

*State of New Mexico*  
**ENVIRONMENTAL IMPROVEMENT BOARD**  
*Harold Runnels Building, N-2150*  
*1190 St. Francis Drive, P. O. Box 5469*  
*Santa Fe, New Mexico 87502*

**Environmental Improvement Board Meeting**  
**April 6, 2009**  
**10:00 a.m.**  
**New Mexico State Capitol Room 317**  
**490 Old Santa Fe Trail**  
**Santa Fe, New Mexico 87501**

**Members Present:**

Kathi Bearden, Vice-Chair  
Dolores Herrera, Member  
Harold Tso, Secretary  
Gay Dillingham, Member  
Soren Peters, Member

**Members Absent:**

Gregory Green, Chair  
Abbas Ghassemi, Member

**Others Present:**

Brian Egolf	Jennifer Marshall, NMELC
John Fogarty, NEE	Cecilia Abeyta, NM Farm & Livestock Bureau
Margaret Nieto, Alb/Bernalillo County	Donna Griffin, City of Albuquerque
Allan Sindelar, Solar Industry	John Gillis, NMGCO
David Baca, SW Energy Board	John Otter, Citizen's Energy Board
Robert Locker, Citizen's Energy Board	Robb Thomson, Sierra Club/NM Conf. of Churches
Deborah Seligman, NMOGA	Sonia Phillips, Xcel Energy
Anna Rondon, Lnd Use Plner, Navajo Tribe	Edwina Beard, NM Interfaith Power and Light
Rick Alvidrez, PNM	Robert Bernstein, MD, Physicians for Soc. Responsibility
Mariel Nanasi, Movie Youth Group, Taos	Rick Lass
Magita Storm	Kent Salazar, NM & Nat'l Wildlife Fed.
Louis Rose, Montgomery Law Firm	Rachel Mandelkorn
Clemente McFarland, Jr.	John Curl, Western Resource Advocates
Jennifer Pruett, NMED/PSTB	Jim Davis, NMED/PSTB
Eric Ames, NMED/OGC	Bruce Frederick, NMELC
Beth Gillia, Esq., NMED/PSTB	Susan George, Esq., NMED/PSTB
Adam Keaster, NMED/AQB	Bill Grantham, NMED/OGC
Gail Cooke, NMED/AQB	Tammy Fiebelkorn, SWEEP
Ryan Pokrasso	Keegan Crumpacker, SF Farmer's Market
Michael Jenson, Amigos Bravos	Adrienne Barrett
Ona Porter, Comm. Action NM	David Baigman, SW Energy Institute
Jonas Armenta, Western Refining	Adrian Terry, Atty. General's Office

John Reaves, D & H Petroleum  
Benjamin Hodges, Brewer Oil  
Tom Gray, NMED/PSTB  
Stephen Reuter, NMED/PSTB  
Beverly Fikse, Dairy Producers of NM

Link Summers, POWRA  
Joe Goodwin, NMED/PSTB  
Kalvin Martin, NMED/PSTB  
Joyce Shearer, NMED/PSTB  
David Cohn

The Vice-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:** Ms. Herrera requested that the Board move agenda Item 10, Election of Officers, to follow Item 4, Public Comment, thereby inserting Board Elections as Item 5. Ms. Dillingham stated that in an effort to accommodate those persons interested in the Board's consideration of EIB 08-09 (R), the Petition to Adopt New Regulations in 20.2.1 NMAC, it was agreed that matter would be set on today's agenda at 2:30 p.m. A discussion followed regarding Board scheduling protocols.

Mr. Tso moved that the agenda be approved as amended, noting that the remaining agenda items would be consecutively re-numbered following inserted Item 5. Ms. Herrera seconded. The motion passed unanimously.

**Item 3. Approval of the January 5, 2009 minutes.**

**Action:** Mr. Tso moved the approval of the January 5, 2009 meeting minutes, and requesting clarification of an issue relating to a hearing setting discussed at the January meeting. There was brief discussion followed by Mr. Tso withdrawing his prior motion and moving approval of the January 5, 2009 as written. Ms. Dillingham seconded. The motion passed unanimously.

**Item 4. Public Comment**

Link Summers, on behalf of POWRA, presented his views regarding statewide liquid waste issues and legislation relating to those issues that had been acted upon during the 2009 legislative session. He also discussed the Liquid Waste Fee Revenue Report prepared for the Board by NMED's Environmental Health Division.

**Item 5. Board Elections**

**Action:** Ms. Herrera moved Board approval of the following election results: Gregory Green, Chair; Kathi Bearden, Vice-Chair and Harold Tso, Secretary. Ms. Dillingham seconded. The motion passed unanimously.

**Item 6. Request for hearing in re: Proposed amendments to Air Quality Regulations 20.2.77, 20.2.78 and 20.2.82 NMAC, New Source Performance Standards (NSPS); National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants. (MACT), EIB 09-03 (R). Bill Grantham, NMED/OGC; Adam Keaster, NMED/AQB.**

Mr. Grantham, accompanied by Mr. Keaster of the Department's Air Quality Bureau, requested that the Board set a hearing on the proposed amendments to 20.2.77, 20.2.78 and 20.2.82, NMAC on the Board's July 2009 meeting. Mr. Grantham estimated that a hearing in this matter would probably take one hour.

There was a brief discussion regarding background information with respect to interested party notification by the Department.

**Ms. Herrera moved that the Board set EIB 09-13 (R) for hearing at the Board's July 2009 meeting. Ms. Dillingham seconded.**

**Roll Call Vote:**

<b>Ms. Dillingham</b>	<b>yes</b>
<b>Ms. Herrera</b>	<b>no</b>
<b>Mr. Peters</b>	<b>yes</b>
<b>Mr. Tso</b>	<b>no</b>
<b>Ms. Bearden</b>	<b>yes</b>

**The motion carried**

**It was agreed that Mr. Peters would act as hearing officer in this case.**

Mr. Terry noted that the Board should be mindful of requiring that parties to hearings provide information or perform activities not required by regulations.

Ms. Bearden stated that a discussion of the issue mentioned by Mr. Terry should appear as an item on the Board's May 4, 2009 agenda.

**Item 7. Request for hearing in re: Proposed revisions to 20.2.2 NMAC – Definitions, 20.2.74 NMAC, Permits – Prevention of Significant Deterioration, 20.2.79 NMAC, Permits – Nonattainment Areas, EIB 09-04 (R). Bill Grantham, NMED/OGC; Gail Cooke, NMED/AQB.**

Mr. Grantham, accompanied by Ms. Cooke of the Department's Air Quality Bureau, requested that the Board set a hearing on the proposed revisions to 20.2.2 NMAC on the July 2009 meeting agenda. Mr. Grantham estimated that a hearing in this matter would probably also take one hour.

There was another brief discussion regarding background information with respect to interested party notification.

**Action:** Ms. Herrera moved that the Board set a hearing in EIB 09-04 (R). Mr. Tso seconded. The motion passed unanimously.

**Mr. Peters also agreed to act as Hearing Officer in this case.**

**Item 8. Hearing and possible decision in re: Proposed revisions to 20.2.9 NMAC, Conformity to SIP of Transportation, Plans, Programs and Projects, EIB 08-15 (R). Bill Grantham NMED/OGC; Gail Cooke, NMED/AQB. Kathi Bearden, Hearing Officer.**

The Vice-Chair asked if anyone in the audience intended to make public comment with respect to this case. No one expressed a desire to comment.

At 10:55 a.m., the Vice-Chair announced that the hearing in the above-referenced case would commence and that she would act as Hearing Officer in 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.

The Board reconvened at 11:25 a.m.

**Action:** Ms. Dillingham moved that the Board accept the revisions proposed by the Department to 20.2.99 NMAC, EIB 08-15 (R). Ms. Herrera seconded. The motion passed unanimously.

**Item 9. Hearing and possible decision in re: PSTB amendments Parts 1, 7, 10, 12, 13, 14, 15, 16 and 18 of 20.5 NMAC, EIB 08-18 (R). Beth Gillia, Esq. and Susan George, Esq., PSTB; Jennifer Pruett, NMED/PSTB. Kathi Bearden, Hearing Officer**

Mr. Terry noted that the only party to this case is the Petroleum Storage Tank Bureau, no other notices of intent to present technical testimony have been filed. Consequently, the Board will consider these regulations by accepting the written submissions of the Department. He additionally cited several requirements set out in the Environmental Improvement Act relating to the Board's decision making process.

The Vice-Chair asked if anyone in the audience intended to make public comment with respect to this case. No one expressed a desire to comment.

At 11:30 a.m., the Vice-Chair announced that the hearing in the above-referenced case would commence and that she would act as Hearing Officer in 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.

The Board reconvened at 12:25 p.m.

**Action:** Ms. Dillingham moved, for the reasons stated during the hearing, that the Board accept the revisions proposed by the Department to Parts 1, 7, 10, 12, 13, 14, 15, 16 and 18 of 20.5 NMAC, EIB 08-18 (R). Mr. Tso seconded.

**Roll Call Vote:**

<b>Mr. Peters</b>	<b>yes</b>
<b>Mr. Tso</b>	<b>yes</b>
<b>Ms. Dillingham</b>	<b>yes</b>
<b>Ms. Herrera</b>	<b>yes</b>
<b>Ms. Bearden</b>	<b>yes</b>

**The motion carried**

The meeting recessed for lunch at 1:45 p.m.

The meeting reconvened at 2:30 p.m.

**Item 10. Deliberations and possible decision in re: Briefs filed regarding Board jurisdiction and authority relating to Petition to Adopt New Regulations in 20.2.1 NMAC, EIB 08-19 (R), creation of a statewide cap on greenhouse gas emissions. Bruce Frederick, Esq., NMELC; Eric Ames, NMED/OGC; Louis Rose, Esq., Industry Respondents; Richard Alvidrez, Esq., PNM.**

Ms. Bearden noted that there were now four Board members present, Ms. Herrera had to leave. She then turned the meeting over to Ms. Dillingham as Hearing Officer in this case.

Ms. Dillingham asked if any member of the audience wished to make public comment with respect to this case. Nine individuals indicated they wished to comment.

Ms. Dillingham then asked the parties, beginning with the Petitioner, to present their oral arguments, noting a time limit of five minutes for each party.

Mr. Frederick, representing the Petitioner New Energy Economy, presented his argument stating that there was no doubt that the Board had the authority to regulate greenhouse gas emissions in New Mexico, citing, among other items, the Board's mandate to protect the health and welfare of the citizens of the State. He concluded by requesting that the Board set a hearing in this matter.

Mr. Ames, representing the New Mexico Environment Department, noted that the Department concurred with Mr. Frederick's assessment that the Board has the authority to regulate greenhouse gas emissions in 2007. Mr. Ames urged the Board make clear that its decision applies to any potential amendments to the Petition that is pending today. Mr. Ames also requested that the Board set a hearing in this case.

Mr. Alvidrez, representing Public Service Company of New Mexico, disagreed with Mr. Frederick's and Mr. Ames' opinion that the Board has the authority to regulate greenhouse gas emissions. Mr. Alvidrez set out his views relating to the deficiencies in NEE's and NMED's legal position with respect to the regulations contemplated by Petition in this case. He requested that the Board reject the Petitioner's request for a hearing.

Mr. Rose, representing Industry Respondents, also disagreed with Mr. Frederick's and Mr. Ames' view that the Board has the authority to regulate greenhouse gas emissions. He also noted that in his view the Board, for a series of legal and practical reasons, did not have the authority to regulate greenhouse gas emissions. He too requested that the Board reject the request for hearing.

Ms. Dillingham again asked who in the audience would like to make public comment. Eleven additional people indicated they wished to do so. Ms. Dillingham noted that all individuals who wanted make public comment would need to limit those comments to two minutes each.

Robert Bernstein, MD, Physicians for Social Responsibility  
Anna Rondon, Land Use Planner for the Navajo Tribe  
Kent Salazar, Regional Wildlife Federation  
Allan Sindelar, Solar Industry  
Ona Porter, Community Action New Mexico  
Mariel Nanasi, Movie Youth Group, Taos  
Michael Jenson, Amigos Bravos, River Preservation Group  
John Otter, Citizen's Energy Board  
David Baigman, SW Energy Institute  
Clemente MacFarland, Jr., individually  
Edwina Beard, NM Interfaith Power & Light  
Robert Locker, Citizen's Energy Board  
David Cohn, individually  
Robb Thomson, Sierra Club/Conference of Churches  
Rick Lass, individually  
Tammie Feiblecorn, SWEEP  
John Curl, Western Resource Advocates  
Keegan Crumbacker, SF Farmer's Market  
Ryan Pokrasso, individually  
Adrienne Barrett, individually and for New Mexico's children

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

Ms. Dillingham then asked the four parties in this matter to present their closing arguments

Mr. Frederick set out Petitioner's view with respect to the compelling need for the Board to set a hearing in this matter. He also noted that while the petition filed by New Energy Economy in this case fulfilled the requirements of the law, it will very likely be amended in the future.

Mr. Ames concurred with the position taken by the Petitioner in this case and further agreed with

Petitioner that the petition would likely be amended prior to any hearing set by the Board. He also stated that it was the position of NMED that the Board has clear authority to act in this case. Mr. Alvidrez reiterated his client's position with regard to the Board's lack of authority to act in adopting a statewide cap on greenhouse gas emissions. He also noted that in his view, the Board should reject the petition based upon what he considered to be a number of serious flaws contained in the document.

Mr. Rose stated his clients' opposition to the Board setting a hearing in this case. He again expressed his view that the Board does not have the authority to act with respect to the issues in this case and also agreed with Mr. Alvidrez' position that the petition was insufficient.

A lengthy discussion among the Board, the parties to the case, Board counsel, public comment participants and meeting attendees ensued.

Ms. Dillingham suggested that the Board revise its initial schedule and move the hearing from August 3, 2009 to a later date, possibly October, December or January to allow the Department time to handle public outreach, publication deadlines, etc.

A lengthy discussion by the Board, Board counsel and the parties to the case continued.

**Action: Ms. Dillingham, stating that the Board had the authority to hear this case, moved that the Board schedule a hearing in EIB 08-19 (R). Mr. Peters seconded.**

Mr. Tso agreed with Ms. Dillingham's assessment of the Board's authority. He also expressed his concern as to whether the Board's actions in this matter could be adequate with respect to environmental justice issues. He additionally noted that there is the possibility that the Board's action may be superseded by Congressional action.

**Roll Call Vote:**

<b>Ms. Bearden</b>	<b>no</b>
<b>Mr. Peters</b>	<b>yes</b>
<b>Mr. Tso</b>	<b>yes</b>
<b>Ms. Dillingham</b>	<b>yes</b>

**The motion passed.**

**Action: Ms. Dillingham moved that the Board investigate timing issues for the hearing and that October, December or January be discussed at the May 4, 2009 meeting as possible hearing dates. Mr. Peters seconded.**

**Roll Call Vote:**

<b>Mr. Tso</b>	<b>yes</b>
<b>Ms. Bearden</b>	<b>yes</b>
<b>Mr. Peters</b>	<b>yes</b>
<b>Ms. Dillingham</b>	<b>yes</b>

**Item 11. Other business**

Mr. Terry brought up the necessity of rescheduling the hearing in EIB 09-02 (A), Air Quality Permit No. 0039M5 Issued to DCP Midstream, LP, Linam Ranch Gas Plant, Randy and Naomi Smith, Petitioners. It was agreed that the case would be heard at the Board's July 2009 meeting.

There was discussion regarding whether July 6 or 7 would be the date of that meeting. Pending input from absent members, the Board tentatively agreed on July 7.

**Item 12. Next meeting: 10:00 a.m. May 4, 2009, State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, NM 87501**

**Item 13. Adjournment**

**Ms. Dillingham moved that the Board adjourn. Mr. Peters seconded. The motion passed unanimously.**

*Gregory Green, Chair, for:*

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**Kathi Bearden, Vice-Chair**