



# ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD



**DRAFT MINUTES – September 11, 2013**

**Regular Meeting**

**Vincent E. Griego chambers**

**Albuquerque-Bernalillo County Government Center**

**One Civic Plaza NW, Albuquerque, NM 87102**

**AQCB MEMBERS PRESENT**

Dona Upson, M.D. (City), Chair  
Ms. Kelsey Curran (City), Vice Chair  
Ms. Jane Cudney-Black (City)  
Mr. Jens Deichmann (County)  
Robert A. Goldstein, M.D. (County)  
Naomi Kistin, M.D. (County)  
Mr. Jack Sullivan (City)

**AQCB MEMBERS ABSENT**

Lenton Malry, Ph.D. (BCPC Liaison)

**STAFF PRESENT**

Mr. Neal Butt, EH Scientist, AQD  
Mr. Bill Grantham, Air Board Attorney  
Ms. Liz Jones, AQCB Liaison  
Ms. Adelia Kearny, Deputy City  
Attorney  
Ms. Mary Lou Leonard, Director, EHD  
Mr. Fabian Macias, Air Quality Official  
Mr. Danny Nevarez, Acting Deputy  
Director, EHD  
Ms. Margaret Nieto, AQCB Secretary,  
EH Supervisor  
Mr. Isreal Tavarez, EH Manager,  
Permitting

**VISITORS PRESENT.**

Mr. Sam Bregman, Bregman Law Firm  
Mr. Frank Salazar, Sutin Law Firm  
Mr. Andy Carrasco  
Mr. Tim Adler, Sutin Law Firm  
Mr. Pat Toledo  
Ms. Traci Olivias, Sutin Law Firm  
Mr. Pete Domenici, Jr., Domenici Law Firm  
Mr. Matt Cross-Guillen, Bernalillo County  
Mr. John Wakeland

**Draft Meeting Minutes**

**CALL TO ORDER**

The meeting was called to order by Chair Dr. Dona Upson at 6:08 pm on September 11, 2013 with seven Board members present: Chair Dona Upson, M.D., Ms. Kelsey Curran, Ms. Jane Cudney-Black, Mr. Jens Deichmann, Robert A. Goldstein, M.D., Dr. Naomi Kistin, M. D., Mr. Jack Sullivan; and the BCPC liaison absent: Lenton Malry, Ph.D.

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

Vice Chair Kelsey Curren moved to approve the agenda, seconded by Dr. Goldstein. The motion passed by a unanimous vote of 7-0

**Item #2 Approval of July 10, 2013 Meeting Minutes (Chair)**

A motion was made by Member Sullivan and seconded by Member Deichmann to approve the July 10, 2013 minutes. The motion passed by a unanimous vote of 7-0.

**PUBLIC COMMENT**

There was no public comment.

**HEARING**

**Item #3 Hearing to Consider Smith's Food and Drug Centers, Inc. Motion to Dismiss for Lack of Standing (re: AQCB Petition #2013-6) – Felicia Orth, Hearing Officer**

Hearing Officer Felicia Orth opened the hearing, providing background, reviewing filings, and noting that the following hand-outs had been introduced: an aerial map, provided by Mr. Adler, and copies of regulations 20.11.41 NMAC and 20.11.81 NMAC and the State Air Quality Control Act provided by Ms. Kearny. Smith's legal representative, Mr. Tim Adler with the Sutin, Thayer and Browne law firm, presented his arguments first, since the Motion was filed by the Sutin firm on behalf of his clients, Smith's Food and Drug Centers, Inc. Ms. Adelia Kearny, representing the City of Albuquerque Environmental Health Department followed with her client's arguments. Lastly, Mr. Pete Domenici, representing Petitioners Andy Carrasco, Dempsey Power, and Pat Toledo, presented the Petitioners' arguments.

After extensive arguments by the parties' attorneys, questions to the attorneys by the Board members, advice from the Hearing Officer and Board Counsel, and discussion among Board members, a motion to grant the Motion to Dismiss for Lack of Standing was made by Vice Chair Curran, seconded by Member Deichmann. The motion passed by a vote of 6-1 (For: Upson, Curran, Cudney-Black, Deichmann, Goldstein, Sullivan; Against: Kistin).

Because the Board determined that all three Petitioners lacked standing and the Petition for a Hearing (AQCB Petition #2013-6) was dismissed, the hearing on the merits initially set for October 1-2, 2013 was cancelled.

**REPORTS**

**Item #4 Division Report. Staff available for questions.**

There was no discussion.

**OTHER BUSINESS**

There was no Other Business

**ADJOURNMENT**

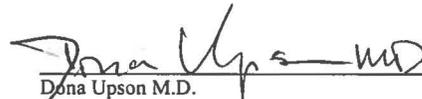
Chair, Dr. Dona Upson, adjourned the meeting at 10:03 p.m.

**NEXT SCHEDULED BOARD MEETING:** October 9, 2013 5:30 p.m. at Plaza del Sol Hearing Room, basement level of Plaza del Sol building, 600 Second Street, N.W.

SUBMITTED:

 10/9/13  
date  
Ms. Margaret Nieto  
Board Secretary/Env. Health Supervisor, Control Strategies Section  
Air Quality Div., Environmental Health Department

READ AND APPROVED:

 10/9/13  
date  
Dona Upson M.D.  
Chair  
Albuquerque – Bernalillo County Air Quality Control Board