

State of New Mexico
ENVIRONMENTAL IMPROVEMENT BOARD
Harold Runnels Building, N-2150
1190 St. Francis Drive, P. O. Box 26110
Santa Fe, New Mexico 87502

Environmental Improvement Board Meeting
June 5, 2007 Meeting
8:30 a.m.

New Mexico State Capitol Building
Room 317
490 Old Santa Fe Trail
Santa Fe, New Mexico 87501

Members Present: Gay Dillingham, Chair
Kathi Bearden, Member
Gregory Green, Vice-Chair
Dolores Herrera, Secretary
Soren Peters, Member
Harold Tso, Member

Members Absent: None

Others Present:

Joe King, WCN	Jim Little, WCN
Mark Turnbough	Mark Crepeau, GEI
Pay Shay, Rodey Law Firm	Keith Gordon, GEI
C. Shannon Bacon, Sutin Law Firm	Lynn Maxer
Bill Grantham, NMED/OGC	Zachary Shandler, AG's Office

Chair Gay Dillingham called the meeting to order at 8:35 a.m.

Item 1. Roll Call

The Board administrator took the roll and noted a quorum was present.

Item 2. Approval of Agenda

Action: Mr. Green moved that the agenda be approved. Mr. Peters seconded. The motion passed unanimously.

Item 3. Approval of minutes of April 3-4, 2007 and May 1, 2007 meetings.

Ms. Dillingham noted a typographical error in the April minutes.

Action: Mr. Green moved that the Board approve the April 3-4, 2007 and May 1, 2007 meeting minutes, as revised. Mr. Tso seconded. The motion passed unanimously.

Item 4. Public Comment

None.

Item 5. Petition for Hearing Before Environmental Improvement Board by Sunland Park Grassroots Environmental Group (SPGEG) in re: Operating Permit P186LR1 – Camino Real Environmental Center for operation of the Camino Real Landfill in Sunland Park, New Mexico, EIB 07-03 (A). Bill Grantham, NMED/OGC and Taylor Moore, SPGEG.

**Motion to Dismiss SPGEG’s Petition for Hearing, EIB 07-03 (A).
C. Shannon Bacon, Esq., Camino Real Environmental Center**

The Chair noted that Mr. Moore, who represents SPGEG, was not present. After a brief discussion, Mr. Grantham suggested that the Board proceed with the consideration of the motion to dismiss filed by Camino Real Environmental Center. The Chair asked if anyone involved in this matter had any communication from SPGEG regarding its representation at this meeting. It was noted that no one had received any information indicating SPGEG would, or would not, be present at this meeting. The Board administrator stated that a copy of the agenda for today’s meeting had been sent by U. S. Mail to Taylor Moore.

Mr. Green stated that he would like to hear first from the petitioner on the motion to dismiss and then from NMED on notice and also on whether or not NMED has taken a position on the motion.

Ms. Bacon, on behalf of Camino Real Environmental Center (Camino Real), stated that SPGEG’s petition for a hearing should be denied because as a very basic issue of fact, SPGEG does not have standing under New Mexico law (NMSA 1978 §74-2-7) in this matter to request a hearing before the Board. Additionally, Ms. Bacon went on to point out that the petition for hearing was not timely filed and lacked the fulfillment of additional compliance requirements under the New Mexico Air Quality Control Act and Air Quality Regulations as well as the applicable statutes. Additionally, Ms. Bacon noted the circumstances under which a party can appeal from the grant of a permit. She stated that SPGEG’s action in filing its petition did not fall under any of those circumstances. Ms. Bacon requested that, based upon the foregoing facts setting out SPGEG’s lack of standing and additional compliance failures, its petition for hearing be denied.

There was extensive Board discussion relating to public hearing scheduling, public participation requirements under statute with respect to granting of permits, as well as under the Air Quality Act and Air Quality Regulations and additionally, the public hearing notice requirements. It was established during the discussions that the Camino Real permit had already been issued, was final and no longer subject to revocation by the Department. It was noted that if SPGEG wished to appeal the issuance of the Camino Real permit, that appeal could be filed in the New Mexico

Court of Appeals. The Board also discussed Camino Real's degree of adherence to Governor's Executive Order #2005-056 relating to environmental justice issues in processing their permit request. It was established that the parties had gone beyond the requirements set out in the Governor's Executive Order in the permitting process procedure. The point was made that the permit is the second one granted to Camino Real and SPGEG did not object to or participate in any way at the time of the original permit issuance.

Bill Grantham, on behalf of NMED, stated that the Department concurred with Camino Real in its motion to dismiss SPGEG's petition for hearing. Additionally, he stated that the Department rejects any allegations of untoward behavior by it with respect to the Camino Real permitting process. It was again mentioned that the Department, in publishing the public notice of the hearing in this matter, had gone beyond what is required of it. He also stated that SPGEG did not state in its petition any substantive basis for its objections to the permit. Mr. Grantham also indicated that SPGEG would have an opportunity to object to, and become involved in, Camino Real related issues at an NMED Solid Waste Bureau hearing which will take place later this year, additionally noting that a solid waste permit can contain provisions relating to air quality. Mr. Grantham asked that the Board dismiss SPGEG's petition for hearing.

There was further Board discussion regarding Department public notice issues and mailing lists of interested parties that are compiled and utilized by the individual bureaus. Ms. Herrera asked whether the Department had followed the guidelines set out in the Governor's Executive Order #2005-056 in processing this matter. Mr. Grantham stated that the Department had complied with the guidelines by going beyond the statutory requirements for public notice.

There was a brief discussion regarding whether the emission standards for the current permit allowed emissions greater than, or less than, the original permit. It was noted that there was not a significant change in the Title V standards.

Action: Mr. Green moved that the Board deny SPGEG's petition for hearing. Mr. Tso seconded.

Mr. Green stated that in making this motion he felt that the Department did publish the appropriate public notices and in fact had gone beyond the requirements. Additionally, he noted that Camino Real had conducted public meetings and outreach in this case and that SPGEG did not meet the necessary criteria regarding participation nor was there any explanation by it regarding why a hearing was needed at this time.

The motion passed unanimously.

Prior to Ms. Dillingham leaving she turned the meeting over to Vice-Chair, Gregory Green.

Item 6. Deliberations and possible decision in EIB 06-17 (R), revision of 20.2.99 NMAC and EIB 06-18 (R) revision of Sunland Park, NM, 1 hour ozone nonattainment area. Hearing Officer: Kathi Bearden

Mr. Green thanked Ms. Bearden for traveling to Sunland Park on behalf of the Board to conduct these hearings.

Ms. Bearden noted that the two hearings were brief, there was no attendance by the public and all of her questions as Hearing Officer were answered and were part of the transcript of the proceedings. She recommended that based upon the information she received, the revisions be adopted. She also mentioned that the Asarco Plant, located in Texas but very near the New Mexico state line is evidently going to be reactivated and the Department is working with Texas authorities regarding New Mexico's concerns about air quality.

Mr. Green noted that the Statements of Reasons had been prepared in these two cases for consideration by the Board.

Action: Ms. Bearden moved that the Board adopt the Department's revision of 20.2.99 NMAC and the Sunland Park, New Mexico 1 hour ozone nonattainment area. Mr. Tso seconded. The motion passed unanimously.

Mr. Green asked Ms. Bearden if she had an opportunity to review the Statements of Reasons in these two matters and if she found the documents credible and reflective of the issues presented at the hearings. She stated that she did find them credible and reflective of the hearings.

Action: Ms. Bearden moved that the Board adopt the Statements of Reasons in these cases. Mr. Tso seconded. The motion passed unanimously.

Ms. Bearden mentioned that she felt the economic situation in the Sunland Park area necessitated added effort by the Department to communicate with the local communities regarding environmental issues as they are addressed in the area. Mr. Green noted that he felt it was very important that information be disseminated to local residents regarding the oversight responsibilities of the Department's various bureaus and that the bureaus compile one mailing list for use in noticing local communities of Department activities.

Item 7. Other business

There was Board discussion relating to items that had been included in the Board member meeting packets.

There was a brief discussion of matters pending which may or may not be placed on the July meeting agenda.

Item 8. Next meeting – July 11, 2007 Santa Fe, NM

Mr. Green noted that the Board's November 6, 2007 meeting date would need to be changed since that is election day. It was agreed that the meeting would be held Wednesday, November 14, 2007.

There was additional discussion regarding the Board's September meeting date and it was agreed that the Board chair would deal with the setting of a September meeting date.

Ms. Herrera mentioned that she thought it would be a good idea to hold one of the Board's future

meetings in Sunland Park. Mr. Grantham stated that the Camino Real hearing would be held in Sunland Park but that hearing is before the Secretary of the Department not EIB. Discussion continued regarding the issue of a Board meeting in Sunland Park and various suggestions as to the manner in which information could be provided to local residents relating to their rights as citizens with respect to Department actions. Mr. Green stated that he would let Ms. Dillingham know that the Board has suggested that EIB hold a hearing, on an issue that would be appropriate to the area, in Sunland Park at the Board's earliest convenience.

Item 9. Adjournment

Action: Mr. Tso moved for adjournment at 11:05 a.m. Ms. Bearden seconded. The motion passed unanimously.

Signature on File

Gay Dillingham, EIB Chair