counsel's confidential memo to the Board dated September 2, 2005. Member Herrera seconded. Motion carried unanimously.**

Vice Chair later amended his motion to specifically waive the attorney-client privilege only to the two and one-quarter pages of the memorandum written by Counsel Mary Smith dated September 2nd at the request of Chair Dillingham. Vice Chair requested that copies of the memorandum be made available to the Petitioner and the department and any other interested party.

Chair Dillingham proposed the Board invite public comment on the Board's legal authority at the October 4th meeting. Counsel Mary Smith advised the comments be limited to legal argument on the authority of the EIB to rule on the matter and should include a list of statutory authority to hold a rules hearing. Vice Chair Stroud asked

Counsel Tannis Fox to request the Department be available to Mr. Fox to advise in the proper placement of the rule within the regulations. Chair Dillingham invited Mr. Fox to return with the same petition on October 4th as the Board will make a decision within the 60-day period. The Board will make a decision based on written submittals of citation legal authority that either support or do not support the Board's legal authority (only) and sent to the Board administrator. Email submittals will not be accepted as the format is not presently in the EIB rule procedures. Comments will be limited to 30 minutes total. Chair Dillingham and Vice Chair Stroud will identify and determine the time allotted to each concerned group. A public notice will be sent out to all interested persons and to the EIB mailing list 10 days in advance of the next meeting.

Item #7: Hearing and possible decision in the matter of EIB Rulemaking Regulations: Proposed Amendments to 20.1.1 and 20.1.2 NMAC and to Consider Adoption of a New Part. EIB 05-10 (R).

The hearing commenced at 12:15 pm with Vice Chair Stroud as Hearing Officer. NMED Counsel Tannis Fox presented testimony on 20.1.1 and 20.1.2 NMAC and the proposed new part; Felicia Orth of the Department was a witness. Douglas Meiklejohn of the New Mexico Environmental Law Center also presented testimony on 20.1.1 and 20.1.2 NMAC. The Board will deliberate and make a decision at the October 4th meeting. The Board administrator will send an electronic file of the transcript to the Board and a hard copy to Member Tso as soon as it is available. The record was closed at 5:20 pm.

Item #8 Other Business

- Environmental Justice Presentation - Member Herrera requested that the presentation, originally scheduled for October 4th, be postponed. The Board concurred that the presentation be set for a future date.
- Member Tso agreed to sit as Hearing Officer in Member Herrera's stead in the matter of EIB 05-08 (R) at the October 4th meeting.

Item #9: Next Meeting is October 4, 2005

Item #10: Adjournment

As there was no other business before the Board, the meeting was adjourned.

ACTION: Member Green made a motion to adjourn. Member Herrera seconded. Motion carried unanimously.

The meeting adjourned at 5:35 pm.



Gay Dillingham, EIB Chair