State of New Mexico
ENVIRONMENTAL IMPROVEMENT BOARD
Harold Runnels Building, N-2150
1190 St. Francis Drive, P. O. Box 5469
Santa Fe, New Mexico 87502

Environmental Improvement Board Meeting
July 11-12, 2011
9:00 a.m.
Room 307, State Capitol Building
490 Old Santa Fe Trail
Santa Fe, New Mexico 87501

Members Present: Deborah Peacock, Chair
John Volkerding, Vice-Chair
Elizabeth Ryan, Secretary
Jeffrey Bryce, Member (July 11, 2011 only)
Greg Fulfer, Member
Timothy Morrow, Member (July 11, 2011 only)
James Casciano, Member (July 11, 2011 only)

Others Present: Stephen Vigil, Board Counsel
Felicia Orth, Hearing Officer and Acting Administrator
Laurie Leibowitz, OGC (July 11, 2011)
Sally Worthington, Hearing Clerk (July 12, 2011)
Cheryl Arreguin, Court Reporter
Others-See attached sign-in sheets

Item 1. Roll Call

Roll was called; a quorum was present.

Item 2. How Notice Requirements Were Met

Ms. Orth described how notice requirements were met for the meeting consistent with the Board's Open Meetings Act Resolution.

Item 3. Approval of Agenda

Action: Ms. Ryan moved Board approval of the agenda. Mr. Morrow seconded the motion. The motion passed unanimously.

Item 4. Public Comment Unrelated to Agenda Items

Action: None.

Item 5. **Approval of meeting minutes, June 1-2, 2011.**

Action: Mr. Casciano moved Board approval of the meeting minutes as presented. Ms Ryan seconded the motion. The motion passed unanimously.

Item 6. **Presentation by Petroleum Storage Tank Bureau with overview of Bureau programs, responsibility and authority.**

Action: Jennifer Pruett of the Petroleum Storage Tank Bureau presented an overview of Bureau programs, responsibility and authority, and answered questions from Board members.

Item 7. **Request for Hearing in EIB 11-13 (R): Proposed Amendments to the Petroleum Storage Tank Regulations, 20.5.1, 20.5.2, 20.5.4, 20.5.5, 20.5.6, 20.5.7, 20.5.10, 20.5.12, 20.5.13, 20.5.14, 20.5.16, 20.5.18 NMAC proposed new Part 20.5.19, Delivery Prohibition. Jennifer Pruett, NMED/PSTB; Susan George and Leigh Brunner, Attorneys, Institute of Public Law.**

Action: Ms. George and Ms. Brunner presented reasons for the request for hearing and answered questions from Board.

Mr. Bryce moved that the Board schedule a hearing on the proposed amendments to the Petroleum Storage Tank Regulations and proposed new Part 20.5.19 for October 3, 2011. Mr. Casciano seconded the motion. The motion passed unanimously.

Board discussed length of hearing and selection of a Hearing Officer for the hearing. Ms. Ryan moved to appoint herself as Hearing Officer for this matter on October 3, 2011. Mr. Volkerding seconded the motion. The motion passed unanimously.

Item 8. **Hearing and possible deliberations in EIB 11-03 (R), Liquid Waste Regulations re: licensure (Section 904). Andrew Knight, NMED/OGC; Dennis McQuillan, NMED/FOB; Link Summers; Ralph Baker Dotson and Eugene Bassett, Professional Onsite Wastewater Reuse Association of New Mexico; Jace Ensor, New Mexico Onsite Wastewater Association.**

Action: The hearing and Board deliberations in EIB 11-03 (R) were recorded and transcribed by Cheryl Arreguin of Kathy Townsend Court Reporters. The first part of the hearing convened in Santa Fe at approximately 9:40 a.m. and recessed at approximately 5:50 p.m. The hearing was set to

and recessed at approximately 5:50 p.m. The hearing was set to reconvene in Santa Fe at 9:00 a.m. on July 12, 2011. The transcript is available in the office of the Board Administrator.

Action: **July 12, 2011**

Mr. Volkerding moved Board enter into executive session to discuss Items 12.a. through 12.g. to discuss pending litigation first thing Tuesday morning to accommodate individuals affected by the early morning traffic jam north of Santa Fe. Ms. Ryan seconded the motion.

Stephen Vigil, Attorney for the Board, took a roll call vote of the Board and the motion passed unanimously. The Board went into executive session at 9:10 a.m.

Item 12. **Executive session to discuss pending litigation. Stephen Vigil, NMAGO.**

a.	Helena Chemical Co. v. NMED and N.M. Environmental Improvement Board	COURT OF APPEALS No. 31,037 Appeal of EIB 10-02(A); 10-11(A), Air Quality Prmit Adjudication.
b.	City of Farmington and Farmington Electric Utility System v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 30,897 Appeal of EIB 10-04(R): Cap and Trade Provisions.
	N.M. Oil and Gas Association v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 30,898 Appeal of EIB 10-04(R): Cap and Trade Provisions.
	Tri-State Generation and Transmission Association, Inc. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 30,899 Appeal of EIB 10-04(R): Cap and Trade Provisions.

	Southwestern Public Service Company v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 30,901 Appeal of EIB 10-04(R): Cap and Trade Provisions.
	Public Service Co. Of N.M. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 30,902 Appeal of EIB 10-04(R): Cap and Trade Provisions.
	Independent Petroleum Association of N.M. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 30,907 Appeal of EIB 10-04(R): Cap and Trade Provisions.
	El Paso Electric Co. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 30,908 Appeal of EIB 10-04(R): Cap and Trade Provisions.
c.	N.M. Oil & Gas Ass'n. et al. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 30,952 Appeal of EIB 10-09(R): Greenhouse Gas Reporting
	Tri-State Generation and Transmission Association, Inc. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 30,953 Appeal of EIB 10-09(R): Greenhouse Gas Reporting

	Independent Petroleum Association of N.M. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 30,954 Appeal of EIB 10-09(R): Greenhouse Gas Reporting
d.	City of Farmington and Farmington Electric Utility System v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 31,015 Appeal of EIB 08-19(R): New Energy Economy
	Independent Petroleum Association of N.M. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 31,016 Appeal of EIB 08-19(R): New Energy Economy
	N.M. Oil & Gas Ass'n, et al. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 31,017 Appeal of EIB 08-19(R): New Energy Economy
	El Paso Electric Co. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 31,018 Appeal of EIB 08-19(R): New Energy Economy
	Tri-State Generation and Transmission Association, Inc. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 31,019 Appeal of EIB 08-19(R): New Energy Economy

	Public Service Co. Of N.M. v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 31,020 Appeal of EIB 08-19(R): New Energy Economy
	Southwestern Public Service Company v. N.M. Environmental Improvement Board	COURT OF APPEALS No. 31,021 Appeal of EIB 08-19(R): New Energy Economy
e.	New Energy Economy, Inc. v. Judge Linda M. Vanzi; Public Service Co. of N.M. and N.M. Environmental Improvement Board, real parties In interest	Verified Emergency Petition for Writ of Superintending Control or Other Appropriate Writ (Sup. Ct. 33,074) Relates to COURT OF APPEALS Nos. 31,020, 30,902 and 31,191
	Amigos Bravos, League of Women Voters of NM and Center of South-west Culture vs. Judge Linda M. Vanzi; Public Service Co. of N.M. and N.M. Environmental Improvement Board, real parties In interest	Verified Emergency Petition for Writ of Superintending Control or Other Appropriate Writ Relates to COURT OF APPEALS No. 31,020
f.	State (ex rel) Hanosh v. N.M. Environmental Improvement Board	THIRD JUDICIAL DISTRICT D-0307-CV-200702708 Clean Car Rules

g. Mediation Report: Proposed settlement. Re: Items b., c., and d. above.

Action: The Board came back into open session at 10:00 a.m.

Roll Call was taken for the Board meeting on July 12, 2011 and to approve the Agenda as revised – members present were:

Deborah Peacock, Chair
John Volkerding, Vice-Chair
Elizabeth Ryan, Secretary
Greg Fulfer, Member

Mr. Fulfer moved that Agenda Item 12 be moved up before continuation of Item 8 because of the traffic jam north of Santa Fe. Mr. Volkerding seconded the motion. The motion passed unanimously.

Mr. Vigil noted that the time was appropriate for action on Items discussed in executive session. The Board had been presented with a report on mediation on Items b., c., and d., out of which came a proposed joint motion for 180-day remand to the Board and a stay of the current appellate proceedings.

Mr. Fulfer moved the Board approve the settlement agreement to remand the matters referenced in Items b., c., and d back to the Board and also to give Mr. Vigil authority to sign all of the necessary pleadings – all 17. Member Ryan seconded the motion. The motion passed unanimously.

Item 8. **Hearing and possible deliberations in EIB 11-03 (R), Liquid Waste Regulations re: licensure (Section 904). Andrew Knight, NMED/OGC; Dennis McQuillan, NMED/FOB; Link Summers; Ralph Baker Dotson and Eugene Bassett, Professional Onsite Wastewater Reuse Association of New Mexico; Jace Ensor, New Mexico Onsite Wastewater Association.**

Action: The hearing and Board deliberations in EIB 11-03 (R) were recorded and transcribed by Cheryl Arreguin of Kathy Townsend Court Reporters. The hearing reconvened in Santa Fe at approximately 10 a.m. and recessed at 3 p.m. The transcript is available in the office of the Board Administrator.

Ms. Ryan moved the Board accept Mr. Summers' exhibits, notwithstanding timeliness and other issues identified by the Hearing Officer. Mr. Fulfer seconded the motion. The motion passed unanimously.

Item 9. **Motion to Dismiss in EIB 11-08 (R), Liquid Waste Fee Regulations; argument, discussion and deliberation. Carol Parker and Ryan Flynn, NMED/OGC; Link Summers. Stephen Vigil, NMAGO.**

Action: Ms. Parker presented NMED's position and reasons for granting the motion. Ms. Parker answered questions from the Board. Mr. Summers presented his position and answered questions from the Board. Ms. Parker responded to Mr. Summers presentation.

Mr. Fulfer moved to deny the Motion to Dismiss in EIB 11-08 (R) in its entirety. This motion was not seconded or voted on. The Board discussed the Motion to Dismiss further.

Ms. Ryan moved the Board grant the Motion to Dismiss in part regarding Subsection D referring to the penalty section and to deny all other parts of the Motion to Dismiss. Mr. Volkerding seconded the motion. The motion passed unanimously.

Ms. Orth discussed with the Board how testimony would be presented for the hearing in August, and the Board and parties agreed that a similar procedural order would be issued as in EIB 11-03.

Item 10. **Consideration of postponement of September Hearing in EIB 11-09 (R) and EIB 11-12 (R), Liquid Waste Disposal and Treatment Regulations, 20.7.3 NMAC. Chair Peacock and the Board.**

Action: The Board discussed postponement of the September hearing planned in EIB 11-09 (R) and EIB 11-12 (R) with Mr. McQuillan from the NMED, Mr. Summers, and other parties.

Ms. Ryan moved the Board postpone the hearings from September 1-3, 2011 in EIB 11-09 (R) and EIB 11-12 (R) to Spring 2012 to allow more time for the parties and the department to work together. Mr. Volkerding seconded the motion. The motion passed unanimously.

Item 11. **Request for Hearing in EIB 11-14 (R): Proposed Amendments to the Board's Rulemaking Procedures Regulations, 20.1.1 NMAC. Felicia Orth, Hearing Officer.**

Action: Ms. Orth presented reasons for and contents of proposed amendments to the Board's rulemaking procedures regulations.

Ms. Ryan moved the Board grant the request for hearing. Mr. Volkerding seconded the motion. The motion passed unanimously.

The Board set the hearing for October 3, 2011 with Ms. Ryan acting as the Hearing Officer.

Item 13. **Other business.**

Action: None.

Item 14. **Board Member Comments and Questions.**

Actions: None.

Item 15. **Next meeting—August 1, 2011.**

Coming up:

a. Hearing on August 1-2 in EIB 11-04 (R), Air Quality Regulations re: NSPS, NESHAPS and MACT updates; and EIB 11-07 (R), SIP for Infrastructure of Lead NAAQ; and EIB 11-08, Liquid Waste Fees.
b. Hearings on September 2 in EIB 11-09 (R), EIB 11-10 (R), EIB 11-11 (R), and EIB 11-12 (R), Liquid Waste Disposal and Treatment Regulations, 20.7.3.

Item 16. **Adjournment.**

Ms. Peacock moved Board to adjourn. Mr. Fulfer seconded the motion. The motion passed unanimously.

Board Secretary