

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

Approved January 3, 2007
Environmental Improvement Board Meeting
December 5, 2006 Meeting
9:00 a.m.

Room 317, State Capitol Building
Santa Fe, New Mexico 87501

Members Present: Gay Dillingham, Chair
Gregory Green, Vice-Chair
Kathi Bearden, Member
Soren Peters, Member

Members Absent: Dolores Herrera, Secretary
Ken Marsh, Member
Harold Tso, Member

Others Present:

Chuck Noble, NMED/OGC	Auralie Ashley-Marx, NMED/SWB
Darcie B. Johnson, Holland & Hart	Chuck Akeley, NMED/SWB
John Bartlit	Richard Goodyear, NMED/AQB
Robert Samaniega, NMED/AQB	Yolanda Sandoval
Albert Dye, LANL	Rick Word, NMED/OGC
Lynne Kinis	Jeff Reynolds, Gallagher & Kennedy
Roberta H. King	Felicia Orth, NMED
David Hogge, NMED/SWQB	Erin Trujillo, NMED/SWQB
Misty Braswell, NMED/OGC	Elizabeth Shields, NM Cattle Growers
Armando Martinez, Molycorp	John Travis
Toni Duggan, NMED/SWB	E. Gifford Stack, NMED/SWB
Douglas Meiklejohn, NMELC	Pat Shay, Rodey Law Firm

Chair Gay Dillingham called the meeting to order at 9:15 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 mentioned that because the election of officers had been omitted from the current agenda, the election would take place at the January 3-5, 2007 Board meeting.

Action: Mr. Green moved that the agenda be approved as presented. Ms. Bearden seconded. The motion carried unanimously.

Item 3. Approval of October 3, 2006 meeting minutes.

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

Item 4. Public Comment

Ms. Lynne Kinis of Corrales, New Mexico, stated that several months ago she had requested, through the Board, a comparison of major and minor permits. She noted that she had received a two page reply setting out the basis for comparison in pounds of emissions. She went on to ask how one could verify whether or not the numbers set out by Intel were accurate. She also discussed the problems inherent in accepting the Company's numbers absent a Departmental monitoring program.

There was discussion relating to Mr. Green's verbal report (Item 6 on the Board's agenda) relating to the November 9, 2006 EIB subcommittee meeting, chaired by him and held in Albuquerque.

Ms. Kinis expressed her concerns regarding unscheduled down time at Intel. Mr. Green requested that Ms. Kinis provide pounds of emissions by Intel on the dates that she had noted. She complied and again expressed her concerns that an ongoing pattern of behavior by Intel was not being monitored.

Item 5. Request for hearing re: In the Matter of the Petition for Hearing on Air Quality Permit No. 3291-M1, Agro Distributing LLC, a subsidiary of Agriliance LLC, EIB 06-14 (A). Richard B. Word, NMED/OGC; Darcie Johnson, Agro Distributing LLC.

Ms. Johnson stated that the Petitioner was requesting, pursuant to its Petition, a hearing in this matter. Ms. Johnson also noted Petitioner's consent to the Stipulated Motion to Waive Requirement for Hearing on Petition Within 60 Days that has been filed with the Board. A discussion followed regarding a hearing date change in the text of the Order granting the stipulated motion, to reflect a May 1, 2007 date for hearing. Ms. Johnson and Mr. Word agreed to the insertion of the May 1, 2007 date into the Order.

Ms. Bearden will act as hearing officer for EIB 06-14 (A). Mr. Shandler stated that he would work with Ms. Bearden in the development of a scheduling order prior to the May 1 hearing date.

Action: Ms. Dillingham moved to accept the Order Granting the Stipulated Motion To Waive Requirement for Hearing on Petition Within 60 Days in EIB 06-14 (A) Agro Distributing LLC, as amended. Ms. Bearden seconded. The motion

passed unanimously.

Item 6. Report by Mr. Green regarding the Intel related EIB Designated Sub-Committee Meeting held in Albuquerque on November 9, 2006.

Mr. Green briefly outlined a schedule for his report on the November 9th meeting as well as the Department's statement on the Intel shut-down. He noted that there were some differences in the Department's original report and its current report. Additionally, he stated that following both reports, there would be a ten minute time period within which members of the public could ask questions about discrepancies contained in the report.

Richard Goodyear, Acting Bureau Chief of NMED's Air Quality Bureau, introduced Robert Samaniego, Senior Environmental Compliance Specialist from NMED's Air Quality Bureau to present the Department's report on the July 19, 2006 Intel shut-down. Mr. Samaniego stated that he had dealt with Intel over a period of years and while he was no longer as directly involved with Intel, he had the most familiarity with the facility and he continues to receive complaints regarding review issues relating to the Company such as the outage on July 19, 2006. Mr. Samaniego noted the chronology of the July 19th incident. He further stated that Intel was timely in filing its excess emission report with the Department on July 27, 2006. Additionally, he discussed the specific pounds of emissions set out in Intel's report. He also mentioned Intel's time-line relating to the return to production of the various facilities affected by the shut-down. Mr. Samaniego stated that the discrepancy involving the number of pounds of emissions produced and reported by him was his error and not an Intel error. He also noted that Intel posted the shut-down information on the Community Information Line in the morning of July 19th and updated that information in the afternoon of the same day. Additionally, he mentioned that Intel had in place a program that provides for the activation of the established Regional Emergency Plan in the event of danger to the community. In the event of such an occurrence the community would be notified through the Coordinated Emergency Response. He stated that the Air Quality Bureau has no jurisdiction in this area.

Mr. Green asked if employees of Intel were in any danger as a result of the shut-down. Mr. Samaniego stated that there were no worker injuries and that no OSHA report was filed since there were no injuries.

Ms. Bearden commended Mr. Samaniego for his candor and honesty in taking responsibility for the pounds of emissions error he referred to earlier in these discussions.

Ms. Dillingham asked if there were monitoring processes in place that could establish whether Intel was disseminating accurate information with respect to the results of their pollution testing numbers. Mr. Samaniego noted that NMED does not have an independent mechanism to check Intel's test data. However, he also noted that under the requirements of its permit, the company is required to test all of their stacks each year. He also mentioned that the thermal oxidizers at Intel are tested four times a year by a third party contractor employed by the company. He went on to describe the independent calculations randomly performed by NMED staff to determine the accuracy of a third party contractor's data.

Mr. Goodyear then pointed out that the outage at Intel was not an unusual circumstance with

respect to Air Quality Bureau permitted companies doing business in New Mexico. He also noted that the emission levels relating to the July 19th shut-down were a small percentage of what the emission levels would have been had the facility been operating at normal capacity.

A discussion was held relating to the fluctuation in emission levels at Intel during the days the facility was out of service as opposed to emission levels during ordinary days of operation. There was additional discussion regarding the timing of Intel's prompt provision of updated material relating to the shut-down. Mr. Green mentioned the need for the public to have access to the most current information in situations such as the July 19th shut-down.

Mr. Green then summarized his reactions to the November 9, 2006 EIB meeting in Albuquerque. He stated that it was his view that NMED did a very thorough and concise presentation of the July 19 shut-down report and that the attendees at the meeting appeared to be less concerned about the shut-down but continued to have concerns about Intel and its affect on the surrounding neighborhoods. He then asked for questions or comments from the public limited to the discrepancy in number of pounds of emissions. There was a brief final discussion relating to those Intel facilities that are required to have emission levels tested yearly.

Item 7. Adoption of Statement of Reasons in EIB 05-07 (R), Solid Waste Management Regulations. Board counsel, Zachary Shandler.

Mr. Shandler introduced Felicia Orth, Hearing Officer in this matter, to discuss the proposed Statement of Reasons. Ms. Orth set out the sources that she had drawn upon in creating the Statement of Reasons in this case.

The Board expressed its appreciation for the work that Ms. Orth had done with respect to this case.

Action: Mr. Green moved that the Board adopt the Statement of Reasons in EIB 05-07 (R). Ms. Bearden seconded. The motion passed unanimously.

Item 8. Hearing in re: Petition to Consider Replacement Rules for Tire Recycling Regulations in 20.9.2 NMAC, EIB 06-08 (R), Solid Waste Bureau. Chuck Noble, NMED/OGC. Hearing Officer: Soren Peters

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.

The hearing commenced at 10:10 a.m.

Action:

The Board extended its compliments to the Bureau on the thoroughness of the testimony presented

in this matter.

Mr. Green stated that he was willing to make a motion that the Board accept the regulations as amended with the addition of the words “beneficial use” always preceding the word “agriculture” throughout the regulations and making clear that the use actually is beneficial and further that the Department continue to retain the authority to regulate those entities it deems do not qualify as beneficial users.

There was additional discussion regarding the correspondence from the Department of the Air Force and the last-minute nature of that correspondence.

Mr. Green moved the acceptance of the regulations as presented, today with the changes made by NMED and with the addition of the words “beneficial” preceding the words “agricultural use” in the regulations. Ms. Dillingham seconded.

Mr. Shandler asked Mr. Green why he was not considering the New Mexico Mining Association’s proposal. Mr. Green stated that while he too was concerned about the “policing” aspects of the regulations, he felt the evidence was overwhelming with respect to the benefits to health, the environment and the citizens of New Mexico in having the generator as part of the manifest process and outweighed the Association’s concerns.

There was a brief discussion regarding the economic advantages involving the generators and the haulers of tires.

Mr. Shandler asked for clarification of Mr. Green’s motion. Mr. Green noted that he was moving that the word “beneficial” precede the words “agricultural use” in the regulations.

The Hearing Officer asked for a roll call vote on the motion.

A roll-call vote was taken and the motion passed unanimously.

Board Vote

Kathi Bearden	yes
Gay Dillingham	yes
Gregory Green	yes
Soren Peters	yes

Item 9. Other Business:

There was a brief discussion regarding placement of election of Board officers on the January 2007 agenda.

Additionally, there was a brief discussion relating to the Board receiving an update on the effectiveness of the changes approved today in the recycling of tires in New Mexico. The Department staff estimated that such an update could reasonably be brought before the Board in a year.

Item 10. Next Meeting: January 3-5, 2007 in Santa Fe

Item 11. Adjournment

**Mr. Green moved to adjourn the meeting. Ms. Bearden seconded.
The motion carried unanimously, the meeting adjourned at 5:15 p.m.,
December 5, 2006.**

Signature on file

Gay Dillingham, EIB Chair