



ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD



REVISED DRAFT MINUTES – March 12, 2014 Regular Meeting

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

AQCB MEMBERS PRESENT

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

EHD STAFF PRESENT

Mr. Andrew Daffern, AQCB Liaison
Ms. Lauren Dickerson, EH Scientist
Mr. Mark DiMenna, Deputy Director
Ms. Regan Eyeran, EH Scientist
Ms. Mary Lou Leonard, Director
Ms. Angela Lopez, EH Supervisor
Mr. Fabian Macias, Air Quality Official
Mr. Danny Nevarez, Deputy Director
Ms. Margaret Nieto, AQCB Secretary
Ms. Carol Parker, Assistant City Attorney
Mr. Damon Reyes, EH Manager, ENF/COM
Mr. Jeff Stonesifer, Senior EH Scientist
Mr. Isreal Tavarez, EH Manager, Permitting

VISITORS PRESENT

-Mr. Charles Dickerman, representing himself
-Ms. Cheryl Rein, representing COA Economic Development Department
-Mr. Roger Mickelson, representing East Gateway Coalition of Associations
-Ms. Beverly Chavez, representing Albuquerque Small Business Regulatory Advisory Commission

-Mr. William Scott, Modrall Sperling Law Firm representing the Association of Commerce and Industry of New Mexico
-Ms. Jane Jernigan, representing National Utility Contractors Association of New Mexico
-Mr. Anthony Trujillo, representing Albuquerque Small Business Regulatory Advisory Commission; and Hispano Chamber of Commerce
-Mr. Steven Abeyta, representing San Jose Neighborhood Association; and Southwest Organizing Project
-Mr. Bret Bailey, representing Home Builders Association of Central New Mexico
-Mr. Roger Hartman, representing himself
-Ms. Lynne Andersen, representing NAIOP of New Mexico
-Mr. James Warren, representing Pueblo Metals Recycling; and American Iron and Metal
-Mr. Mark Guatney, representing EnviroSure Solutions, LLC
-Mr. Tim Adler, Sutin Law Firm representing Smith's Food and Drug in New Mexico
-Mr. Paul Silverman, representing Greater Albuquerque Chamber of Commerce
-Ms. Ruxanne Rivera Wiest, representing Associated Builders and Contractors, Inc. of New Mexico
-Ms. Beverlee McClure, representing Association of Commerce and Industry of New Mexico

-Mr. Pat Toledo, representing himself
-Mr. Juan Reynosa, representing Southwest Organizing Project
-Ms. Anna-Lena Toledo, representing herself
-Mr. Ted Garrett, representing Garrett Development Corporation; and Western Albuquerque Land Holding, LLC.
-Mr. Brian McCarthy, representing Abrazo Homes
-Ms. Diane Dolan, Staff for Albuquerque City Councilor Isaac Benton
-Ms. Lora Lucero, representing herself
-Ms. Esther Abeyta, representing San Jose Neighborhood Association; and Southwest Organizing Project
-Ms. Janice McCrary, representing Greater Albuquerque Association of Realtors
-Mr. Mike Puelle, representing Associated General Contractors of New Mexico
-Ms. Mona Upson, representing Wagner Equipment Co.
-Mr. Mike Beck, representing Associated Contractors of New Mexico
-Mr. Walter Meech, representing New Mexico Ready-Mix Concrete Association
-Mr. Dustin Chavez-Davis, representing Sierra Club; and Southwest Organizing Project
-Mr. Lauro Silva, representing Mountain View Neighborhood Association
-Mr. John Varsa, representing himself
-Mr. Kurt Browning, representing himself
-Mr. John Hughes, representing MSCI
-Mr. Don Schrader, representing himself
-Mr. Richard Mertz, representing University of New Mexico Hospital

-Mr. Richard Moore, representing Los Jardines Institute
-Ms. Marla Painter, representing Mountain View Neighborhood Association
-Mr. Mark Williams, representing PNM Resources, Inc.
-Ms. Julie Vancil, representing Julie's Hair Studios
-Ms. Bianca Encinias, representing herself
-Ms. Sofia Martinez, representing Los Jardines Institute
-Mr. Raj Solomon, representing TRC Engineering Services
-Ms. Jacque Garcia, representing Bernalillo County Place Matters
-Mr. Dean Ford, representing JTC Inc.
-Mr. Neal Meisner, representing JTC Inc.
-Mr. Robert Fiser, representing Acme Iron and Metal
-Mr. Michael Patterbach, representing Titan Development
-Mr. David Shaffer, representing AIC General Contractor
-Ms. Sofia Martinez, representing Los Jardines Institute
-Mr. Brad Barrett, representing himself
-Mr. Vern Hershberger, representing himself
-Ms. Deanna M. Baca, representing San Jose Neighborhood Association
-Ms. Olivia M. Greathouse, representing San Jose Neighborhood Association
-Ms. Laurie Blackwood, representing herself
-Mr. Bernard Loeffler, representing University of New Mexico Hospitals
-Ms. Annette Colbert, representing San Jose Neighborhood Association

DRAFT MEETING MINUTES

CALL TO ORDER

The meeting was called to order by Chair Dona Upson, M.D. at 5:43 P.M. on March 12, 2014 with seven voting Board members present: Dona Upson, M.D., Ms. Kelsey Curran, Ms. Jane Cudney-Black, Jens Deichmann, Ph.D., Robert Goldstein, M.D., Augustine Grace III, P.E., Ms. Deborah L. Stover; and two non-voting members present: Lenton Malry, Ph.D., and Ms. Margaret Nieto.

- Chair Upson introduced the new Board members - Mr. Augustine Grace III and Ms. Deborah L. Stover.

- Board Attorney Grantham stated that he is resigning from his position due to increased workload at New Mexico Environment Department. Board Attorney Grantham also introduced Ms. Felicia Orth and stated that she will take over as Board Attorney once her contract is finalized.

Item #1 Approval of Agenda (Chair)

A motion to approve the agenda was made by Member Curran and seconded by Member Deichmann. The motion was approved unanimously.

Item #2 Approval of January 8, 2014 Meeting Minutes (Chair)

A motion to approve the January 8, 2014 meeting minutes was made by Member Cudney-Black and seconded by Member Curran. The minutes were approved by a vote of 5-0-2, with Chair Upson and Member Grace abstaining.

REPORTS Program Report. Staff available for questions.

There was no discussion.

Item #3 “Air Dispersion Modeling” Presentation – Jeff Stonesifer, Senior Environmental Health Scientist; Isreal Tavarez, Environmental Health Manager, COA Air Quality Program.

The Air Dispersion Modeling presentation was made by Jeff Stonesifer, Senior Environmental Health Scientist, COA Air Quality Program; and Isreal Tavarez, Environmental Health Manager, COA Air Quality Program. Mr. Stonesifer, Mr. Tavarez, and Mr. Fabian Macias, Air Quality official for the COA Air Quality Program, answered questions from the Board.

PUBLIC COMMENT

There was no public comment.

ACTION ITEMS

Item #4 Request for a Hearing in the Matter of the Petition to Amend Title 20, Chapter 11 of the New Mexico Administrative Code to Require Review and Consideration of Cumulative Air Impacts (AQCB Petition No. 2014-1) – Mr. Eric Jantz, New Mexico Environmental Law Center.

Mr. Eric Jantz, from the New Mexico Environmental Law Center and representing the Southwest Organizing Project, made a presentation before the Board to Request a Hearing in the Matter of the Petition to Amend Title 20, Chapter 11 of the New Mexico Administrative Code to Require Review and Consideration of Cumulative Air Impacts (AQCB Petition No. 2014-1). Mr. Eric Jantz then answered questions from the Board.

Mr. Lenton Malry, Ph.D. (BCPC LIAISON) left the meeting at 7:00 p.m.

PUBLIC COMMENT in support of the above petition was made by:

- Mr. Charles Dickerman, representing himself; Ms. Marla Painter, representing Mountain View Neighborhood Association; Mr. Juan Reynosa, representing Southwest Organizing Project; Mr. Lauro Silva, representing Mountain View Neighborhood Association; Mr. Steven Abeyta, representing San Jose Neighborhood Association and Southwest Organizing Project; Ms. Esther Abeyta, representing San Jose Neighborhood Association and Southwest Organizing Project; Mr. Richard Moore, representing Los Jardines Institute; Ms. Diane Dolan, representing Albuquerque City Councilor Isaac Benton; Ms. Jacque Garcia, Bernalillo County Place Matters; Mr. Don Schrader, representing himself; and Ms. Lora Lucero, representing herself.

A break was taken at 7:30 p.m. and the meeting was reconvened at 7:45 p.m.

Ms. Carol Parker, Assistant City Attorney for the City of Albuquerque and representing the Environmental Health Department's Air Quality Program, made a presentation before the Board in opposition to the Request for a Hearing in the Matter of the Petition to Amend Title 20, Chapter 11 of the New Mexico Administrative Code to Require Review and Consideration of Cumulative Air Impacts (AQCB Petition No. 2014-1). Ms. Parker, Mr. Fabian Macias, and Ms. Mary Lou Leonard, Director of the Environmental Health Department then answered questions from the Board.

Ms. Beverlee McClure and Mr. William Scott, both representing the Association of Commerce and Industry of New Mexico, made a presentation before the Board in opposition to the Request for a Hearing in the Matter of the Petition to Amend Title 20, Chapter 11 of the New Mexico Administrative Code to Require Review and Consideration of Cumulative Air Impacts (AQCB Petition No. 2014-1). Mr. Scott then answered questions from the Board.

PUBLIC COMMENT in opposition to the above petition was made by:

- Mr. Roger Mickelson, representing East Gateway Coalition of Associations; Mr. Anthony Trujillo, representing Albuquerque Small Business Regulatory Advisory Commission and Hispano Chamber of Commerce; Mr. Roger Hartman, representing himself; Ms. Cheryl Rein, representing COA Economic Development Department; Mr. Ted Garrett, representing Garrett Development Corporation and Western Albuquerque Land Holding, LLC; Mr. Kurt Browning, representing himself; Ms. Lynne Andersen, representing NAIOP of NM; Mr. Paul Silverman, representing Greater Albuquerque Chamber of Commerce; Mr. Bret Bailey, representing Home Builders Association of Central New Mexico; Mr. Vern Hershberger, representing himself; Mr. Walter Meech, representing New Mexico Ready-Mix Concrete Association; and Ms. Mona Upson, representing Wagner Equipment Co.

Mr. Eric Jantz then responded to the presentations in opposition.

A motion to deny the request for a Hearing in the Matter of the Petition to Amend Title 20, Chapter 11 of the New Mexico Administrative Code to Require Review and Consideration of Cumulative Air Impacts (AQCB Petition No. 2014-1) was made by Vice Chair Curran and seconded by Member Grace. Each Board Member was asked to provide a reason for their decision:

- Vice Chair Curran – supported the motion to deny because she does not believe that the AQCB has the authority to address the issue. Vice Chair Curran also did not believe that the solution proposed by the petition was appropriate and that substantial changes—changes that cannot happen in a meeting—would need to be made.
- Member Cudney-Black – supported the motion to deny because she does not believe that this is solely an Air Quality issue. Member Cudney-Black would also like to see any future proposed regulations patterned after regulations that have been successfully implemented in districts with similar issues.
- Member Goldstein – opposed the motion to deny because he believes that a discussion about Environmental Justice must take place and cannot be “kicked down the road” any longer.
- Member Grace – supported the motion to deny because he believes the proposed petition is poorly constructed and is overly burdensome on the regulated community.
- Member Deichmann – supported the motion to deny because he does not believe that this petition is a solution to the problem of Environmental Justice. Additionally, he believes that the proposed regulation is of poor quality and draconian.
- Member Stover – supported the motion to deny because, while she believes that there is an issue in these neighborhoods, she does not believe that a proposed regulation that would impact the entire City of Albuquerque is the right way to fix the problem. She also believes that pursuing a solution through Planning and Zoning changes would be more appropriate.
- Chair Upson – supported the motion to deny because, while she recognizes that there is a problem, she does not believe that this is the solution.

The motion to deny the request for a Hearing in the Matter of the Petition to Amend Title 20, Chapter 11 of the New Mexico Administrative Code to Require Review and Consideration of Cumulative Air Impacts (AQCB Petition No. 2014-1) was approved by a vote of 6-1, with no abstentions. Vice Chair Curran, Member Cudney-Black, Member Grace, Member Deichmann, Member Stover, and Chair Upson all voted for the motion; Member Goldstein voted against the motion.

The Request for a Hearing in the Matter of the Petition to Amend Title 20, Chapter 11 of the New Mexico Administrative Code to Require Review and Consideration of Cumulative Air Impacts (AQCB Petition No. 2014-1) was recorded and transcribed by Court Reporter Mary Seal with Bean & Associates. The transcript is available for review during business hours in the office of the Board’s Hearing Clerk located at One Civic Plaza NW, Suite 3023, Albuquerque, NM 87103.

OTHER BUSINESS

Item #5 **Executive Session: Discussion and possible decision on Board intervention in New Mexico Court of Appeals No. 33, 269, Carrasco et al. v. City of Albuquerque et al. – Bill Grantham, Board Attorney; and Felicia Orth, Hearing Officer.**

Chair Upson closed the meeting to go into closed Executive Session. The meeting was then closed at 9:13 P.M.

The Board returned from closed session at 9:55 P.M. Chair Upson announced that the Board voted 7-0, with no abstentions, to intervene in the second Smith's case, and the Board Attorney and Hearing Officer will file a brief in support of their position.

Item #6 Solicitation of nominations for Air Board elections at April 9, 2014 meeting for positions of Chair; Vice Chair; non-voting advisory member and alternate to Mid-Region Council of Governments (MRCOG), Transportation Program Task Group (TPTG), and Transportation Coordinating Committee (TCC); and Liaison to the Governor's Task Force on Environmental Justice – Margaret Nieto, Secretary to the AQCB.

Member Deichmann nominated Member Curran for Chair and Member Cudney-Black for Vice Chair. Member Cudney-Black nominated Member Stover to be the non-voting advisory member and alternate to Mid-Region Council of Governments (MRCOG), Transportation Program Task Group (TPTG), and Transportation Coordinating Committee (TCC). Chair Upson volunteered to be the alternate. Ms. Nieto stated that it appears that the Governor's Task Force on Environmental Justice no longer exists.

ADJOURNMENT

Chair Dona Upson, M.D. adjourned the meeting at 10:01 P.M.

NEXT SCHEDULED BOARD MEETING AND HEARING: April 9, 2014 5:30 p.m.

SUBMITTED:

READ AND APPROVED:

Ms. Margaret Nieto date
Board Secretary/Env. Health Supervisor, Control Strategies Section,
Air Quality Program, Environmental Health Department.

Dona Upson, M.D. date
Chair
Albuquerque – Bernalillo County Air Quality Control Board