

*State of New Mexico*  
***Environmental Improvement Board***

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Gary E. Johnson  
Governor

DRAFT  
STATE OF NEW MEXICO  
**ENVIRONMENTAL IMPROVEMENT BOARD**  
**MINUTES OF THE REGULAR MEETING OF**  
January 12, 2001

Chairperson Jimi Gadzia called the regular meeting of the Environmental Improvement Board to order at approximately 9:34 a.m., at the City County Government Center, 9<sup>th</sup> Floor Committee Room 9081, One Civic Plaza, Albuquerque, New Mexico.

**Members Present**

Jimi Gadzia, Chair  
Hilary Noskin, Vice-Chair  
David Salopek, Secretary  
Dr. Abbas Ghassimi  
Cynthia Mojtabai

**Others Present**

Patrick Simpson	EIB Attorney
Maria Voyles	EIB Administrator
Eric Ames	NMED/OGC
Louis Rose	Montgomery & Andrews
Sandra Ely	NMED
Gail Cooke	NMED
Jennifer Taylor	NMPIRG
Deborah Seligman	NMOGA
Eduardo V. Pineda	CRCAW/CORRALES
Hugh W. Church	ALA/NM
Doug Wolf	

**ITEM 1. Approval of the Agenda**

David Salopek moved to approve the agenda. Dr. Hillary Noskin seconded the motion. The motion passed unanimously.

**Item 2 - Approval of the Minutes of the January 12, 2001, and February 9, 2001, meetings.**

Jimi Gadzia moved to approve the minutes of the January 12, 2001, and February 9, 2001, meetings. David Salopek seconded the motion. The motion passed unanimously.

**Item 3 – Discussion and action on relocating future Environmental Improvement Board meetings from Santa Fe, New Mexico to Albuquerque, New Mexico.**

Secretary Peter Maggiore presented a plaque to Dr. Laurence Lattman for his five years of service on the Environmental Improvement Board.

Secretary Maggiore gave a brief presentation regarding legislation that the Environment Department will be introducing during the 2001 sixty-day session.

Legislation that may be introduced:

1. Amend the Air Quality Act to allow for emissions to be determined based on the potential to emit rather than potential emission rate.
2. Amend the Air Quality Act to specify that appeals brought before the Board is based on the record rather than a new or de novo hearing.
3. Request for a 1.5 million-dollar appropriation from the general fund to match federal grants for the Clean Water State Revolving Loan Fund.
4. Amend the Rural Infrastructure Act to allow for flexible interest rates for low interest loans to New Mexico Communities.
5. Amend the Hazardous Waste Act to allow for the adoption of federal rules to bring the regulation of used oil under the Resource and Conservation Recovery Act.
6. Amend the Utility Operator Certification Act to conform to the new language in the Federal Safe Drinking Water Act.
7. Amend the Environmental Improvement Act to allow the Governor to make a temporary appointment to the Environmental Improvement Board in case of recusal or conflicts that will not allow for a quorum to vote on an issue.
8. Resend the requirement in Underground Storage Tank regulations regarding competitive bidding.
9. Amend the Petroleum Products Loading Fee Act to eliminate the deduction to the petroleum products loading fee for tribal distributors of petroleum products.
10. Legislation that would allow an owner of above ground storage tanks that experiences a release access to the corrective action fund.
11. A bill that would give the Environment Department statutory authority to enforce environmental covenants that can be used to protect human health and the environment by establishing certain land use restrictions in conjunction with risk based clean-up of polluted properties.
12. Amend the Environmental Improvement Act to designate the Green Zia Pollution Prevention Program as a separate program within the Environment Department and to allow applicants to this program the same privileges afforded to applicants for environmental permits with respect to confidentiality.
13. Legislation that would improve the way water resources are managed in New Mexico.

Secretary Maggiore stated that the Department would brief the Board on the outcome of its legislative initiatives after the session.

Secretary Maggiore stated that he supports the Department's petition regarding the proposed changes to 20 NMAC 2.75 – Construction Permit Fees.

The proposed fees are part of an agency wide strategy to try to insulate the Department from fluctuations in general fund appropriations. The proposal is part of a comprehensive strategy that will allow the Department to continue to provide a high level of protection, while also enhancing the predictability of the regulatory framework that the Department administers.

Mr. Ames stated that the Board adopted the Departments proposed changes to section 206 of 20 NMAC 2.72 – Construction Permits. The Board continued the hearing on the remainder of the Departments petition, the Industry Working Groups petition, and the Conservation Voters Alliance petition. The Department requested that the Board set a date for hearing the remainder of the three petitions, either at the Boards April meeting or shortly thereafter. Counsel for the Conservation Voters Alliance concurred with the date. Mr. Ames stated that there is a wide gap between the parties on certain issue and asked that the Hearing Officer work with the parties to facilitate a resolution.

Dr. Noskin moved to set a hearing date of April 13, 2001, to hear the remainder of the petitions submitted to the Board by the Environment Department, Industry Working Group and the Conservation Voters Alliance on proposed changes to 20 NMAC 2.72 – Construction Permits. Dr. Lattman seconded the motion. The motion passed unanimously.

Chairwoman Gadzia stated that Mr. Sweazea would act as interim Hearing Officer to facilitate a resolution between the petitioners.

**Item 4 – Next Meeting.**

The next meeting of the Environmental Improvement Board will be held on February 9, 2001.

**Item 5 – Hearing to amend 20 NMAC 2.75 – Construction Permit Fees, Environment Department, Petitioners.**

Dr. Lattman left the hearing at 3:10 p.m. on January 12, 2001.

The hearing adjourned at 4:10 p.m. on January 12, 2001, and will reconvene at 9:30 a.m. on January 26, 2001.

**January 26, 2001, continuation of the hearing to amend 20 NMAC 2.75 – Construction Permit Fees, Environment Department, Petitioners.**

Chairwoman Gadzia asked the Board's counsel for guidance regarding the issue of charging annual fees. Mr. Simpson stated that annual fees have been found to be inappropriate when they are not tied to actual costs. The Board must decide if the fees are a legitimate part of the Department's proposed system.

Dr. Noskin stated that she is concerned that the Department has not tracked any hourly time since 1989. She liked the point system however, there is no basis for the system; and no criteria

established for it. Dr. Noskin stated that she likes annual fees. The fees along with new or modified permits are justified because they are tied with an action. Dr. Noskin stated that a fee increase is necessary, but the Department has not justified the amount of money that it is requesting. She believes that the Department's proposal needs some work and at the very least would be amiable to option number 6 with lower fees and adding a reporting requirement of one or two years.

Chairwoman Gadzia stated that she is comfortable with the Department's proposal and if the fees are found to be excessive, the Department could come back to the Board to adjust the amount.

Mr. Sweazea stated that the idea of annual fees is good although they should only be applied to newly permitted or modified sources as in option number 6, with no fees for NOI's and a reporting requirement added for one year. Mr. Sweazea stated that the Department needs to work on getting a data system in place so Department employees can track their time spent on each permit.

Dr. Noskin stated that because of all the other fees required a fee should not be required for NOI's.

Mr. Sweazea moved to approve the Departments option number 6 with the addition of the language suggested by Ms. Rita Trujillo of reporting on the performance of the new system, except that the reporting be required annually rather than every two or three years. Chairwoman Gadzia seconded the motion.

Dr. Lattman stated that having to pull employees off of their regular jobs to get the system started would hurt other important work. Dr. Lattman suggested giving the Department two years to get the system started, then require reporting every year.

Mr. Sweazea stated that the data compilation would be a contemporaneous thing that would not require pulling anyone off of other jobs.

Dr. Lattman stated that his concern is that if the Board does not give the Department support initially, and the Legislature does not fund them adequately, the Board could do the Department damage in the loss of people. Dr. Lattman stated that if Mr. Sweazea's motion were to reflect an initial report in two years he would vote for it, after that, a yearly report by the Department could be required.

Mr. Sweazea stated that if the Chairwoman would withdrawal her second, he would amend his motion to add an initial two year reporting requirement.

Chairwoman Gadzia withdrew her second.

Mr. Sweazea amended his earlier motion to add an initial report be required from the Department in two years, then reporting would be required every year. Chairwoman Gadzia seconded the amendment.

Dr. Lattman left the hearing at approximately 2:02 p.m and the Board took a short recess.

Dr. Noskin stated that even though she still does not believe that the point system has a basis, to

keep the Department from going under, she would be willing to approve option number 6, if the reporting requirement was backed up to one year.

Mr. Sweazea withdrew his earlier motion and Chairwoman Gadzia withdrew her second.

Mr. Sweazea moved to approve option number 6 with annual fees only for new applications and modifications, and an initial report be required in one year and every year thereafter. Chairwoman Gadzia seconded the motion.

**VOTE**

Jimi Gadzia	Yes
Hilary Noskin	Yes
Kevin Sweazea	Yes
Laurence Lattman	Absent
David Salopek	Absent

The motion passed.

Chairwoman Gadzia asked the Department if they would weight the pros and cons of the option that was passed versus the option that the Department prefers in their first report to the Board.

Dr. Noskin stated that she would like to see more information on the point system in the Department's first report.

**Item 6 – Hearing to amend 20 NMAC 2.72– Construction Permits, Environment Department, Petitioners.**

The hearing was continued until February 9, 2001.

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**Jimi Gadzia, Chair**

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**David Salopek, Secretary**