

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
June 2, 2008
10:00 a.m.
State Capitol Building, Room 317
490 Old Santa Fe Trail
Santa Fe, New Mexico 87501

Members Present: Gregory Green, Chair
Harold Tso, Secretary
Soren Peters, Member
Gay Dillingham, Member
Abbas Ghassemi, Member

Members Absent: Dolores Herrera, Member
Kathi Bearden, Vice-Chair

Others Present:

Jennifer Hower, NMED/OGC	Tracy Hughes, General Counsel NMED
Justin Woolf, AGO	Louis Rose, Esq., Montgomery Andrews Firm
Jason Sandel, Aztec Well	Chris Wolpert, Rodey Law Firm
Ralph Baker Dotson, POWRA	Eugene C. Bassett, POWRA
Curtis Gurley, Gurley Law Firm	Pat Nelson, Holloman AFB
Deborah Seligman, Tri-State	Karin Foster
Greg Kardos, DCP Midstream	Bill Blankenship, LANL
Bruce Gantner, Conoco/Phillips	Jennifer Knowlton, Agave Energy/Yates Petroleum
Jim Sanderson, Tri-State	Dora Way, NMED
Martin A. Rehm, Tri-State	Jim Noble, Tri-State
Melody Russo, Mosaic	Douglas B. Price NMOGA/Navajo Refining
Bruce Nicholson, NMOGA	Sam Cudney, NMOGA
Cale Swanson, NMOGA	Link Summers, POWRA
Zachary Shandler, 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. Dillingham moved approval of the meeting agenda. Mr. Peters seconded. The motion passed unanimously.

Item 3. Approval of May 5, 2008 meeting minutes

Action: Mr. Tso moved approval of the May 5, 2008 meeting minutes. Mr. Peters seconded. The motion passed unanimously.

Item 4. Public Comment

Several individuals representing the Professional On-Site Wastewater Re-Use Association of New Mexico spoke to the Board expressing their views on what they consider to be the serious shortcomings of NMED's liquid waste programs, bureau staffing and effective management.

Mr. Green pointed out that any interested individual or entity is free to petition the Board to request a setting and have a hearing held. He noted, presuming the Board grants a petition, that a hearing with respect to amending, replacing or repealing rules set out in the New Mexico Administrative Code would be set on a future Board agenda. Additionally, he invited the POWRA representatives to remain at the meeting to observe first-hand how such a petition for hearing is presented. They departed.

Item 5. Presentation in re: Board authority relating to costs associated with appeal hearings. Tracy Hughes, NMED General Counsel

Ms. Hughes discussed with the Board its options with respect to who pays for the cost of a transcript in EIB permit appeal hearings. She noted that the Air Quality Bureau was the only department bureau for which the Board would receive an appeal. She went on to discuss the applicable NMAC section (20.1.2.400) covering Board authority relating to appeal hearings. Additional discussion included, but was not limited to, court reporter transcription services and the responsibility for the payment of those as well as such other services as might be required. She pointed out that in her opinion, the Board did not have the authority to order an applicant to pay for a court reporter. She suggested several options for Board members to consider as possible workable solutions in resolving this issue. She also noted that although in the past the Board had a funded budget, that is no longer true and all monies expended on the Board's behalf, e.g. member per diem payments, etc., are covered by the office of the department secretary's budget allocation. It was agreed that in the future, appeal applicants would be asked at the time of the hearing request whether they would be willing to pay for court reporter transcription services.

Item 6. Request for hearing in re: Petition for Hearing on NSR Permit No. 2393-M1 WWC, Inc., 500 TPH Hot Mix Asphalt Plant, EIB 08-10 (A). Louis Rose, Esq., WWC, Inc.

Following a brief discussion with the Board, Mr. Rose asked that a hearing in this matter be placed on the Board's August 4, 2008 agenda to be heard simultaneously with NSR Permit No. 2394-M1 WWC, Inc., 300 TPH Asphalt Drum Mix Plant, **EIB 08-09 (A)**, its companion case.

The Board agreed to schedule this hearing in conjunction with **EIB 08-09 (A)** on August 4, 2008. Ms. Bearden was previously appointed as hearing officer for these two cases.

Item 7. Petition for Regulatory Change in re: proposed repeal and replacement of 20.2.90 NMAC, Field Citations, EIB 08-11 (R). Leslie Barnhart, NMED/OGC.

Ms. Barnhart requested that the Board set the hearing in this matter on its September 2, 2008 agenda.

Mr. Peters agreed to act as hearing officer in this case.

Action: Ms. Dillingham moved that the Board set the hearing in EIB 08-11 (R) on the September 2, 2008 agenda. Ms. Ghassemi seconded. The motion passed unanimously.

Mr. Shandler noted that Mr. Rose, as counsel for the applicant, in the request for hearing in re: Petition for Hearing on NSR Permit No. 2393-M1 WWC, Inc., 500 TPH Hot Mix Asphalt Plant, EIB 08-10 (A) had not been asked whether his client would be willing to pay for transcription of the hearings by a court reporter. Mr. Rose stated he thought that would agreeable but would need to confer with his client before committing to that expense.

Item 8. Continuation of hearing with respect to three specific items noted by the Board May 5, 2008, for which the record was left open, followed by deliberations in re: Proposed amendments to Parts 1, 2, 3, 4 and 6 of 11.5 NMAC, OHSB Regulations EIB 07-15 (R). Tracy Hughes, General Counsel, NMED; Butch Tongate, NMED/OHSB. Hearing Officer Soren Peters.

At 10:55 a.m. the hearing in EIB 07-15 (R), noted above as Item 8, continued. Kathy Townsend Court Reporters transcribed the hearing and the deliberations. The transcript is available for review in the Office of the Environmental Improvement Board Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Room N-2150, Santa Fe, New Mexico 85701.

The hearing concluded at 12:35 p.m.

The Chair announced a lunch break.

The meeting reconvened 1:45 p.m.

Deliberations were initiated by Chair Green. It was agreed that the deliberations would work through the hearing issues individually. A lengthy Board discussion followed.

Action: Mr. Green moved that the amount of cash left in the cash drawer remain at the \$50.00 amount. Mr. Tso seconded.

Ms. Dillingham moved a substitute amendment changing the \$50.00

cash drawer amount to \$75.00. Mr. Tso seconded.

Roll Call Vote

Mr. Tso	yes
Mr. Peters	yes
Ms. Dillingham	yes
Mr. Ghassemi	yes
Mr. Green	no

The substitute motion passed, four votes in the affirmative; one vote in the negative.

There was discussion regarding the matter of employees being represented by an employer's attorney as well as the rights of an employee to separate individual counsel.

Action: Mr. Green moved that an employee must sign a waiver stating that employer and employee agree that there in no conflict of interest and if a conflict does arise, the company is required to retain counsel for the employee and the entire process will be governed by the code of conduct and standards for New Mexico attorneys. Ms. Dillingham seconded.

Mr. Ghassemi noted that he would be more amenable to placing a limit on the costs incurred by an employee with respect to counsel retained by an employee.

Ms. Dillingham suggested language be added that would require the costs of counsel retained for employee in the event of a conflict be at a level comparable to that charged by the employer's attorney.

Roll Call Vote

Mr. Tso	no
Mr. Ghassemi	yes
Ms. Dillingham	yes
Mr. Peters	yes
Mr. Green	yes

The motion as amended passed, four votes in the affirmative; one vote in the negative.

Action: Mr. Peters moved to amend subparagraph 3 (a) to require that an employee be given seven working days to secure personal counsel. Mr. Ghassemi seconded.

Roll Call Vote

Mr. Peters	yes
Ms. Dillingham	yes
Mr. Tso	yes
Mr. Ghassemi	yes

NMED 20.2.70, Exhibit 2 in NMED's original submittal. Mr. Ghassemi seconded.

Roll Call Vote:

Mr. Tso	yes
Mr. Peters	yes
Mr. Ghassemi	yes
Ms. Dillingham	yes
Mr. Green	yes

Item 11. Other Business

None

Item 12. Next Meeting: August 4, 2008, State Capitol Room 317 at 10:00 a.m.

Item 13. Adjournment

Action: Mr. Ghassemi moved for adjournment. Mr. Peters seconded. The motion passed unanimously.

Gregory Green, EIB Chair