

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
August 4, 2008
10:00 a.m.
State Capitol Building, Room 317
490 Old Santa Fe Trail
Santa Fe, New Mexico 87501

Members Present: Gregory Green, Chair
Harold Tso, Secretary
Soren Peters, Member
Gay Dillingham, Member
Abbas Ghassemi, Member

Members Absent: Dolores Herrera, Member
Kathi Bearden, Vice-Chair

Others Present:

Jennifer Hower, NMED/OGC	Tracy Hughes, General Counsel NMED
Butch Tongate, NMED/OHSB	Robert Genoway, NMED/OHSB
Margie Perrault, NMED	Robin Shishido, NMED
Rosemary Othmer, NMED/OGC	Dawn Matson, ABC
Carolos Romero, NMED	Carol Parker, NMED/OGC
Dennis McQuillan, NMED	Karen Gallegos, NMED/WWIDD
Judi Kahl, NMED	Darren Padilla, NMED
Curtis Gurley, Gurley Law Firm	Darcie B. Weingrad, Gallagher & Kennedy
Link Summers	Jason Sandel, Aztec Well
Kathryn Becker, NMED/OGC	Adrian Terry, Atty. General's Office
Zachary Shandler, Atty. General's Office	

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 Agenda

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

Item 3. Approval of June 2, 2008 meeting minutes

Action: Ms. Dillingham moved approval of the June 2, 2008 meeting minutes. Mr. Tso seconded. The motion passed unanimously.

Item 4. Public Comment

Link Summers spoke to the Board expressing his views regarding what he considers to be shortcomings of NMED's liquid waste programs, bureau staffing, financial issues, educational programs and effective management and further indicated his views on the financial repercussions to homeowners as a result of these shortcomings.

Item 5. Presentation in re: Board authority relating to the Board's desire to "go paperless" and the form of filing. Tracy Hughes, NMED General Counsel

Ms. Hughes discussed with the Board unforeseen problems that had been encountered with respect to the online posting of meeting documents previously sent in hard copy form to the Board members prior to each meeting. After some discussion, the Board agreed that posting the meeting documents in PDF format on EIB's web site was the most efficient and effective manner in which to handle the situation while preserving the public's ability to review all documents.

Item 6. Board action in re: NMED's Occupational Health and Safety Bureau's Request for Reconsideration in EIB 07-15 (R), Amendments to 11.5.1, 11.5.2, 11.5.4 and 11.5.6 NMAC. Kathryn Becker, NMED/OGC.

Mr. Becker stated that the Request for Reconsideration related to the specific issue of private interviews of employees by Bureau staff during an investigation of alleged health and safety violations by employers which would exclude employer counsel. During her presentation Ms. Becker noted that if the Board was unwilling to consider the Bureau's request to change the language which the Board had adopted at the June 2, 2008 hearing, then the Bureau would ask that the Board, in the alternative, allow the Bureau to retain the rule currently in effect.

Jason Sandel, representing Aztec Well, presented his views with respect to the issue being considered by the Board.

A very lengthy discussion among the parties and the Board was held.

Mr. Shandler presented a series of four options for consideration by the Board in resolving this matter: 1) approval of the Statement of Reasons as written; 2) reconsideration of the language in the Statement of Reasons and adoption of NMED's current proposal; 3) conduct a discrete hearing developing new language; and 4) a return to the prior language of the section in question. He further pointed out legal ramifications flowing from possible actions taken by the Board.

The Board continued, at length, its discussions with respect to a number of issues in this matter.

Action: Chair Green moved that the Board deny the Department's Motion for Reconsideration in EIB 07-15 (R). Mr. Peters seconded.

Roll Call Vote

Ms. Dillingham	yes
Mr. Ghassemi	yes
Ms. Peters	yes
Mr. Tso	yes
Mr. Green	yes

The motion passed unanimously.

Item 7. Board decision in re: Statement of Reasons in EIB 07-15 (R) Amendments to 11.5.1, 11.5.3, 11.5.4 and 11.5.6 NMAC, Zachary Shandler, Asst. Atty. General, Board Counsel.

A lengthy discussion ensued with respect to the Statement of Reasons and particularly the issue of the ramifications of dual representation regarding an employee, employer, the State and obligations relating to the representation of an employee by outside counsel.

Action: Chair Green moved that the Board accept the Statement of Reasons in EIB 07-15 (R) as presented by Mr. Shandler, Board Counsel. Mr. Ghassemi seconded the motion.

The Chair called for discussion on the motion. During the discussions, Mr. Shandler was asked if making minor wording changes was acceptable. He stated that minor wording changes were appropriate.

Ms. Dillingham proposed a friendly amendment removing the hourly rate language and inserting “comparable attorney to the employer’s counsel” in Paragraph 55 of the Statement of Reasons.

Mr. Green accepted the friendly amendment and Mr. Ghassemi again seconded.

The Chair asked for additional discussion. Following a comment relating to typographical errors by Ms. Becker, the Chair called for discussion between Ms. Becker and Mr. Shandler to resolve issues pointed out by Ms. Becker. The following text corrections were noted by Mr. Shandler.

At Line 5 of Paragraph 55, revised language should read “...employer must, if employee uses company counsel during the interview...” .

and

At line 3, Subparagraph (a) Paragraph 54, revised language should read “..., except if employee requests employee’s representative, or employer counsel and both employer and employee consent...”.

Mr. Green accepted the friendly amendment language corrections. Mr. Ghassemi again seconded.

Roll Call Vote:

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

The motion passed, three votes in the affirmative; two votes in the negative.

Item 8. Board decision in re: Statement of Reasons in EIB 07-16 (R) Proposed Repeal and Replacement of 20.2.7. NMAC, Excess Emissions. Zachary Shandler, Asst. Atty. General, Board Counsel.

Action: Mr. Ghassemi moved the adoption of the Statement of Reasons in EIB 07-16 (R), Excess Emissions as presented. Ms. Dillingham seconded. The motion passed unanimously.

Item 9. Board decision in re: Statement of Reasons in EIB 08-07 (R), Revisions to 20.2.70 NMAC, Operating Permits. Zachary Shandler, Asst. Atty. General, Board Counsel.

Action: Ms. Dillingham moved the adoption of the Statement of Reasons in EIB 08-07 (R), Operating Permits as presented. Mr. Ghassemi seconded. The motion passed unanimously.

***Item 10. The Board executive session was moved to follow Item 12. on today's agenda.**

Item 11. Petition for Hearing in re: EIB 08-13 (R) Proposed Amendments to Liquid Waste Fees, 20.7.11 NMAC. Link Summers, Petitioner; Carol Parker NMED/OGC.

Mr. Summers stated his reasons for petitioning the Board for a hearing setting.

Ms. Parker set out the Department's objections to the Board setting a hearing in this matter.

There was lengthy Board discussion relating to what, if any, Department reporting requirements to the Board were extant and what ramifications could or would flow from the Board being regarded as a Department oversight body .

Action: Mr. Tso moved that the Board direct the appropriate Department staff and Mr. Summers to meet to explore the possibility of reaching a compromise in this matter and report back to the Board at the September 2, 2008 meeting.

Mr. Green proposed a friendly amendment to table the Petition until the September 2, 2008 meeting. Mr. Tso accepted the amendment. Mr. Peters seconded.

There was a brief discussion regarding the motion and amendment.

Roll Call Vote:

Mr. Ghassemi	yes
Ms. Dillingham	yes
Mr. Peters	yes
Mr. Tso	yes
Mr. Green	yes

The motion passed unanimously.

The Chair turned the meeting over to Mr. Peters, the designated Hearing Officer in EIB 08-03 (R).

Item 12. Hearing and possible decision in re: EIB 08-03 (R), Amendment of §§100 and 101 of 20.7.10 NMAC, new drinking water regulations. Jennifer Hower, NMED/OGC. Hearing Officer: Soren Peters.

At 2:15 p.m. the hearing in EIB 08-03 (R), noted above as Item 12, was convened by Mr. Peters as Hearing Officer. Kathy Townsend Court Reporters transcribed the hearing. The transcript is available for review in the Office of the Environmental Improvement Board Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Room N-2150, Santa Fe, New Mexico 85705.

The hearing was concluded at 2: 50 p.m.

The meeting resumed.

The Board deliberated with respect to the amendment of current drinking water regulations and the adoption of new regulations.

Action: Ms. Dillingham moved that the Board adopt the changes as proposed by NMED in EIB 08-03 (R). Mr. Tso seconded.

Roll Call Vote

Mr. Tso	yes
Mr. Peters	yes
Ms. Dillingham	yes
Mr. Ghassemi	yes
Mr. Green	yes

The motion passed unanimously.

***Item 11. Board executive session pursuant to NMSA 1978 §10-15 (H)(7), in re: status report by Zachary Shandler, Board Counsel regarding the Zangara Dodge, et al., v. Ron Curry, et al., USDC for the District of New Mexico, Cause No. CIV 07-1305 ACT/LFG.**

Action: Ms. Dillingham moved that the Board go into executive session to receive Mr. Shandler's status report. Mr. Peters seconded.

Roll Call Vote

Mr. Tso	yes
Mr. Peters	yes
Ms. Dillingham	yes
Mr. Ghassemi	yes
Mr. Green	yes

Action: Mr. Peters moved that the Board return to its regular meeting. Mr. Ghassemi seconded.

Roll Call Vote

Mr. Peters	yes
Ms. Dillingham	yes
Mr. Ghassemi	yes
Mr. Tso	yes
Mr. Green	yes

It was noted by the Chair that the only matter discussed during the executive session was USDC Cause No. CIV 07-1305.

Item 13. Other Business

None

Item 14. Next meeting: 10:00 a.m. September 2, 2008, State Capitol Room 317.

Item 15. Adjournment:

Action: Mr. Tso moved for adjournment. Mr. Ghassemi seconded. The motion passed unanimously.

Gregory Green, Chair