



# ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

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



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## DRAFT MINUTES – June 14, 2017 Regular Meeting

### AOCB MEMBERS PRESENT

Ms. Jane Cudney-Black (CITY), Chair  
Ms. Michelle Miano (COUNTY), Vice  
Chair  
Dr. Jens Deichmann, Ph.D. (COUNTY)  
Mr. Ben Everson (CITY)  
Dr. Josie Lopez, Ph.D. (COUNTY)  
Mr. Dale Mack (CITY)  
Mr. Matthew Wylie (CITY)

### AOCB MEMBERS ABSENT

Mr. James Peck (COA/EPC LIAISON)

### STAFF PRESENT

Mr. Andrew Daffern, AOCB Liaison  
Ms. Regan Eyeran, EH Scientist  
Ms. Mary Lou Leonard, Director, EHD  
Mr. Fabian Macias, Air Quality Official  
Mr. Ed Merta, Air Quality Regulation  
Development Coordinator  
Mr. Travis Miller, EH Supervisor  
Mr. Danny Nevarez, Deputy Director, EHD  
Ms. Felicia Orth, Air Board Attorney

Ms. Carol Parker, Assistant City Attorney  
Mr. Damon Reyes, EH Manager  
Mr. Dario Rocha, EH Manager and AOCB  
Secretary  
Mr. Dwayne Salisbury, EH Supervisor  
Mr. Isreal Tavarez, EH Manager

### VISITORS PRESENT

Ms. Esther Abeyta, San Jose Resident  
Mr. Steven Abeyta, San Jose Resident  
Mr. Pete Domenici Jr., representing Pat  
Toledo  
Ms. Kelsey Forde  
Mr. Rico Gonzales  
Ms. Patricia D. Martinez  
Ms. Lynn Mostoller, Smith's Food and Drug  
Centers, Inc.  
Ms. Marla Painter, MV Community Action  
Mr. Frank Salazar, Smith's Food and Drug  
Centers, Inc.  
Mr. Pat Toledo

## DRAFT MEETING MINUTES

### CALL TO ORDER

Chair Cudney-Black called the meeting to order at 5:37 p.m. on June 14, 2017.

Chair Cudney-Black congratulated Members Lopez, Mack, and Wylie on their appointment to the Air Board.

Chair Cudney-Black also thanked Ms. Kelsey Curran for her service on the Air Board.

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

Member Deichmann moved to approve the agenda and Member Everson seconded. The motion passed by a vote of 7-0.

**Item #2      Approval of April 12, 2017 Meeting Minutes (Chair)**

Member Deichmann moved to approve the April 12, 2017 meeting minutes and Vice Chair Miano seconded. The motion passed by a vote of 7-0.

**AIR PROGRAM REPORT**

Mr. Danny Nevarez, Environmental Health Department Deputy Director, presented the air program report. During the staff report, Mr. Nevarez thanked Ms. Kelsey Curran for her service on the Air Board. Mr. Nevarez then answered questions from the Board.

**PUBLIC COMMENT**

There was no public comment.

**REPORTS**

**Item #3      The Albuquerque-Bernalillo County Air Quality Control Board's Adjudicatory and Rulemaking Functions – Felicia Orth, Air Board Attorney**

Information on the Albuquerque-Bernalillo County Air Quality Control Board's Adjudicatory and Rulemaking Functions was presented by Ms. Felicia Orth, Air Board Attorney.

**HEARING**

**As part of this hearing, public comment was taken under oath and transcribed.**

**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. (Smith's Montgomery Remand to AQCB).**  
**Petitioners: Pat Toledo, represented by Pete Domenici, Jr.; Margaret M. Freed, *pro se*; and Mary Ann Roberts, *pro se*;**  
**Respondents: City of Albuquerque Environmental Health Department, represented by Carol Parker, Assistant City Attorney;**  
**Permittee: Smith's Food and Drug Centers, Inc. represented by Frank Salazar and Lynn Mostoller, Sutin Law Firm.**

Hearing Officer Orth opened the hearing record at 6:19 p.m.

Public comment was offered by Mr. Pat Toledo.

Attorneys for Smith's Food and Drug Centers, Inc., for the City of Albuquerque Environmental Health Department, and for Petitioner Pat Toledo presented arguments in support of and against the 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. (Smith's Montgomery Remand to AQCB).

Hearing Officer Orth called for a break in the hearing at 8:02 p.m. Member Everson recused himself from the motion hearing during the break and left the dais. Hearing Officer Orth reconvened the hearing at 8:21 p.m.

Mr. Frank Salazar, Ms. Carol Parker, Mr. Pete Domenici Jr., and Hearing Officer Orth answered questions from the Board.

Hearing Officer Orth closed the hearing record at 9:37 p.m.

## **ACTION ITEMS**

**Item #4**      **Decision on the Matter of 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. (Smith's Montgomery Remand to AQCB).**  
**Petitioners: Pat Toledo, represented by Pete Domenici, Jr.; Margaret M. Freed, *pro se*; and Mary Ann Roberts, *pro se*;**  
**Respondents: City of Albuquerque Environmental Health Department, represented by Carol Parker, Assistant City Attorney;**  
**Permittee: Smith's Food and Drug Centers, Inc. represented by Frank Salazar and Lynn Mostoller, Sutin Law Firm.**

Member Deichmann moved to grant 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. (Smith's Montgomery Remand to AQCB). Member Mack seconded. The motion passed by a vote of 5-1 (For: Cudney-Black, Miano, Deichmann, Mack, Wylie; Against: Lopez).

The motion hearing and decision were recorded and transcribed by Court Reporter Cindy Chapman 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 87102.

## **HEARING**

**As part of this hearing, public comment was taken under oath and transcribed.**

**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. (Smith's Montgomery Remand to AQCB).**  
**Petitioners: Pat Toledo, represented by Pete Domenici, Jr.; Margaret M. Freed, *pro se*; and Mary Ann Roberts, *pro se*;**  
**Respondents: City of Albuquerque Environmental Health Department, represented by Carol Parker, Assistant City Attorney;**

**Permittee: Smith's Food and Drug Centers, Inc. represented by Frank Salazar and Lynn Mostoller, Sutin Law Firm.**

Hearing Officer Orth stated that this item was rendered moot by the Board's granting of the 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. (Smith's Montgomery Remand to AQCB).

## **ACTION ITEMS**

**Item #5**      **Decision on the Matter of 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. (Smith's Montgomery Remand to AQCB).**  
**Petitioners: Pat Toledo, represented by Pete Domenici, Jr.; Margaret M. Freed, *pro se*; and Mary Ann Roberts, *pro se*;**  
**Respondents: City of Albuquerque Environmental Health Department, represented by Carol Parker, Assistant City Attorney;**  
**Permittee: Smith's Food and Drug Centers, Inc. represented by Frank Salazar and Lynn Mostoller, Sutin Law Firm.**

Hearing Officer Orth stated that this item was rendered moot by the Board's granting of the 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. (Smith's Montgomery Remand to AQCB).

**Item #6**      **Decision on whether the Board should pursue intervention as a party in New Mexico Court of Appeals No. 36,398, SouthWest Organizing Project, Esther Abeyta, and Steven Abeyta, Plaintiff-Appellants, v. Albuquerque-Bernalillo County Air Quality Control Board, Defendant-Appellee. – Felicia Orth, Air Board Attorney.**

**The Board may choose to close this discussion and go into Closed Session pursuant to NMSA 1978, Section 10-15-1.H(7), insofar as it is pending litigation in which the Board may become a participant.**

The Board did not choose to close this discussion.

Member Everson returned to the dais at 9:52 p.m. Chair Cudney-Black recused herself from this agenda item and left the meeting at 9:54 p.m. Vice Chair Miano conducted the rest of the meeting.

Member Deichmann moved to instruct Ms. Orth to file a motion for intervention on behalf of the Albuquerque-Bernalillo County Air Quality Control Board as a party in New Mexico Court of Appeals No. 36,398, SouthWest Organizing Project, Esther Abeyta, and Steven Abeyta, Plaintiff-Appellants, v. Albuquerque-Bernalillo County Air Quality Control Board, Defendant-Appellee. Member Everson seconded. The motion passed by a vote of 5 for and 1 abstention (For: Miano, Everson, Deichmann, Mack, Wylie; Abstain: Lopez).

