

*State of New Mexico*  
**ENVIRONMENTAL IMPROVEMENT BOARD**  
*Harold Runnels Building, N-4084*  
*1190 St. Francis Drive, P. O. Box 26110*  
*Santa Fe, New Mexico 87502*

**Approved August 1, 2006**  
**Minutes of the**  
**Environmental Improvement Board Meeting**  
**July 6, 2006 Meeting**  
**9:00 a.m.**

**Room 311, State Capitol Building**  
**490 Old Santa Fe Trail**  
**Santa Fe, New Mexico 87501**

**Members Present:** Kathi Bearden, Member  
Gay Dillingham, Chair  
Dolores Herrera, Secretary  
Ken Marsh, Member  
Mr. Soren Peters, Member  
Mr. Harold Tso, Member

**Members Absent:** Gregory Green, Vice-Chair

**Others Present:**

Carol Parker, NMED/OGC	Felicia Orth, NMED/OOTS
Darren Padilla, NMED/DWB	Louis Rose, Montgomery & Andrews
Richard Minzner, Rodey Law Firm	Chuck Thomas, NMED/DWB
Andy Berger, NMED/AQB	Robert Spillers, NMED/AQB
Tracy Hughes, NMED/GC	Maria Milanes, NMED/SWB
Robert Gallegos, City of Santa Fe	Pat Shay, Rodey Law Firm
Karyn Dest	Ana Marie Ortiz, NMED
Richard Murray	Sally Worthington, NMED/OOTS
Terry Riley	Anthony J. Trujillo, Gallagher &
Leslie Barnhart, NMED/OGC	Kennedy

Chair Gay Dillingham called the meeting to order at 9:00 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 stated that in the interest of time and fairness to the petitioner regarding Item 7, the agenda should reflect that the matter would be heard at 1:30 p.m.

**Action:** Mr. Marsh moved that the agenda be approved as presented with the exception of the 1:30 p.m. scheduling of Item 7. Ms. Bearden seconded. The motion carried unanimously.

**Item 3:** Approval of June 7, 2006 meeting minutes.

There was a brief discussion relating to the language of the two motions at agenda Item 5. The Board agreed that the text would remain as set out in the minutes.

**Action:** Mr. Marsh moved that the minutes of the meeting be approved. Mr. Peters seconded. The motion carried unanimously.

**Item 4:** Public Comment

None.

**Item 5:** Petition for Public Hearing to Consider Adoption of Title 20, Chapter 2, Part 85 of the NMAC and Revision to 20.2.84 NMAC, EIB 06-07(R). Leslie Barnhart, NMED/OGC; Andy Berger, NMED/AQB.

AQB staff members distributed revised versions of the initial proposed changes in regulations that had been mailed to the Board earlier. Mr. Berger discussed the changes that the Bureau would like to make in the regulations. He requested that the hearing be set on the Board's October 3, 2006 agenda in order to meet time constraints relating to NMED federal deadlines. He additionally requested that an entire day be set aside for the hearing.

The Chair asked whether the differences between the documents received by the Board by mail and the documents presented to the Board at this meeting were substantive. Ms. Barnhart stated that the revised documents had been more comprehensively edited and that there were some procedural changes in how the mercury emissions standards would be allocated.

**Action:** The Chair moved that the hearing be set on the October 3, 2006 meeting agenda. Ms. Bearden seconded. The motion carried unanimously.

The Chair mentioned the appointment of Mr. Green to act as Hearing Officer in this matter. She stated that the Board should confirm the appointment with him at the next meeting.

**Item 6:** Hearing and possible decision In the Matter of the Proposed Amendments to Drinking Water Regulations 20.7.10; 7, 100, 101, 102, 103, 200, 201, 300, 400 and 600 NMAC, EIB 05-13 (R). Tracy Hughes, NMED/GC; Carol Parker, NMED/OGC.

The Chair announced that the hearing would commence and that Mr. Peters would preside as Hearing Officer for this agenda item. Kathy Townsend Court Reporters transcribed the hearing. All Notices of Intent to Present Technical Testimony were timely filed and are available for review, as well as public comment correspondence and the hearing transcript in the office of the Environmental Improvement Board Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building, Rm. 2150, Santa Fe, New Mexico 87505.

**Action: Mr. Marsh moved that the amendments to the Drinking Water regulations be approved as presented. Mr. Peters seconded. The motion carried unanimously.**

Following the conclusion of the hearing, several Board members complimented Department staff on their presentation and conduct with respect to this matter.

The Chair indicated that the meeting would recess until 1:30 p.m. at which time Item 7 would be heard. She also asked if there were any agenda Item 8, "Other Business" issues the Board would like to discuss prior to recessing.

Ms. Herrera proposed that the Board work with the Department to develop guidelines for a standardized procedure relating to case documentation presented to the Board. She specifically mentioned a protocol for document form and cost analysis as well as whatever additional issues might improve the document submission process.

The Chair concurred with Ms. Herrera's proposal and also pointed out the Board's need for Department work load information.

Tracy Hughes, NMED General Counsel, stated that she would prepare a check list for the Board which would be submitted to the Board's counsel for review and approval.

There was Board discussion relating to distribution of the transcript of the hearing on the proposed Solid Waste Management rules, EIB 05-07(R), to Board members. It was agreed that the transcript would be sent to the members electronically.

Felicia Orth, Hearing Officer in EIB 05-07(R), stated that on July 5, 2006, a Motion for Extension of Proposed Time to File Final Proposed Language and Supporting Arguments had been filed by Pete Domenici, representing Southwest Landfill, LLC, requesting a two week extension of time. She also mentioned that the motion for extension had the concurrence of the major parties in the case. Ms. Orth noted that her order granting the extension had been entered July 6, 2006.

There was discussion regarding availability of future Board meeting times to debate the upcoming Hearing Officer's Report with respect to EIB 05-07(R). That discussion was informally set on the October 3, 2006 agenda.

The meeting reconvened at 1:35 p.m.

Ms. Herrera asked for clarity regarding the second sentence of Item 7 - "Vote to

release attorney letter to the public.” The Chair stated that Mr. Shandler had written two letters, one dated April 28, 2006, the other dated June 21, 2006, and she was unsure of his intentions. She indicated that she did not know if he was recommending another vote relating to the April 28<sup>th</sup> letter or if the Item 7 vote recommendation was limited to the June 21<sup>st</sup> letter.

**Item 7: Vote to grant or deny petition specifically requesting a ban on Aspartame. Vote to release attorney letter to the public.**

**Action: The Chair moved to deny the petition for hearing as it is currently written. Ms. Bearden seconded the motion.**

The Chair asked for comments from the parties relating to the motion.

Dick Minzer, representing Ajinomoto Foods, stated that the motion was well-taken and that the FDA has clear and exclusive authority over the issue of banning aspartame.

Stephen Fox, petitioner, read from various sections of the New Mexico Statutes Annotated that prohibit poisonous or deleterious substances in food.

Richard Murray, member of the public, expressed his views regarding the presence of toxic substances in food in the United States. He stated it was his position that a hearing should be held by the Board.

**Following comments, a roll call vote was taken and the motion to deny the petition for hearing carried; 5 affirmative; 1 negative.**

**Board vote**

<b>Kathi Bearden</b>	<b>yes</b>
<b>Gay Dillingham</b>	<b>yes</b>
<b>Dolores Herrera</b>	<b>yes</b>
<b>Ken Marsh</b>	<b>yes</b>
<b>Soren Peters</b>	<b>yes</b>
<b>Harold Tso</b>	<b>no</b>

**The Chair moved to release the letters from Zach Shandler dated April 28, 2006 and June 21, 2006. Ms. Herrera seconded.**

**Following Board comments, a roll call vote was taken and the motion to release Mr. Shandler’s letters dated April 28, 2006, and June 21, 2006 failed; 3 negative; 3 affirmative:**

**Board vote**

<b>Kathi Bearden</b>	<b>yes</b>
<b>Gay Dillingham</b>	<b>yes</b>
<b>Dolores Herrera</b>	<b>yes</b>

<b>Ken Marsh</b>	<b>no</b>
<b>Soren Peters</b>	<b>no</b>
<b>Harold Tso</b>	<b>no</b>

**Item 8: Other business - See discussions held following the Item 6, the hearing of EIB 05-13 (R).**

**Item 9: Next Meeting – August 1, 2006 in Santa Fe.**

**Item 10: Adjournment:**

**The Chair moved to adjourn the meeting. Mr. Peters seconded. The motion carried unanimously, the meeting adjourned at 3:35 p.m. July 6, 2006.**

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**Gay Dillingham, EIB Chair**