

APPROVED 07/01/03
ENVIRONMENTAL IMPROVEMENT BOARD
MINUTES OF THE JUNE 12-13, 2003 MEETING

June 12, 2003

The June meeting of the Environment Improvement Board (EIB) was held at the State Capitol Building in Santa Fe, New Mexico on June 12-13, 2003. Chair Gay Dillingham called the meeting to order at approximately 9:30 a.m.

Item #1: Roll Call

Members Present: Ms. Gay Dillingham, Chair
Mr. Clifford Stroud, Vice-Chair
Mr. Gregory Green, Secretary
Ms. Gwen Wardwell
Mr. Harold Tso
Ms. Dolores Herrera

Members Absent: Mr. Jeff Thomas

Others Present: Felicia Orth Carolyn Vigil
Jerry Schoeppner Anna Richards
Zack Shandler, AGO Sandra Ely

Item #2: Approval of Agenda

ACTION: Mr. Green made a motion to approve the agenda as presented. Ms. Wardwell seconded. Motion carried unanimously.

Item #3: Public Comment Period – 9:30am – 10:00am

None at this time.

Item #4: Approval of May 8-9, 2003 meeting minutes

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

Item #5: Petition by the El Paso Natural Gas Company – In the matter of setting for hearing on Operating Permit No. P133-R1. (EIB 03-06)

Mr. Louis Rose requested that the Board grant a stipulated motion for extension of time to file response and stay of hearing.

ACTION: **Mr. Green made a motion to table agenda item #5 until Mr. Rose could present the Board with the Motion. Ms. Dillingham seconded. Motion carried unanimously.**

The Motion was distributed to all Board Members.

ACTION: **Ms. Dillingham made a motion to grant the stipulation and put it into the record. Mr. Stroud seconded. Motion carried unanimously.**

Item #6: Update on Gray Water Act (HB114) – By Melissa McDonald & Paul Paryski.

ACTION: **Mr. Green made a motion to postpone item #6 until June 13, 2003. Ms. Wardwell seconded. Motion carried unanimously.**

No one showed up on June 13, 2003 for this presentation.

Item #7: The EIB Board will review NSR briefing and possibly make recommendation to staff.

ACTION: **Mr. Green made a motion to table Item #7 until staff from the Air Quality Bureau is present. Mr. Tso seconded. Motion carried unanimously.**

Sandra Ely, Chief of the Air Quality Bureau appeared before the Board. Ms. Ely stated that, regarding potential participation in a lawsuit to challenge the final New Source Review (NSR) regulations, the Bureau has a lack of resources due to a severe budget shortfall, and the matter is still under discussion with NMED's upper management. The new proposed rules will probably go final in December. Her recommendation is to focus on the proposed rules.

Mr. Green noted that the preparation of our own amicus brief would take 100 hours; alternatively we could sign on to someone else's amicus or outside counsel could work with us pro bono.

Ms. Ely responded that she had spoken with several national air quality organizations but no one else was filing an amicus brief. There are 15-18 states opposing EPA, and 6 states supporting EPA in this matter.

Mr. Stroud asked Board counsel what role the Board plays in directing NMED to enter into litigation.

Mr. Shandler replied that the Board is represented by the Attorney General and her permission is necessary for the Board to enter into litigation. It is more appropriate to direct discussions with the Attorney General than it is to direct the AQB to enter into

litigation. The Board has a complicated relationship with NMED; sometimes the entities are on the same side and sometimes not.

Ms. Herrera asked if the administration could attest for the record that the new revisions to the regulations were not weakened but strengthened to protect human health and the environment and not more lax. The administration (legal counsel) responded that the proposed revisions were written as stronger and definitely not more lax.

Ms. Herrera agreed to support discussions between the AG's office and NMED to explore other options available to NMED in the potential participation in litigation as it pertains to the (NMED and other States and entities) challenge of the final, New Source Review (NSR).

Ms. Wardwell noted that she would like more information.

Ms. Dillingham noted there was no time to get more information before acting in the appeal to NSR I.

ACTION: **Mr. Green moved that NMED talk with the AG and explore getting into the lawsuit, filing an amicus brief, and availing themselves of potential resources to find a way around financial constraints. Ms. Herrera seconded. Motion carried 4-2, with the no votes by Mr. Stroud and Mr. Tso.**

ACTION: **Mr. Green moved to recommend that, regarding the final rule, NMED hold public information meetings in the affected parts of the state to explain the impacts of the proposed rules on those parts of the state. Ms. Herrera seconded. Motion carried unanimously.**

Item #8: **Hearing of and possible decision to consider Proposed Amendments to 20.5 NMAC, Parts 1 and 9-16 (EIB 02-17).**

A public hearing was held at the New Mexico State Capitol Building in Santa Fe on June 12 - 13, 2003 regarding Petition No. EIB 03-06 at approximately 1:30 p.m. In attendance was Gregory Green, Hearing Officer, and the Board Members listed above. The following Board Member was absent: Jeff Thomas. This hearing was transcribed and the record will be in the custody of the Administrator. It is available upon request.

June 13, 2003

Chair Gay Dillingham called the meeting to order at approximately 9:40 a.m.

Roll Call

Members Present: Ms. Gay Dillingham, Chair
Mr. Clifford Stroud, Vice-Chair
Ms. Gwen Wardwell
Mr. Harold Tso
Ms. Dolores Herrera

Members Absent: Mr. Jeff Thomas
Mr. Gregory Green, Secretary

Others Present: Anna Richards
Jerry Schoeppner
Felicia Orth
Carolyn Vigil

Public Comment Period – 9:30am – 10:00am

None at this time.

Ms. Herrera asked the administration what terminology is used in the (US-EPA) federal regulations: is it “public” health or “human” health? The administration/legal counsel responded that they did not know the answer. Ms. Herrera said she thought the term used was “human.”

Continuation of Item #8 - Hearing of and possible decision to consider Proposed Amendments to 20.5 NMAC, Parts 1 and 9-16 (EIB 02-17).

ACTION: Ms. Dillingham made a motion to adopt the proposed revisions in the red line strike out version in Exhibit 2 as well as the additional proposed changes listed in Exhibit 3 and in addition the four changes proposed during the course of the hearing: (1) add the word “ranking” in part one to the first line of the definition of LST Ranking System; (2) in part 14 change all references from “ICBO” to “ICC” (the International Code Council) which is the correct name of that body; (3) in part 10 on Administrative Review particularly section 20.5.10.1002 E & F to leave in the struck language regarding “significant public interest” to be the standard for a public hearing but to include in the revisions all remaining red line strike out changes proposed in that section that do not affect or conflict with the significant public interest standard, and (4) in 20.5.12.2, in the Scope section, to correct the phrase “if the owner or operator or separate person” to correct the addition of the “s” at the end of word persons. Ms. Herrera seconded. Motion carried unanimously.

Item #9: Other Business

Ms. Dolores Herrera gave a brief biography of herself.

Item #10: Next Meeting

The next meeting of the Environmental Improvement Board will be July 1, 2003, in Santa Fe, New Mexico at the State Capitol Building in Room 317.

Item #11: Adjourn

Chair Gay Dillingham announced that the meeting of the Environmental Improvement Board is now adjourned.