Approved June 7th, 2005

ENVIRONMENTAL IMPROVEMENT BOARD

MINUTES OF THE May 3, 2005 MEETING

The New Mexico Environmental Improvement Board (EIB) Meeting was held on May 3, 2005, at the New Mexico State Capitol Building, Room 321, in Santa Fe, New Mexico.

Item #1: Roll Call

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

Members Absent: Ms. Dolores Herrera, Member

Others Present:

Mary Smith, AGO
Douglas Meiklejohn, NMELC
Ned Kendrick,
TJ Trujillo, Gallagher & Kennedy
Barbara Claire (NMED)
Joni Arends, CCNS
Rich Vitale
Deborah Woitte, LANL
Eric Ames, NMED OGC

Item #2: Approval of Agenda

ACTION: **Mr. Marsh made a motion to approve the May 3, 2005 Agenda as presented. Mr. Tso seconded. Motion carried unanimously.**

Item #3: Executive Session pursuant to the Open Meetings Act Section 10-15-1(H)(7) to discuss with Board legal counsel the status of the convenience store rules consolidated appeals, The New Mexico Petroleum Marketers Assn, et al. v New Mexico EIB."

ACTION: **Co-chair Stroud made a motion to move into closed executive session. Mr. Green seconded. Motion carried unanimously.**

Roll Call Vote:
Chair Dillingham: Yes
Co-chair Stroud: Yes
Mr. Green: Yes
Mr. Marsh: Yes
Mr. Tso: Yes

The Board moved into a closed executive session at approximately 9:10 am. Upon reconvening, it was stated for the record that no other matters were discussed other than those moved by Co-chair Stroud to go into the executive session for.

ACTION: **Mr. Green made a motion to close the executive session and move into the normal session and during the executive session, no other maters other than the ones that Co-chair Stroud moved to go into Executive Session for. Mr. Tso seconded. Motion carried unanimously.**

Chair Dillingham then thanked the Board and meeting participants for their indulgence in the schedule of the Executive Session and turned chairing of the meeting to Co-chair Stroud for the remainder of the meeting.

Item #4: **Request for a Hearing to Rescind NSR Air Quality Permit No. 2195-J and and NSR Air Quality Permit 2195-K. EIB 05-06 (P) (Concerned Citizens for Nuclear Safety, Embudo Valley Environmental Monitoring Group, and Tewa Women United).**

Co-Chair Stroud announced the matter before the Board and invited the Petitioners to come forward. The petitioners appeared before the board represented by Mr. Douglas Meiklejohn of the NM Environmental Law Center. The petitioners asked for four hours to present their direct case and witnesses and agreed to waive the sixty-day hearing requirement as an expert witness is out of the country until September. This was agreeable with the Counsel for LANL, the permitee, Ms. Woitte, as well as Eric Ames, counsel for the Air Quality Bureau. Neither Mr. Ames nor Ms. Woitte could give a time requirement for testimony. The Board granted a Hearing for September 6th and 7th with the provision of a third day pending information from the Department and LANL regarding time need for testimony. Co-chair Stroud requested Mr. Green act as Hearing Officer which Mr. Green accepted. Co-chair Stoud requested that the record reflect that he will not participate in the hearing of the matter as it involves Los Alamos National Laboratory, but will be present for other matters before the Board, and this will need to be taken into consideration in order to ensure a quorum at that time.

Item #5: **Public Comment Period.**
Co-chair asked if there were any members of the public desiring to make public comment at this time. As there was none, Co-Chair Stroud moved to item #6.

Item #6: **Approval of the April 5 & 6, 2005 meeting minutes**

ACTION: **Mr. Green made an amended motion to approve the April 5-6, 2005 minutes as amended. Mr. Tso seconded. Motion carried unanimously.**

On Page two, line 22 the word 'meeting' was changed to 'hearing'.

Item #7 **Hearing and possible decision to consider proposed amendments to Operating Permits 20.2.70 NMAC (subject to a Motion for Continuance filed by the parties). (EIB 04-10) (Ken Marsh, Hearing Officer).**

At this time Co-chair Stroud invited Hearing Officer Marsh to conduct the session. Mr. Marsh opened the matter and asked the parties involved in the matter to come before the Board. The parties introduced themselves: , Mr. Ames representing NMED, Mr. Ned Kendrick of Montgomery & Andrews representing New Mexico Oil and Gas, Mr. T.J. Trujillo of Gallagher & Kennedy representing Phelps Dodge Mining Co., and Mr. Richard Virtue of Virtue, Najjar & Brown representing Waste Management of New Mexico.

Mr. Ames presented to the Board stating that the Department has filed jointly with NMOGA a Joint Motion for Continuance of Hearing currently scheduled for today on the Department's petition to amend part 70 of the NMAC Air Quality Control regulations. All the other parties concur in the motion. The parties have been negotiating to resolve their issues regarding the petition and are almost done, it is a matter of obtaining final client signatures on a settlement agreement. The Department is also negotiating a resolution with El Paso Natural Gas Company which has filed about ten appeals of operating permits revolving around the same set of issues which are raised by the Departments petition that is currently pending before the Board; that Settlement Agreement is nearly done as well and are merely waiting for Mr. Rose, Mr. Kendrick's partner to return from a brief vacation to settle the final details. So the Department expects settlements to be done in the very near future. Once those settlements are done, the Department intends to withdraw the Petition pending before the Board and continue to work with the remaining parties who have filed Notice of Intent specifically Phelps Dodge Corporation and Waste Management to see if they can resolve any remaining limitations and issues with part 70. The Department apologizes for the repetitive nature of the Continuances and understands the Board is concerned by the sequence of the Continuances that have come across the Hearing Officer's desk as well as the potential that the Public may have lost sight of when a hearing may occur should one be scheduled and this putting the risk of the Public missing a hearing. The Department's proposed solution, and others parties have been consulted and concur, that the Board adopt the process

as in the past that is to grant an indefinite continuance of the hearing subject to one or more parties coming back to the Board and requesting a hearing, and also subject to a requirement that the Department republish notice for the new hearing; that way the Board is not troubled by repeated continuances and is able to manage its schedule more effectively and the public will then have notice that the hearing is going to occur. Upon settlement with NM Oil and Gas Association it is the Departments intent to withdraw the petition before the Board. None of the parties are prepared to go to hearing today as scheduled and would need thirty days to prepare. Hearing Officer Marsh set a Hearing date of October 4th and 5th with a status meeting in July 2005. An Order will be drafted concerning the matter continuing the hearing to October 4th and 5th a status update from the parties to be given at the July 5th; meeting.

ACTION: Mr. Marsh ordered that the hearing will be continued to October 4th and 5th with a status update from the parties due at the July 5th meeting. An Order will be drafted to that effect.

Item #8 **Other Business**

- EIB 05-01 Proposed amendments to Title 20, Chapter 3, parts, 3,4,12,and 15 and repeal and replacement of part 20 will be heard before the Board on June 7th with Co-chair Stroud serving as Hearing Officer.
- Tenure – of Board appointments; Mr. Tso expressed his desire to continue his appointment as a member of the Board. Co-chair Stroud will bring this to the attention of the Governor's Office. Counsel Mary Smith advised Mr. Tso his tenure continued until a successor was qualified or until he was reconfirmed.
- Rules Committee status update – Member Green requested that a status update by the EIB Rules Committee be put on the June 7th Agenda in order to set a rules hearing. Mr. Eric Ames (counsel, NMED), Mr. Douglas Meiklejohn (NM Environmental Law Center) and Mr. Lou Rose (in the interest of industy at large) expressed an interest in having an input to the EIB Rule Making process and a teleconference for this purpose with these three parties and the Rule Making Committee at the end of the process will be considered by the Board.

Item #9 **Next Meeting**

The next regularly scheduled meeting of the Environmental Improvement Board is scheduled for June 7, 2005.

Item #10:Adjourn

ACTION: Mr. Green made a motion to adjourn the meeting Mr. Marsh seconded. Motion carried unanimously.

The meeting was adjourned at 10:55 AM

Gay Dillingham

EIB Chair