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

MINUTES
Environmental Improvement Board Meeting
March 16, 2012 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
Timothy Morrow, Member
James Casciano, Member

Members Absent: Greg Fulfer, Member

Others Present: Michael Williams, Board Counsel
Felicia Orth, Hearing Officer and Acting Administrator
Laurie Leibowitz, OGC
Sally Worthington, Hearing Clerk
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. Peacock moved Board approval of the agenda. Mr. Casciano seconded the motion. The motion passed unanimously.

Item 4. Public Comment Unrelated to Agenda Items

Action: None.

Item 5. **Approval of meeting minutes, February 6, 2012.**

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

Item 6. **Approval of meeting minutes, March 6, 2012.**

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

Item 7. **Request for Hearing in EIB 12-01 (R) and EIB 11-09 (R), Petitions for Public Hearing to Consider Proposed Amendments to the Liquid Waste Disposal and Treatment Regulations, 20.7.3 NMAC, Link Summers, Pro Se, Dennis McQuillan, LWB/NMED, Andrew Knight, OGC/NMED.**

Action: Mr. Knight presented reasons for NMED's petition and position on Mr. Summers' objection (filed March 15, 2012) to NMED's Request for Hearing. Mr. McQuillan provided additional information. Mr. Knight, Mr. McQuillan, and a representative from POWRA answered questions from the Board.

Mr. Summers presented reasons for his objection to NMED's Request for Hearing and answered questions from the Board related to why his petition and hearing should be consolidated with NMED's hearing.

Board members asked further questions and held further discussions related to whether the hearings should be held separately or consolidated. Board discussion concluded the hearings should be held separately.

Ms. Ryan made a motion not to consolidate the two hearings and to delay a vote on whether to grant Mr. Summers a hearing on his petition.

Board had further discussion on the issues with input from Board attorney, Michael Williams and Felicia Orth.

Mr. Casciano moved that NMED's Request for Hearing in EIB 12-01 (R) be granted, the hearing be scheduled in August, and to deny any motions to consolidate any other petitions with this hearing. Ms. Ryan withdrew her motion and seconded Mr. Casciano's motion. The motion passed unanimously.

Ms. Ryan moved that Mr. Summers' motion be denied. Mr. Volkerding seconded the motion. After Board discussion, the motion passed unanimously.

Ms. Peacock clarified that the hearing for EIB 12-01 (R) would be held on August 6th at the regularly scheduled August meeting date. Ms. Peacock moved that Felicia Orth be appointed the Hearing Officer. Mr. Bryce seconded the motion. The motion passed unanimously.

Item 8. **Deliberations in EIB 11-16 (R)—Repeal of regulations, 20.2.100 NMAC—Greenhouse Gas Reduction Program.**

Action: The Board deliberations in EIB 11-16 (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 repeal the rule on the basis that it had sunsetted according to the Board's interpretation of the sunset provision within the rule itself. Ms. Peacock seconded the motion. The motion passed unanimously.

Ms. Ryan moved to repeal the rule on the basis that Rule 100, as compared to the new federal PSD program, is more stringent than the federal program, contrary to state law. Ms. Peacock seconded the motion. The motion passed unanimously.

Ms. Ryan made a motion to repeal the rule on the basis that, weighing the three-factor test set forth in Section 74-2-5, with regard to character and visibility of property and effect on human health and welfare, economic reasonableness and public interest and technical practicability—in balancing that test the rule fails as to all three of those factors. Mr. Bryce seconded the motion.

Ms. Ryan withdrew her motion and put a new motion on the table to repeal for the reason that the rule failed the three-prong balancing test that is set forth in Section 74-2-5, in addition to the vague language of the rule, and the fact that the Department does not support the rule. Mr. Bryce seconded the motion. The motion passed unanimously.

Item 9. **Executive session to discuss pending litigation. Michael Williams, 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 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.	Link Summers v. Environmental Improvement Board v. New Mexico Environment Department	COURT OF APPEALS No. 31,774 Appeal re EIB 11-08 (R)

Action: Mr. Volkerding moved to enter into Executive Session. Mr. Bryce seconded the motion. The motion passed unanimously and the Board entered into Executive Session. The Board took no action in Executive Session and discussed no matters not listed.

Item 10. **Other business.**

Action: Ryan Flynn, NMED General Counsel, presented the Board with an update on the Regional Haze issue and agreed to present the Board with another update at the May meeting.

Item 11. **Board Member Comments and Questions.**

Action: None.

Item 12. **Next meeting—May 7, 2012**

Coming up:

a. Continuation of hearing in **EIB 11-18 (R)** on **May 7th**, Proposed Revisions to 20.7.10, NMAC Drinking Water Regulations, Bill Grantham, NMED/OGC.
b. No meeting on **July 5, 2012** or in July.
c. Hearing in **EIB 12-01 (R)**, Petition for Public Hearing to Consider Proposed Amendments to the Liquid Waste Disposal and Treatment Regulations, 20.7.3 NMAC, to be held on **August 6th**, Dennis McQuillan, LWB/NMED, Andrew Knight, OGC/NMED, Felicia Orth, Hearing Officer.
d. Meetings scheduled during the remainder of 2012: **August 6, 2012, September 4, 2012, October 1, 2012, November 5, 2012, and December 3, 2012.**

Item 13. **Adjournment.**

Ms. Peacock adjourned the meeting at approximately 4:05 p.m.

Board Secretary