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

October 3, 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
Carmella Casados, Administrator
Felicia Orth, Hearing Officer
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. Casados 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. Peacock suggested moving Item #6 and 7 after Item #12.

Ms. Peacock moved Board approval of the agenda as amended. Ms. Ryan seconded the motion. The motion passed unanimously.

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

Mr. Crawford asked the Board members not to recuse themselves from participating in the upcoming hearings on greenhouse gas emissions. He acknowledged the Board members for their good work.

Action: None taken.

Item 5. **Approval of meeting minutes, September 2, 2011.**

Action: Ms. Peacock moved to approve the minutes as amended. Mr. Fulfer seconded the motion. The motion passed unanimously.

Item 6. Hearing in **EIB 11-06 (R),** Proposed Revisions to 20.2.99 NMAC, Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects; Bill Grantham, NMED/OGC, Gail Cook, NMED/ AQB. Time Estimate: 30 Minutes

Action: The hearing in EIB 11-06(R) was recorded and transcribed by Cheryl Arreguin of Kathy Townsend Court Reporters. The transcript is available in the office of the Board Administrator.

Ms. Peacock moved to approve the proposed amendments by the Petitioner and as amended by the Board. Mr. Bryce second the motion. The motion passed unanimously.

Item 7. Hearing in **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; Susan George and Leigh Brunner. Time Estimate: 1 Hour

Action: The hearing in EIB 11-13(R) was recorded and transcribed by Cheryl Arreguin of Kathy Townsend Court Reporters. The transcript is available in the office of the Board Administrator.

The Board determined to leave the record open, and continue the hearing on November 7, 2011.

Item 8. Hearing in **EIB 11-14 (R),** Board Rulemaking Procedures, 20.1.1 NMAC. Felicia Orth, NMED/ Hearing Officer; Douglas Meiklejohn, Jonathan Block, R. Bruce Frederick, and Eric Jantz, NMELC. Time Estimate: 1 Hour

Action: The hearing in EIB 11-14(R) was recorded and transcribed by Cheryl Arreguin of Kathy Townsend Court Reporters. The transcript is available in the office of the Board Administrator.

Mr. Casciano moved to replace "bifurcate" with "divide" in line 251, page 5 of the red-line version of changes. Ms. Peacock seconded the motion. The motion passed unanimously.

Ms. Ryan moved to accept the proposed revision to 20.1.1.304B and add at the end of the word "accepted" period, capitalize "however, comments may be posted on the EIB web page." Mr. Volkerding seconded the motion. The motion passed unanimously.

Ms. Ryan moved to change 20.1.1.400B (2) to read, "The hearing officer may allow a brief opening statement by any party who wishes to make one." Ms. Peacock seconded the motion. The motion passed unanimously.

Ms. Ryan moved to leave the proposed language in 20.1.1.401C, line 350. Mr. Fulfer seconded the motion. The motion passed unanimously.

Ms. Peacock moved to change "to include" to "including" on line 383, page 8, 20.1.405. Mr. Bryce seconded the motion. The motion passed unanimously.

Ms. Peacock moved to delete lines 430-432 in 20.1.1.501, and add the word "at" after the word "heard" in line 435. Ms. Ryan seconded the motion. The motion passed unanimously.

Ms. Peacock moved that the Board adopt all of the Petitioner's suggested changes to 20.1.1 NMAC as proposed and amended. Mr. Casciano seconded the motion. The motion passed unanimously.

Item 9. Motion hearing (several motions) in **EIB 11-15/17 (R),** Proposed Repeal of Greenhouse Gas Cap and Trade Provisions and Reporting and Verification Requirements; **and 11-16 (R),** Proposed Repeal of Greenhouse Gas Reduction Program. Bruce Frederick, NEE; Brent Moore, Tri-State; Louis Rose, NMOGA; Robert Clark, PNM/ SPSC; Sunny Nixon, Farmington; Karin Foster, IPNAM; Bryan Moore, EPEC; Ryan Flynn, NMED; Victoria Mandell, WRA; Felicia Orth, Hearing Officer; Stephen Vigil, NMAGO. Time Estimate: 1 Hour

Action: The hearing in EIB 11-15/17(R), and EIB 11-16 (R) was recorded and transcribed by Cheryl Arreguin of Kathy Townsend Court Reporters. The transcript is available in the office of the Board Administrator

The Board heard arguments and considered the motions filed related to Board member disclosure, voir dire and recusal. Members Fulfer, and Casciano recused themselves from further participation. No other recusals were made. Following disclosures by the other Board members, Mr. Federick withdrew his request for voir dire.

Ms. Orth addressed the other three motions as Hearing Officer. The first motion was the motion to strike parts of Petitioners' statement of reasons. The motion was denied. The second motion was an objection to improper hearing procedures and request for reconsideration. Ms. Orth rejected the characterization of the Board members' communication with the Hearing Officer as ex parte. Ms. Orth stated that she will correct the order concerning the September 7, 2011 conference to add the statement of reasons and closing arguments from prior proceedings as documents to be considered in the current proceedings. Otherwise, the objection to the order establishing procedures and request to vacate or amend was denied by Ms. Orth. The Hearing Officers written orders on these motions may be obtained from the Board Administrator.

Item 10. **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 4:30 P.M. The Board took no action in closed session and discussed no other business.

Item 11. Statement of Reasons in **EIB 11-03 (R)**, Liquid Waste Regulations re: licensure (Section 904). Stephen Vigil Time estimate: 10 Minutes

Action: Mr. Fulfer moved approve Statement of Reasons in 11-03(R), as amended. Mr. Morrow seconded the motion. The motion passed unanimously.

Item 12. Final Rule and Statement of Reasons in **EIB 11-08 (R),** Liquid Waste Fee Regulations; discussion and deliberation. Stephen Vigil, NMAGO. Time estimate: 10 minutes

Action: Ms. Peacock moved to adopt the Statement of Reasons in 11-08(R), as proposed and amended. Mr. Casciano seconded the motion. The motion passed unanimously.

Item 13. **Other business.**

None

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

None

Item 15. **Next meeting—November 7, 2011**
Coming up:

a. Hearings beginning **November 8** in **EIB 11-15/17,** proposed repeal of regulations requiring greenhouse gas emissions reporting and verification, and the cap and trade program, 20.2.300, -301, -350 NMAC.
b. Hearings beginning **December 5** in **EIB 11-16,** proposed repeal of regulations on greenhouse gas emissions reductions, 20.2.100 NMAC.
c. Hearing in **EIB 11-18 (R)** on **January 3,** Proposed Revisions to 20.7.10, NMAC Drinking Water Regulations, Bill Grantham, NMED/ OGC.

Item 16. **Adjournment.**

Ms. Peacock adjourned the meeting.

Board Secretary