

Approved August 2, 2005

**ENVIRONMENTAL IMPROVEMENT BOARD
MINUTES OF THE June 7, 2005 MEETING**

The New Mexico Environmental Improvement Board (EIB) Meeting was held on June 7, 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: Mr. Clifford Stroud, Vice Chair
Mr. Ken Marsh, Member
Mr. Soren Peters, Member
Ms. Dolores Herrera, Member
Mr. Gregory Green, Secretary

Members Absent: Ms. Gay Dillingham, Chair
Mr. Harold Tso, Member

Others Present:

Mary Smith, Counsel (AGO)	John Parker (NMED, RCB)
Stephen Fox	Leslie Barnhart (NMED OGC)
Richard T. Murray	Leland Lehrman
Grant La Farge, MD	Ken Folley, MD
Mary Sjoberg	Karen Ulehla
Cathy Smith (ASRT)	Hugh Church
David Harwell (ASRT)	Andy Berger (NMED AQB)
Anthony Trujillo (Gallagher & Kennedy)	Jim Perry (NMED, FOD)
Diana Thatcher	Kathryn S. Becker (NMED OGC)
Jennifer Hower (NMED OGC)	Adrian Vega (NMED OGC)
Pat Nelson	Tracy Hughes (NMED OGC)
Jocelyn M. Towes	Amanda Wang (NMED OGC)
Tania Soussan (ABQ Journal)	David Stupin
Deborah Selighman	Louis Rose (Montgomery & Andrews)
B.J. Brock	Stanley Fitch (NMED RCB)
Stephen Sanchez	Walter Medina (NMED RCB)
Christine Pollard (RTAC)	

Item #2: Approval of Agenda

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

Item #3: Approval of the May 3, 2005 meeting minutes

ACTION: Mr. Marsh made a motion to approve the Minutes as amended. Mr. Green seconded. Motion carried unanimously.

The word 'Company' was changed to 'Association' on line 7, page 4.

Item #4: Public Comment Period – 9:35 am – 10:10 am

Co Chair Stoud reviewed the meeting sign-in sheet and interviewed the members of the public who had requested to make a public comment at this meeting. He then called upon Mr. Stephen Fox to make his presentation to the EIB on the Dangers of Aspartame, an artificial sweetener. The presentation was videotaped by the media. Mr. Fox outlined the issue and requested that the EIB apply the state statues, Chapter 25, Article 2, which he stated had never been applied. Co Chair Stroud responded to Mr. Fox's statement by reiterating what is within the EIB's authority, that it is not a regulatory body, but limited to either adjudicatory or rulemaking processes; if Mr. Fox is requesting the EIB to hear on a new rule, he would need to petition the Board for a rules hearing, with the newly proposed rule. The EIB can pass rules how to follow the state statues law. Several members of the public who appeared to give their support to this issue and spoke as a part of Mr. Fox's presentation were Dr. Grant Lafarge, Dr. Kent Stoller, Ms. Karen Ulehla, and Mr. Richard Murray, who is summarizing the mainstream research. These individuals voiced their support for this issue and the rule making process at hand. At the conclusion of the presentation, Co Chair Stroud requested that the Administrator provide Mr. Fox a copy of the EIB Rule Making Regulations. Ms. Herrera suggested Mr. Fox use testimony regarding human interests in addition to technical testimony. Co Chair Stroud thanked everyone for their time and dedication to this issue. The Co Chair also encouraged Mr. Fox to observe the upcoming request for a rules hearing and a hearing on regulation changes before the EIB later in the day as examples of procedure for requesting a rules hearing before the Board.

Item #5 Request for hearing to amend Food Permit Fees Regulations NMAC 7.6.2, EIB 05-08 (R) (Jim Perry, Field Operations Divison/Food Safety; Kathryn Becker, OGC, 5 minutes)

A hearing was granted for October 4th. Member Herrera will sit as the hearing officer. Ms. Becker approximated the hearing time to be one hour.

ACTION: Mr. Green made a motion to grant and set a hearing for October 4th, a regularly scheduled Board meeting. Member Herrera will sit as Hearing Officer. Member Herrera seconded. Motion carried unanimously.

Item #6 San Juan County Early Action Compact for Ozone: Presentation and Q&A for Board Members' Questions (Mary Uhl, Air Quality Bureau)

(PowerPoint presentation; a handout was provided.)

Ms. Uhl confirmed to the Board that there have been public meetings, and participation by a peer review committee on the Bureau's Conclusions (participants included LANL, the Navajo Nation, and the public). This is the first rural area in the county to do a

regional ozone study. NMED stands by the conclusions reached by the Air Quality Bureau.

Item #7 The Air Quality Bureau's presentation to the Board on current and upcoming air quality issues (Mary Uhl, Air Quality Bureau)

Ms. Uhl spoke to the Board regarding current and future activities by the Air Quality Bureau. In December of 2003, the AQB came before the Board on regulations for open burning and smoke management, agreeing to come back before the Board to report on progress in implementing those regulations.

The AQB has had meetings and trainings state wide on smoke management and open burnings and has developed and distributed two brochures on both subjects. In addition, the AQB has established a hot line for smoke management and open burning calls; an online registration for smoke management; and community outreach, including working with city officials, the fire departments and Fire Marshall on compliance with open burning requirements. They have offered to meet with local governments on implementing regulations regarding open burning and smoke management.

Ms. Uhl also spoke to House Memorial 59, which requires EIB to consider revising the open burning rules, taking into consideration impacts on rural communities (copy of HM59 provided).

This legislative session House Memorial 59 and Senate Memorial 39 were introduced, the latter not passing. HM59 requires the EIB to consider the open burning rules and consult with communities, reporting back to an interim legislative committee by November 1, 2005. Member Green commented that the EIB cannot petition itself in this matter; unless a party petitions the EIB, the EIB cannot has no authority to change the rules on its own and report back to the legislature. Ms. Uhl offered that the AQB could hold some public input meeting around the state in response to this memorial. Member Herrera commented that the EIB cannot address an issue until the public follows the protocol, but the Board will be responsive when the matter is set before it. Mr. Green commented that previously there was a hearing with several days of testimony concerning this issue. If the Board is re petitioned, they will respond, but the EIB does not have authority to do what the memorial is asking it to do. Member Marsh commented that if a petition for a rule change was filed, that the counties and cities must be polled again to establish uniformity in public awareness and participation. Co Chair Stroud indicated to Ms. Uhl that the Board would consider setting a hearing in this matter to work in concert with HM59, if and when certain processes transpire that will enable it to do so.

Ms Uhl reported the AQB is working on issues arising from enforcement of open burning on a field citation program for residential and industrial sectors. They are focusing on field efforts and expect to return to the Board with a proposal late in the year. The AQB will return to appear before the Board before the end of the year with a New Source Review reform package; this is the federal New Source Review package that pertains to the permitting of the largest facilities in the state. The program must be adopted by December 31, 2005 to conform to federal standards by the end of the year. State statutes

do not allow the Board to adopt anything more stringent than federal standards. The AQB intends to present a petition to the Board in August and requested a hearing be set for November so the Bureau can make the December 31, 2005 deadline; the state will be the permitting authority for the largest transmissions sources in the state. Currently, the AQB is holding public meetings on the federal revisions and letting the public know it is the Bureau's intention to adopt these regulations. Member Green requested the Board be given sufficient lead time to hear and deliberate the case. A Hearing date was reserved for October 4, 2005; Member Herrera will be hearing officer in this matter. The New Source Performance Standards early next year updating to conform to federal regulations. Part 70 revisions and state standards are in process. A recent settlement agreement was reached some good reductions, so the AQB will withdraw its petition in response to make changes to Title 70 in light of the settlement; the AQB will appear before the Board on this again. Member Green proposed the EIB Chair or Counsel address a letter to the Mr. Nunez who sponsored the House Memorial to communicate the predicament posed to the EIB by the memorial.

(The Board recessed from 11:00 to 11:05 am).

Item #8 Executive Session pursuant to the Open Meetings Act Section 10-15-1(H)(7) to discuss with EIB legal counsel the status of the convenience store rules consolidated appeals, The New Mexico Petroleum Marketers Assn, et al. v New Mexico EIB."

ACTION: Member Hererra made a motion to move into closed executive session. Mr. Green seconded. Motion carried unanimously.

**Roll Call Vote: Ms. Herrera: Yes
 Mr. Stroud: Yes
 Mr. Green: Yes
 Mr. Marsh: Yes
 Mr. Peters: yes**

The Board reconvened at 11:40 am. Co Chair Stroud stated for the record that there were no matters discussed that were not contained in the Motion to go into the closed executive session.

Item #9 Public Hearing and possible decision to Consider Proposed Amendments to Title 20, Chapter 3, Parts, 3, 4, 12, and 15, and repeal and replacement of Part 20 of the New Mexico Administrative Code. EIB 05-01.

John Parker, Chief, NMED Radiation Control Bureau; Leslie Barnhart, OGC. Mr. Clifford Stroud presided as the Hearing Officer. A court reporter transcribed this hearing. The Board adopted the proposed Amendments to Title 20, Chapter 3, Parts 3, 4, 12, and 15. The Board approved the amendments to the regulations as presented. Counsel Mary Smith will draft the Statement of Reasons for the adoption of the regulations.

Item #10: EIB Rules Committee Status Update and consideration of setting a hearing date.

Counsel Smith advised the Board that the Environmental Protection Act requires a 60-day notice in advance of a rules hearing. Counsel Smith will send a draft crafted by the EIB Rule Making Committee to the other members of the Board for review. A hearing was set for September 6-7th at the regularly scheduled meeting. Mr. Doug Meiklejohn of the Environmental Law Center, members of the Department, the NM Oil and Gas Association, Lou Rose (Montgomery & Andrews) and others have requested to see and to have input to the proposed rules. Member Herrera commented, and Member Marsh concurred, that Proposed Rules to be heard by EIB in September not be shared with this group in deference to the public at large. It is the pleasure of the Board that advance copies of the proposed rules will not be provided by the Board prior to the hearing. Counsel Smith stated that a copy of the Proposed Rules be mailed with the public notice of the September rules hearing.

ACTION: Mr. Green made a motion to grant and set a hearing for September 6-7th at the regularly scheduled meeting and to initiate the public notice process. Ms. Herrera seconded. Motion carried unanimously.

Item #11: Other Business

There was no other business before the Board.

Item #12: Next Meeting

The next regularly scheduled meeting of the Environmental Improvement Board is July 5, 2005.

Item #13: Adjournment

ACTION: Mr. Green made a motion to Adjourn. Ms. Herrera seconded. Motion carried unanimously.

The meeting adjourned at 2:45 PM.

EIB Chair