

Approved January 3, 2006

**ENVIRONMENTAL IMPROVEMENT BOARD**  
**MINUTES OF THE December 6th, 2005 MEETING**

The New Mexico Environmental Improvement Board (EIB) Meeting was held on December 6th, 2005, starting at 1:00 pm at the New Mexico Environment Department Albuquerque District Office, 5500 San Antonio NE, Albuquerque, New Mexico.

**Item #1: Roll Call**

Members Present: Ms. Gay Dillingham, Chair  
Mr. Clifford Stroud, Vice Chair  
Mr. Ken Marsh, Member  
Ms. Dolores Herrera, Member  
Mr. Gregory Green, Secretary  
Mr. Soren Peters, Member  
Members Absent: Mr. Harold Tso, Member

Others Present:

Charles McClain, KOB-TV	Mike Lovely, KOAT-TV
Sheri Kotowski	Joni Arends, CCNS
Mary E. Day, NMED	George Shuman, NMED
Hugh Church	John Bartlit
Anthony J. Trujillo, Gallagher & Kennedy	Melanie Teeter

**Item#1 Roll Call**

The Administrator took roll call and noted a quorum was present.

**Item #2: Approval of Agenda**

**ACTION: Member Herrera made a motion to approve the Agenda as presented. Member Peters seconded. Motion carried unanimously.**

**Item #3: Public Comment Period**

There was no public comment made at this time.

**Item #4: Environmental Justice Presentation (Mary E. Day, NMED Environmental Justice & Outreach Issues Liaison)**

Mary Day, the Department's Environmental Justice Liaison, Pollution Prevention and the Borders Program come under the Environmental Justice Division. Ms. Day briefed the Board on her main area of responsibilities and presented the recent activities in

Environmental Justice including the Governor's Environmental Justice Executive Order. Ms. Day will continue to update the Board in the future and will compile a fact sheet for the Board as well. (Handout provided). Board members queried Ms. Day on several issues including public outreach and septic tank regulations impacts on lower income members of the community. Ms. Day assured she would carry these concerns back to the Department.

**Item #6:      Discussion on implications to the EIB in the Rhino Case:  
NM Supreme Court ruling on Rhino Environmental  
Services/Chaparral Landfill case (under NM Solid Waste  
Act). (Felicia Orth, NMED Hearing Officer)**

Ms. Felicia Orth, NMED's Hearing Officer briefed the Board on the Rhino Opinion and the hearing on the Chaparral Landfill near Anthony, NM and the 18,000 citizens in Colonias. There was ample time for public comment and cross-examination in the hearing time, including two teams of interpreters. Ms. Orth recounted all the conditions placed on the applicant. The permit was issued and subsequently appealed. The Supreme Court ruled that the state must conduct a public meeting to consider additional public comment and evidence on the communities quality of life issue in order for Secretary Ron Curry to reconsider the issuance of the permit. The implication to the EIB is that the Department has to expressly consider quality of life issues. The existing (Section 200) Environmental Improvement Board Regulations require all solid waste facilities to be located so as to not endanger the public health or affect the quality of life. Charles Laken Domenici Law firm (WQCC 3109) has similar language

**Item #7:      Opportunity for Submission of Additional Comment, Evidence,  
Argument or Proposed Statements of Reasons in the Matter of EIB  
05-09 (R), Proposed Revisions to 20.2.74 NMAC, Permits, Prevention  
of Significant Deterioration (PSD) and 20.2.79 NMAC, Permits,  
Nonattainment Areas. Hearing Officer Ken Marsh.**

Hearing Officer Marsh reopened the hearing of EIB 05-09 (R) that had commenced on November 1, 2005. Ms. Leslie Barnhart, counsel for the Petitioner, stated that no other written public comment had been received. Mr. John Bartlit of New Mexico Citizens for Clean Air & Water made a public statement to the Board and summarized his statements regarding the new source requirements and an article he wrote on PSD, or Prevention of Significant Deterioration. Hugh Church, a volunteer of the American Lung Association read his statement to the Board concerning the Federal New Source Review. Hearing Officer Marsh admitted the letters from both as non-technical testimony to the record which were entered as Exhibit C-1; the New Mexico Citizens for Clean Air & Water as Exhibit C-2; and The American Lung Association's Statement as Exhibit C-3. As a closing statement the Petitioners Counsel asked the Board to approve the regulations as submitted at the November 1, 2005 hearing. Mr. Shandler will draft the final Statement of Reasons and provide to the Board at the next meeting on January 3, 2006.

**ACTION: Member Green made a motion to not approve the Regulations in EIB 05-09 (R). Member Stroud seconded. The Board voted two (2) – Yea and four (4)**

**No. Motion failed.**

Board Vote

Greg Green	Yes
Dolores Herrera	No
Soren Peters	No
Ken Marsh	No
Cliff Stroud	Yes
Dillingham	No

**ACTION: Member Herrera made a motion to approve the Regulations in EIB 05-09 (R) as presented. Member Marsh seconded. The Board voted two (2) – No and four (4) Yea. Motion passed.**

Board Vote

Greg Green	No
Dolores Herrera	Yes
Soren Peters	Yes
Ken Marsh	Yes
Cliff Stroud	No
Dillingham	Yes

Member Green proposed the Board send a letter to the State Legislature as to why the Board adopted these regulations as presented. Member Green and Counselor Shandler will draft the letter for the Board.

**ACTION: Member Green made a motion for the Board to send a letter to the NM Legislature on their reasons for the adoption of the regulations in EIB 05-09 (R) as presented. Member Herrera seconded. Motion carried unanimously.**

**Item #8 Approval of the November 1st, 2005 meeting minutes**

**ACTION: Member Green made a motion to approve the November 1<sup>th</sup>, 2005 minutes as presented. Member Marsh seconded. Motion carried unanimously.**

**Item #8 Other Business**

- **EIB 05-11 (R), Ban on Aspartame** – Felicia Orth, the Hearing Officer assigned to this matter, addressed the Board on the logistics of the case and this will be placed on the January agenda. As Reconsideration of hearing set. Mr. Shandler will research and report in January to the Board.
- **NM Homebuilders Association letter submitted re: the Liquid Waste Disposal Regulations and the LWDR .**
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**Item #9**      **Next Meeting is January 3-6, 2005**

**Item #10**      **Adjournment**

**ACTION:**      **MemberGreen made a motion to adjourn. Member Marsh seconded.**  
**Motion carried unanimously.**

**The meeting adjourned at 3:50 pm.**

*Signature on File*

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**Gay Dillingham, EIB Chair**