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

DRAFT MINUTES
Environmental Improvement Board Meeting

August 1-2, 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
Greg Fulfer, Member
Timothy Morrow, Member
James Casciano, Member

Members Absent: None

Others Present: Stephen Vigil, Board Counsel
Felicia Orth, Hearing Officer and Acting Administrator
Laurie Leibowitz, OGC (August 1, 2011)
Sally Worthington, Hearing Clerk (August 2, 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: Mr. Morrow moved Board approval of the agenda. Ms. Ryan seconded the motion. The motion passed unanimously.

Item 4. **Public Comment Unrelated to Agenda Items**

Action: None.

Item 5. **Approval of meeting minutes, July 11-12, 2011.**

Action: Mr. Volkerding moved Board approval of the meeting minutes as presented. Mr. Fulfer seconded the motion. The motion passed unanimously.

Item 6. **Request for Hearing in EIB 11-15 (R): Proposed Repeal of Regulation, 20.2.350 NMAC—Greenhouse Gas Cap and Trade Provisions. Louis Rose, Montgomery and Andrews; Rick Alvidrez, Miller Stratvert.**

Action: Mr. Rose and Mr. Alvidrez presented reasons for the petition and answered numerous questions from the Board. They requested that the Board schedule the petition for hearing in November and that the Board designate Felicia Orth as Hearing Officer.

Ms. Peacock asked Mr. Flynn if the department would be participating and Mr. Flynn responded affirmatively. Ms. Peacock asked Mr. Flynn if the department had a position on the rules and Mr. Flynn responded that the department supports the petitions and the petitioners' suggestion of Ms. Orth as hearing officer. The Department supports repeal of the cap and trade rules, and as a matter of policy greenhouse gas regulation should be adopted at the federal level.

Ms. Peacock noted that New Energy Economy filed a motion related to the petitions late Friday afternoon but it would not be heard at this meeting because of the timing of the filing. Ms. Peacock suggested that the time to hear the motion would be at the hearings on these matters.

Mr. Casciano asked for further clarification on the benefits to the citizens of New Mexico for rehearing these issues. Mr. Alvidrez and Mr. Rose further explained their clients' positions.

Board members asked further questions and held further discussions related to procedural issues.

Mr. Bryce moved that the Board schedule a hearing on the petition in November and assign Ms. Orth as the hearing officer. Mr. Fulfer seconded the motion. The motion passed unanimously.

The Board discussed dates and length of hearing. Mr. Casciano stated he may have a conflict the first week in November. Ms. Peacock stated that

the hearing date would be discussed after requests for all three petitions had been heard.

Item 7. **Request for Hearing in EIB 11-16 (R): Proposed Repeal of Regulation, 20.2.100 NMAC—Greenhouse Gas Reduction Program. Louis Rose, Montgomery and Andrews; Rick Alvidrez, Miller Stratvert.**

Action: Mr. Rose and Mr. Alvidrez presented reasons for the petition and answered questions from the Board. Mr. Rose suggested the hearing on this petition be held after the hearing on EIB 11-15 (R), perhaps in December. Board members asked further questions on the length and timing of the hearing.

Ms. Peacock asked if there were any further questions and a representative from New Energy Economy asked how hearings would be held procedurally regarding public comment, previous testimony, and review of the thousands of documents and record from the prior hearings. Ms. Orth stated that there were procedural mechanisms to streamline hearings. New Energy Economy requested the ability to participate in scheduling issues.

Mr. Morrow moved that the Board schedule a hearing on the petition and appoint Ms. Orth to act as the hearing officer. Mr. Volkerding seconded the motion. The motion passed unanimously.

Item 8. **Request for Hearing in EIB 11-17 (R): Proposed Repeal of Regulations, 20.2.300 NMAC—Reporting of Greenhouse Gas Emissions and 20.2.301—Greenhouse Gas Emissions-Verification Requirements. Louis Rose, Montgomery and Andrews.**

Action: Mr. Rose presented reasons for the petition and answered questions from the Board. Board members asked if this petition could be combined and heard with EIB 11-15 (R) scheduled to begin in November. Mr. Flynn reaffirmed the department's position and stated his support for the petition to be heard with EIB 11-15 (R). Mr. Rose answered additional questions from Board.

Mr. Volkerding moved that the Board accept the petition and combine the hearing with EIB 11-15 (R) with Ms. Orth acting as the hearing officer. Mr. Fulfer seconded the motion. The motion passed unanimously.

Action: Board discussed dates for hearings. Board agreed to hold its regular November meeting on November 7th, and begin the first hearings on November 8th and 9th. Mr. Rose reminded the Board that the hearings could take months to complete if hearings were held only 2-3 days a week.

After further discussion, the Board agreed to tentatively schedule hearings for every Monday, Tuesday, and Wednesday until all three hearings are completed. Ms. Peacock reiterated the Board's desire to hear public comment on these issues.

Item 9. **Hearing and possible deliberations in EIB 11-04 (R), Proposed Amendments to Air Quality Regulations 20.2.77, 20.2.78 and 20.2.82. Bill Grantham, NMED/OGC; Adam Keaster and Rita Bates, NMED/AQB.**

Action: The hearing and Board deliberations in EIB 11-04 (R) were recorded and transcribed by Cheryl Arreguin of Kathy Townsend Court Reporters. The transcript is available in the office of the Board Administrator.

Mr. Bryce moved to adopt the proposed amendments to Air Quality Regulations 20.2.77, 20.2.78 and 20.2.82 as presented. Mr. Fulfer seconded the motion. The motion passed unanimously.

Item 10. **Hearing and possible deliberations in EIB 11-07 (R), Proposed Revisions to the State Implementation Plan for Infrastructure of Lead National Ambient Air Quality Standard. Bill Grantham, NMED/OGC; Gail Cooke, NMED/AQB.**

Action: The hearing and Board deliberations in EIB 11-07 (R) were recorded and transcribed by Cheryl Arreguin of Kathy Townsend Court Reporters. The transcript is available in the office of the Board Administrator.

Ms. Ryan moved to approve the proposed revisions to the State Implementation Plan for Infrastructure of Lead National Ambient Air Quality Standard with all proposed Board changes. Mr. Casciano seconded the motion. The motion passed unanimously.

Item 11. **Hearing and possible deliberations in EIB 11-08 (R). Proposed Amendments to Liquid Waste Treatment and Disposal Fees. Carol Parker, NMED/OGC; Dennis McQuillan, NMED/FOB; Link Summers; Ralph Baker Dotson and Eugene Bassett, Profeessional Onsite Wastewater Reuse Association of New Mexico; Jace Ensor, New Mexico Onsite Wastewater Association.**

Action: The hearing and Board deliberations in EIB 11-08 (R) were recorded and transcribed by Cheryl Arreguin of Kathy Townsend Court Reporters. The transcript is available in the office of the Board Administrator.

The hearing convened in Santa Fe at 1 p.m. and recessed at 5:45 p.m. The hearing was set to reconvene in Santa Fe at 9:00 a.m. August 2, 2011. The transcript is available in the office of the Board Administrator.

Action: **August 2, 2011**

Hearing in EIB 11-08 (R) reconvened in Santa Fe at approximately 9 a.m. and recessed at approximately 3 p.m. The transcript is available in the office of the Board Administrator.

Ms. Peacock moved to adopt the rules as amended by the Board in 20.7.11 and as reflected in transcript. Mr. Casciano seconded the motion. The motion passed unanimously.

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 Permit 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	COURT OF APPEALS No. 30,901

	Company v. N.M. Environmental Improvement Board	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	COURT OF APPEALS No. 30,954 Appeal of EIB 10-09(R): Greenhouse Gas Reporting

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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.	Mesquite Community Action Committee v. Hon. Michael E. Vigil, and Helena Chemical Co., NM Environment	SUPREME COURT No. 33,116 Verified Emergency Petition for Writ of Superintending Control or Other Appropriate Writ

Department,
NM Environmental
Improvement
Board.

Action: The Board came back into open session at approximately .

Item 13. **Other business.**

Action: None

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

Action: Mr. Volkerding suggested discussing upcoming greenhouse gas hearings. Ms. Peacock stated that would be discussed in the next Agenda item.

Item 15. **Next meeting—September 2, 2011**

Coming up:

a. Hearings on October 3 in EIB 11-06 (R), Proposed Revisions to 20.2.99 NMAC, Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects; EIB 11-13 (R), Amendments to Petroleum Storage Tank Regulations, throughout 20.5.1—20.5.18 NMAC and proposed new Part 20.5.19; and EIB 11-14 (R), Board Rulemaking Procedures, 20.1.1 NMAC.

Action: Ms. Orth explained that all members of the Board did not need to be in attendance for all days of the greenhouse gas hearings as long as the court reporter and the hearing officer are in attendance.

Ms. Orth discussed who pays for the transcript when court reporters are in attendance and suggested changes to the process.

Ms. Orth explained the parameters for Board members' participation in the greenhouse gas hearings choosing not to attend each day the hearings takes place. In addition, Ms. Orth suggested admitting public comment from the 2010 greenhouse gas hearings and proposing industry lift applicable portions of the 2010 greenhouse gas record for use in the upcoming hearings. Board members discussed the public's perception of members not attending all hearing dates with Ms. Orth as well as how to handle scheduling witnesses from out of state. Ms. Peacock suggested Board members send Ms. Orth their dates of availability through the end of the year. Board discussed procedural issues with Ms. Orth.

Board discussed Agenda items currently set for September 2, 2011 meeting.

Item 16. **Adjournment.**

Ms. Peacock adjourned the meeting.

Board Secretary