The Chair called the meeting to order at 10:00 a.m.

Item 1. Roll Call

Roll was taken and it was noted that a quorum was present.
Item 2. Approval of the Agenda

Action: Mr. Tso moved approval of the meeting agenda. Mr. Ghassemi seconded. The motion passed unanimously.

Item 4. Public Comment

None.

Item 3. Approval of the December 1, 2008 meeting minutes

Action: Mr. Tso moved approval of the December 1, 2008 meeting minutes. Ms. Dillingham seconded. The motion passed unanimously.


Mr. Tso noted an error in the Resolution with respect to the Board’s meeting day.

Action: Mr. Ghassemi moved approval of the Open Meetings Act Resolution as corrected. Mr. Tso seconded. The motion passed unanimously.

Item 6. Board decision in re: setting a date for continuation of the hearing in EIB 08-14 (R), Proposed amendments to 11.5.2, 11.5.3 and 11.5.4 NMAC, Illegal Drug or Alcoholic Beverage Use regulations, OHSB. Tannis Fox, NMED/OGC; Butch Tongate, NMED/OHSB.

Ms. Fox requested that the Board set a date for the continuation of the hearing in this matter.

Action: After discussion, the Chair stated that he would review the Board’s future schedule and a decision would be made within a week as to a date for the continuation of the hearing and that all parties would be informed of that decision.

Item 7. Request for hearing in re: Petition to Adopt New Regulations and Amend Various Sections of 20.2.1, 20.2.2, 20.2.70 and 20.2.72 NMAC to Create a Statewide Cap on Greenhouse Gas Emissions and Promulgate Other Requirements, EIB 08-19 (R). Bruce Frederick, Esq., NMELC; Tannis Fox, NMED/OGC for Eric Ames, NMED/OGC.

The Chair noted that since there were several individuals who wished to discuss issues of concern with respect to this Petition, he would set aside time for those interested parties to voice their concerns and added that rebuttal would follow.

Mr. Frederick, representing the New Mexico Environmental Law Center (NMELC), introduced NMELC client John Fogarty of New Energy Economy (NEE). Mr. Fogarty briefly mentioned NEE’s position regarding the Petition in this case and its perceived need for the Board to act with
dispatch. Mr. Frederick then set out his general summary of the amendments and also noted the pressing need for the Board to be proactive in this situation. He went on to request an April, 2009 hearing date.

Sandra Ely, speaking on behalf of NMED, stated that the Department’s position with respect to a hearing date is that given the scope of the hearing, the Department would oppose a hearing date any earlier than July, 2009. She indicated that bills relating to these same issues would be introduced during the 2009 Legislative Session and it would be premature to conduct a hearing until the sixty day Session is over and disposition of those bills is known. She additionally noted that there appeared to be some inconsistencies in the Petition as it relates to the Western States Climate Initiative that would need to be resolved prior to scheduling a hearing.

Tannis Fox, an attorney with the Department’s Office of General, requested that the Board also consider a request to require that participants in this case file notices of intent to present technical testimony (NOIs) thirty days prior to the hearing date instead of the usual fifteen day filing deadline and further requested that complete written witness testimony be included in the NOI filings.

There was discussion among Board members and various participants regarding an estimate of the length of the hearing being contemplated.

The following individuals made public comment regarding the Petition to Adopt New Regulations:

Rick Alvidrez, Esq., on behalf of Public Service Company of New Mexico
Ernest C’de Baca, on behalf of Public Service Company of New Mexico
Louis Rose, Esq., on behalf of the New Mexico Oil and Gas Association
Jeff Reynolds, on behalf of the Association of Commerce and Industry
Sonia Phillips, on behalf of Xcel Energy
Cecilia Abeyta, on behalf of the New Mexico Farm and Livestock Bureau
T. J. Trujillo, Esq., Dairy Producers of New Mexico

All public comment participants requested that the Board deny the Petition for Hearing.

A lengthy discussion followed among the parties regarding Board authority issues in this matter, as well as scheduling problems should the Board decide to conduct a hearing.

Mr. Frederick then set out Petitioner’s rebuttal to positions taken by the public comment participants in their requests to deny the Petition for Hearing.

Following Mr. Frederick’s rebuttal, several of the public comment participants stated their disagreement with Mr. Frederick’s characterization of the immediate need for a hearing and also noted that there are important scheduling issues that need to be addressed.

Ms. Fox then suggested that it might be appropriate to name a hearing officer to prepare a briefing schedule for the parties which would relate only to the question of Board jurisdiction and authority.
A lengthy discussion among the Board, Petitioner and the public comment participants in this case ensued.

Following discussion, the Chair suggested that the Board allow any interested party to file a brief on the specific issue of the Board’s jurisdiction and authority to enact the proposed regulations. He added that briefs would not be mandatory but could be filed in the discretion of each interested party and that the briefs would need to be available for board members’ review prior to the April 6, 2009 meeting.

Discussion by the Board continued.

**Action:** Ms. Dillingham moved that a hearing in EIB 08-19 (R) be set on the Board’s August 3, 2009 agenda; briefs relating to Board jurisdiction and authority issues be scheduled for discussion on the April 6, 2009 agenda subject to filing deadlines to be set out in a scheduling order; direct interested parties that notices of intent to present technical testimony must be filed thirty days prior to the August 3, 2009 meeting and further that three days be set aside for the hearing in August and, if necessary, continue the hearing at the Board’s September 8, 2009 meeting. Mr. Ghassemi seconded.

**Roll Call Vote:**

- Mr. Peters     yes
- Mr. Tso     no
- Mr. Ghassemi     yes
- Ms. Dillingham     yes
- Mr. Green     yes

The motion passed.

The meeting recessed for lunch at 12:30 p.m. The Chair noted that the meeting would resume at 1:30 p.m.

The meeting resumed and discussion regarding the appointment of a Hearing Officer in EIB 08-19 (R) was held.

**Action:** Mr. Green moved that the Board appoint Ms. Dillingham to act as Hearing Officer in EIB 08-19 (R). Mr. Ghassemi seconded.

The motion passed unanimously.

**Item 8.** Hearing and possible decision in re: Proposed amendments to 20.3.1, 20.3.3, 20.3.4, 20.3.7, 20.3.13 and 20.3.15 NMAC, EIB 08-16 (R), Radiation Protection Rules. Misty Braswell, NMED/OGC; Daniela Bowman, NMED/RCB.

At 1:40 p.m., the Chair announced that the hearing in the above-referenced case would commence and Mr. Ghassemi would act as Hearing Officer for this matter. Kathy Townsend Court Reporters transcribed the hearing. All Notices of Intent to Present Technical Testimony...
were 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 Room N2150, Santa Fe, New Mexico 87505.

At 3:15 p.m. the hearing concluded and the meeting reconvened. The Board discussed the process for the approval of the statement of reasons in EIB 08-16 (R) since the next meeting would not take place until April 6, 2009 and the Radiation Control Bureau would need to process required documentation in this matter prior to that date.

**Action:** Ms. Dillingham moved that the Board approve the Environment Department’s proposed amendments to 20.3.2, 20.3.3, 20.3.4, 20.3.7, 20.3.13 and 20.3.15 NMAC, in EIB 08-16 (R); allow the Department to make minor typographical and non-substantive changes that might be necessary and, authorize the Statement of Reasons and Order to be signed by the Chair on behalf of the Board. Mr. Peters seconded.

**Roll Call Vote:**
- Mr. Peters: yes
- Mr. Tso: yes
- Mr. Ghassemi: yes
- Ms. Dillingham: yes
- Mr. Green: yes

The motion passed unanimously.

**Item 9.** Election of Board Officers.

There was a lengthy discussion relating to election scheduling.

**Action:** Ms. Dillingham moved that election of officers be held at the April 6, 2009 meeting. Mr. Ghassemi seconded.

**Roll Call Vote:**
- Ms. Dillingham: yes
- Mr. Ghassemi: yes
- Mr. Peters: no
- Mr. Tso: no
- Mr. Green: yes

The motion passed.

**Item 10.** Other business

None.
Item 11. Next meeting: 10:00 a.m. April 6-7, 2009, State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, NM 87501

Item 12. Adjournment

Action: Mr. Tso moved that the meeting adjourn. Ms. Dillingham seconded. The motion passed unanimously.

The meeting adjourned at 3:50 p.m.

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Gregory Green, Chair