

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
July 11, 2007 Telephonic Meeting
9:00 a.m.

New Mexico Environment Department
Harold Runnels Building Room #4053N
1190 St. Francis Drive
Santa Fe, New Mexico 87505

Members Present: Gay Dillingham, Chair
Kathi Bearden, Member – present by telephone
Gregory Green, Vice-Chair
Soren Peters, Member
Harold Tso, Member

Members Absent: Dolores Herrera, Secretary

Others Present:

Jennifer Pruett, NMED/PTSB	Bill Scott, Modrall Law Firm
Pay Shay, Rodey Law Firm	Jim Davis, NMED/PSTB
Eric Ames, NMED/OGC	Jack Maddox, Western Water & Power
Sarah Piltch, NMELC, et al.	David S. Cohen, Cohen Law Firm
David Tixier, Western Water & Power	Myra Pancrazio, Estancia Valley Econ. Dev., et al.
Zach Shandler, NM AG's Office	Andy Berger, NMED/AQB
Lany Weaver, NMED/AQB	Jeffrey Wechsler, Montgomery & Andrews
Mary Uhl, NMED/AQB (by telephone)	George Aribé, White Sands (by telephone)
Lauren Ketcham, Environment NM (by telephone)	Link Summers (by telephone)

Chair Gay Dillingham called the meeting to order at 9:20 a.m.

Item 1. Roll Call

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

Item 2. Approval of Agenda

The Chair mentioned that during the course of the meeting, though it did not appear on the agenda, there would be discussion regarding a date for the Board's September meeting.

Action: Mr. Tso moved that the agenda be approved. Mr. Peters seconded.

The motion passed unanimously.

Item 3. Approval of minutes of June 5, 2007 meeting.

Action: Mr. Green moved that the Board approve the June 5, 2007 meeting minutes. Mr. Tso seconded. The motion passed unanimously.

Item 4. Public Comment

Link Summers of POWRA called in to express his opinion to the Board for discrepancies he perceives relating to NMED liquid waste related rules and the confusion he feels with respect to the Department's lack of enforcement and understanding of its own rules.

Item 5. Presentation by the Petroleum Storage Tank Bureau on the scope and scheduling of upcoming rule revisions, some of which are required by the federal Energy Policy Act of 2005. Jennifer Pruett, NMED/PSTB; Jim Davis, NMED/PSTB.

Mr. Davis, Chief of the Petroleum Storage Tank Bureau, discussed the enactment of the 2005 Federal Energy Policy Act. He explained that the Act changed a number of the requirements relating to underground storage tanks. As a result of those changes, it is necessary for New Mexico to rewrite its regulations as well as making statutory changes in order to comply with the Act. He noted that the State currently has some statutory authority to adopt regulations. He stated that the Bureau has presented proposed statutory language to the Legislative Council Service relating to these matters. The statutory changes are scheduled to be presented to the New Mexico 2008 Legislative Session for its consideration in January.

Ms. Pruett stated that she manages the Bureau's statutory and regulatory rewrite program. She noted that the scope of the proposed rewrite effort is quite extensive and went on to discuss the Bureau's outreach efforts with respect to stakeholders impacted by the program. She mentioned that the Bureau anticipates appearing before the Board in August to make the first specific hearing setting request. Additionally, she indicated that there were submission deadlines that had already been missed and because of those missed deadlines, the Bureau wanted to move ahead with the hearing quickly and expeditiously in order to get the regulations in place as soon as possible. She discussed at some length specific areas that would require major revisions as well as areas that might require new regulations. She noted that at this time the Bureau is anticipating three hearings before the Board within the next year. She requested that the first hearing be set on the Board's November agenda. She stated that the time estimate for the hearing is one and one-half to two days. Additionally, she noted that the revisions are not expected to be controversial since a number of the changes are required by federal law and many of the interested parties are aware of the changes.

Item 6. Petition for Hearing on Air Quality Bureau permit #3434 EIB 07-04 (A) Western Water and Power Production Limited, LLC, Appeal and Motion for Expedited Consideration. Eric Ames, NEMD/ OGC; David Cohen, Esq., Western Water Production Ltd.

Mr. Cohen stated that he was appearing on behalf of Western Water in appealing the NMED

Secretary's decision denying Western Water's application for a construction permit for the Estancia Valley Biomass Project. He noted that taking into consideration the Board filing procedure time constraints that Western Water is entitled to a hearing by the Board on August 20, 2007. Mr. Cohen proposed a schedule of deadlines for the publication of notice of the hearing as well as for various document submissions. He emphasized the need for quick action by the Board in order to meet all relevant deadlines.

Additionally, he briefly noted the specific issue which had been before the Secretary for his consideration that precipitated this appeal. He indicated that he felt the scope of the hearing should be limited to what he considered to be a very narrow issue. He went on to state that Western Water did not perceive this matter to be a de novo proceeding.

Mr. Ames, on behalf of the Department, stated that he concurred with Mr. Cohen's proposed schedule of document submissions and hearing date but noted that he was not prepared at this juncture to indicate whether or not the Department concurred with Mr. Cohen's proposal to limit the scope of the hearing. Mr. Ames suggested that the Board appoint a hearing officer and direct Western Water to submit a motion defining the scope of the proceeding to which all other parties in the case could respond. The hearing officer could then render a decision regarding the scope of the proceeding in a manner that would allow for compliance with publication and discovery deadlines.

There was a brief discussion relating to setting a date for the hearing.

Mr. Green volunteered to act as hearing officer in this matter. He asked Board counsel if it was necessary to hold the hearing in the geographical area being discussed or if the hearing should be held in Santa Fe. It was noted that there could be a request by interested parties asking for the hearing to be held in Moriarty.

Action: Mr. Peters moved that the Board appoint Mr. Green to act as hearing officer in this matter. Mr. Tso seconded. The motion passed unanimously.

Mr. Green stated that he wanted to meet with all parties at the earliest possible time to set up the scheduling requirements, timelines, discovery issues, etc. as well as the hearing date.

Item 7. Appeal and Petition for Hearing in re: Clovis Ethanol Plant (ConAgra) EIB 07-05 (A), Bill Grantham, NMED/OGC; Sarah Piltch, Esq., NM Environmental Law Center, et al.

Ms. Piltch stated that she was appearing on behalf of the Law Center, LULAC and the NAACP to request a hearing in this case. She also stated that she was willing to waive the sixty day time period since the petition was filed June 21, the hearing date would fall on August 21, 2007.

Mr. Green volunteered to act as hearing officer in this matter also. He suggested that this matter be handled in the same manner as EIB 07-04 (A). He stated that he would meet with all parties in this case at the earliest possible time to set up the scheduling requirements, timelines, discovery issues, etc. as well as the hearing date. Ms. Piltch noted that her clients would prefer the hearing be held in Clovis.

There was a brief discussion regarding Board preferences for a regular meeting date in September as well as possible dates for the requested hearing.

Mr. Scott, representing ConAgra, stated that he would like to see the hearing scheduled as soon as possible.

Action: Mr. Peters moved that the Board appoint Mr. Green to act as hearing officer in this matter. Mr. Tso seconded. The motion passed unanimously.

Item 8. Request by AQB for hearing in re: revisions to 20.2.2 NMAC and 20.2.73 NMAC, new regulation 20.2.87 NMAC, EIB 07-06 (R), adopting new definitions and requiring reporting of greenhouse gas emissions from emissions sources. Eric Ames, NMED/OGC; Lany Weaver, NMED/AQB.

Ms. Weaver asked the Board to schedule the hearing on these matters in October. She noted that the proposed changes in the NMAC regulations and the adoptions of new definitions in this case were part of a larger effort by the Bureau, on-going since 2005, to address greenhouse gas emissions and climate change issues.

The Board agreed to set aside two days for hearing this matter.

Action: Ms. Dillingham moved that the Board appoint Ms. Bearden to act as hearing officer in this matter. Mr. Green seconded. The motion passed unanimously.

Item 8. Request by AQB for hearing in re: proposed amendments to 20.2.35 NMAC, EIB 07-08 (R), Natural Gas Processing Plant – Sulfur. Leslie Barnhart/Eric Ames, NMED/OGC.

Mr. Berger introduced Jeffrey Wechsler, representing DCP Midstream, joint petitioner in this case. Mr. Berger requested that the Board set the hearing on its October 2, 2007 calendar noting that the time estimate for the hearing is one hour.

Ms. Dillingham mentioned that since the EIB 07-06 (R) hearing could last two days it would be reasonable to place EIB 07-08 (R) first on the October agenda.

Action: Ms. Dillingham moved that the Board appoint Mr. Peters to act as hearing officer in this matter. Mr. Tso seconded. The motion passed unanimously.

Item 10. Other business

Mr. Tso asked if a new Board member had been appointed. Ms. Dillingham stated that it was her unofficial understanding that Abbas Ghassemi of Las Cruces has been asked if he would consent to be the Board's newest member.

There was a brief discussion relating to the Western Water and ConAgra hearings possibly taking place in Moriarty and Clovis respectively.

Ms. Dillingham brought up the subject of the date for the September 2007 meeting. Mr. Green will get back to Board members regarding September 13 and 14 for the meeting and hearing.

Item 11. Next meeting – August 7, 2007 Santa Fe, NM

Item 12. Adjournment

Action: The Chair adjourned the meeting at 10:50 a.m.

Signature on File

Gay Dillingham, EIB Chair