



# ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD



MINUTES – October 8, 2014  
Regular Meeting

Vincent E. Griego Chambers  
Albuquerque-Bernalillo County Government Center  
One Civic Plaza NW, Albuquerque, NM 87102

## AQCB MEMBERS PRESENT

Ms. Jane Cudney-Black (CITY), Vice Chair  
Kelsey Curran, CIH (CITY), Chair  
Jens Deichmann, Ph.D. (COUNTY)  
Robert Goldstein, M.D. (COUNTY)  
Augustine Grace III, P.E. (CITY)  
Ms. Deborah L. Stover (COUNTY)  
Dona Upson, M.D. (CITY)  
Lenton Malry, Ph.D. (BCPC LIAISON)

## EHD STAFF PRESENT

Mr. Andrew Daffern, AQCB Liaison  
Ms. Regan Eyeran, EH Scientist  
Ms. Mary Lou Leonard, Director, EHD  
Mr. Fabian Macias, Air Quality Official,  
EHD  
Mr. Ed Merta, Air Quality Regulation  
Development Coordinator, EHD  
Mr. Danny Nevarez, Deputy Director, EHD  
Ms. Margaret Nieto, EH Manager and  
AQCB Secretary  
Ms. Felicia Orth, Air Board Attorney  
Ms. Carol Parker, Assistant City Attorney  
Mr. Damon Reyes, EH Manager  
Mr. Cale Swanson, EH Supervisor  
Mr. Isreal Tavarez, EH Manager

## VISITORS PRESENT

Larry Nieto  
David L. Quayle  
Richard Nieto  
Catherine Gradi  
Andy Carrasco  
Tim Adler, Sutin, Thayer & Browne  
Ruth A. McGonagil  
Yolanda Gradi  
Arthur A. Gradi  
Paul Kistner  
Eric Jantz, Southwest Organizing Project  
Susan Kelly  
Juan Reynosa, Southwest Organizing Project  
Americo Chavez  
Patricia Martinez  
Pat Toledo  
Vern Hershberger  
Carlos Martinez  
Mary Ann Roberts  
John Kelly

## MEETING MINUTES

### CALL TO ORDER

The meeting was called to order by Chair Kelsey Curran at 5:39 P.M. on October 8, 2014 with six voting Board members present: Jens Deichmann, Augustine Grace, Dona Upson, Kelsey Curran, Deborah Stover, and Robert Goldstein; and

one non-voting member present: Lenton Malry. Not present was Vice Chair Jane Cudney-Black.

**Item #1      Approval of Agenda (Chair)**

A motion to approve the agenda was made by Member Deichmann and seconded by Member Upson. The motion was approved unanimously by a vote of 6-0.

**Item #2      Approval of August 13, 2014 Meeting Minutes (Chair)**

A motion to approve the August 13, 2014 meeting minutes was made by Member Deichmann and seconded by Member Stover. The motion was approved unanimously by a vote of 6-0.

**PUBLIC COMMENT**

Public comment was offered by Andy Carrasco, Paul Kistner, Susan Kelly, Juan Reynosa, Americo Chavez, and Pat Toledo.

**ACTION ITEMS**

**Item #3      AQCB Petition No. 2014-4, Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3131, Honstein Oil. Petitioners: Jon Block and Eric Jantz, New Mexico Environmental Law Center on behalf of Southwest Organizing Project (SWOP), field organizer Juan Reynosa, Esther and Steven Abeyta, members of SWOP; Respondents: for City of Albuquerque, Carol Parker, Assistant City Attorney and Danny Nevarez, Air Quality Program, Deputy Director, Environmental Health Department; Permittee: Rod Honstein, Managing Member, Honstein Oil.**

Mr. Eric Jantz, New Mexico Environmental Law Center, on behalf of Southwest Organizing Project and Esther and Steven Abeyta, requested a hearing on the merits regarding Air Quality Permit No. 3131.

Ms. Felicia Orth, Board Attorney, acting on Chair Kelsey Curran's instructions made at the August 13, 2014 Air Board Meeting, relayed to the Board that a scheduling teleconference with the parties took place on September 26, 2014. Ms. Orth brought the dates of February 11<sup>th</sup> and 12<sup>th</sup>, 2015, to the Board for their consideration.

A motion to appoint Ms. Felicia Orth as the hearing officer, approve the proposed hearing schedule, and instruct the staff to secure a court reporter and to make all necessary arrangements for holding the hearing was made by Member Upson and seconded by Member Stover. The motion was approved unanimously by a vote of 6-0.

**Item #4**

- **City of Albuquerque's Motion for Summary Judgment in the Matter of AQCB Petition No. 2014-2, Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3135 Issued to Smith's Food and Drug Centers, Inc.**

**(Montgomery and Louisiana). Petitioners: Pete Domenici, Jr. on behalf of Margaret M. Freed, Mary Ann Roberts, and Pat Toledo; Respondents: for City of Albuquerque, Carol Parker, Assistant City Attorney and Danny Nevarez, Air Quality Program, Deputy Director, Environmental Health Department; Permittees: Frank Salazar, Timothy Adler, Sutin Law Firm on behalf of Smith's Food and Drug Centers, Inc.**

- **Smith's Food and Drug Centers, Inc.'s Motion for Summary Judgment in the Matter of AQCB Petition No. 2014-2, Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3135 Issued to Smith's Food and Drug Centers, Inc. (Montgomery and Louisiana). Petitioners: Pete Domenici, Jr. on behalf of Margaret M. Freed, Mary Ann Roberts, and Pat Toledo; Respondents: for City of Albuquerque, Carol Parker, Assistant City Attorney and Danny Nevarez, Air Quality Program, Deputy Director, Environmental Health Department; Permittees: Frank Salazar, Timothy Adler, Sutin Law Firm on behalf of Smith's Food and Drug Centers, Inc.**

Note: Chair Curran announced that Vice Chair Cudney-Black entered the meeting at 5:59 p.m.

Note: Hearing Officer Orth announced that Member Malry left the meeting at 6:43 p.m.

Attorneys for all parties presented arguments in support of and against the Motions from the City of Albuquerque Environmental Health Department and Smith's Food and Drug, Inc.

After extensive discussion, a motion to grant the Motions for Summary Judgment was made by Member Deichmann, seconded by Vice Chair Cudney-Black. The motion passed by a vote of 6-1 (For: Deichmann, Upson, Curran, Cudney-Black, Stover, Goldstein; Against: Grace).

Because the Board granted the Motions for Summary Judgment and dismissal of the Petition for Hearing, the Hearing on the Merits initially set for November 5-6, 2014, will be cancelled.

**Item #5**

**Smith's Food and Drug, Inc.'s Motion to Dismiss Petitioner Pat Toledo for Lack of Standing in the Matter of AQCB Petition No. 2014-2, Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3135 Issued to Smith's Food and Drug Centers, Inc. (Montgomery and Louisiana). Petitioners: Pete Domenici, Jr. on behalf of Margaret M. Freed, Mary Ann Roberts, and Pat Toledo; Respondents: for City of Albuquerque, Carol Parker, Assistant City Attorney and Danny Nevarez, Air Quality Program, Deputy Director, Environmental Health Department; Permittees: Frank Salazar, Timothy Adler, Sutin Law Firm on behalf of Smith's Food and Drug Centers, Inc.**

Hearing Officer Orth stated that this item was rendered moot by the Board's granting of the Motions for Summary Judgment.

**REPORTS Air Program Report. Staff available for questions.**

Chair Curran requested to be updated on the status of the two cases scheduled for oral argument in the Court of Appeals of the State of New Mexico on Friday, October 24, 2014. Board Attorney Orth provided the following details. The first case, scheduled for 9:00 a.m., regards the Air Quality Permit No. 2037-M1, issued to Smith's Food & Drug Centers, Inc. for a fuel dispensing facility on Constitution and Carlisle. The second case, scheduled for 10:00 a.m., regards the Air Quality Permit No. 1677-M2, issued to Smith's Food and Drug Centers, Inc. for a fuel dispensing facility on Tramway and Central.

**OTHER BUSINESS**

Ms. Margaret Nieto, Air Quality Control Board Secretary, introduced the newly hired Regulation Development Coordinator, Ed Merta, to the Board.

Ms. Nieto announced that a Motion Hearing in the Smith's 4<sup>th</sup> Street Appeal will take place at 5:30 p.m. on October 22, 2014, in the City Council Committee Room #9081, Albuquerque-Bernalillo County Government Center, located at One Civic Plaza NW, Albuquerque, NM 87102.

**ADJOURNMENT**

Chair Kelsey Curran adjourned the meeting at 8:48 P.M.

**NEXT SCHEDULED BOARD MEETING AND/OR HEARING: November 12-13, 2014**

SUBMITTED:

READ AND APPROVED:

 12/16/14  
Ms. Margaret Nieto date  
Board Secretary/Env. Health Manager, Control Strategies Section,  
Air Quality Program, Environmental Health Department.

 12/15/14  
Kelsey Curran, CIH date  
Chair  
Albuquerque - Bernalillo County Air Quality Control Board