



ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD



MEETING SUMMARY – April 23, 2008 Environmental Justice Task Force Final Report Workshop Los Griegos Health and Social Service Center 1231 Candelaria NW, Albuquerque, NM 87107

AQCB MEMBERS PRESENT

Dr. Matthew Campen (City)
Mr. Jens Deichmann, Vice Chair (County)
Mr. Mike Minturn, Chair (City)
Mr. Louis Pacias, BCPC Liaison
Dr. Debby Potter, (County)
Mr. Art Sharpe (City)
Dr. Gwen Sun (County)

AQCB MEMBERS ABSENT

Mr. Augustine Grace III, (City)

STAFF PRESENT

Mr. Chris Albrecht, Env. Health Manager, AQD
Ms. Janice Amend, AQCB Liaison, AQD
Ms. Adelia Kearny, Deputy City Attorney
Mr. Fabian Macias, Env. Health Mgr. AQD
Ms. Margaret Nieto, Control Strategies Supervisor, AQD
Mr. Isreal Tavaréz, Env. Engineering Mgr., AQD

VISITORS PRESENT

M. Irma Aceves
Ms. Rita Bates, NMED
Mr. Matt Cross-Guillen, BCOEH
Ms. Dede Feldman, NM State Senate
Mr. Joel Gay

Ms. Patty Grice, Mountain View NA
Ms. Mary Gutierrez
Mr. Doug Heatherly, Vulcan Materials
Mr. Ken Lienemann, AQD
Ms. Margaret Menache, UNM
Ms. Sofia Martinez, UNM
Mr. Douglas Meikljohn, NM Env. Law Center
Ms. Bernadette Miera
Ms. Amy Miller, PNM
Mr. Claude Morelli, NVC/NNVNA
Ms Nancy Norem, PNM
Ms. Felicia Orth, NMED
Ms. Marla Painter
Ms. Kitty Richards, Bernalillo County
Mr. Juan-Carlos Rodriguez, ABQ Journal
Mr. George Schroeder, Bernalillo County
Mr. Walter Schnider, AMR
Mr. Kyle Sicfer, Greater Gardner NA
Mr. Lauro Silva, South Valley Partners for EJ
Ms. Rita Trujillo, NMED
Mr. Lucky Vanhorn, Vulcan Materials
Mr. Paul Wade, CTS
Ms. Karen Wentworth

Workshop Summary

- I. Introductions
Chair Mike Minturn introduced himself as the newly elected chair and explained that he has asked Vice-chair Jens Deichmann to preside over the workshop. Chairman Minturn then recognized members of the EJ Task Force.
- II. Expectations for the workshop
Vice Chairman Deichmann explained that this workshop was organized for the members of the Board to discuss the Environmental Justice (EJ) Task Force’s Final Report and recommendations, as well as to

clarify some of the information included in the report. He added that while this workshop is open to the public, no public comment would be taken in order to have sufficient time for a thorough discussion by the Board.

III. Discussion and Clarification of the following Top Five Recommendations from Report Presentation. Board members are invited to suggest adding to the following list from the EJ Task Force Report top nine recommendations

Member Potter asked that recommendation #4 from the Task Force Report (“Strengthen enforcement of regulations and permits.”) be added to the list of items to be discussed.

- ❖ Support adoption of environmental assessment provisions at state and local level.
 - Vice Chair Deichmann recalled that there was a lot of support at Task Force meetings for adoption of a mini NEPA to require more comprehensive reviews of permit applications, looking at more than air issues, looking more at cumulative impacts. In addition to a mini NEPA, creation of a bill for legislation was also suggested at the Task Force meetings. He suggested that the Board can be supportive of this kind of legislation by writing a letter of support. Member Potter suggested that the Board, City of Albuquerque and Bernalillo County could work together to draft an EJ regulation, ordinance, or statute. A question of resources was raised, to which Dr. Potter suggested that Bernalillo County could have a role in that if they choose to.
 - George Schroeder from Bernalillo County was asked if his staff could be available to draft a regulation regarding EJ, and he responded that he would have to consult with his supervisors, and has limited experience in drafting legislation.
 - Kitty Richards, also from Bernalillo County pointed out that the EJ Task Force had included an example of a regulation (Attachment 1) in its final report, which could be modified to fit the Board’s requirements. Chair Minturn asked Ms. Richards whether she thought the adoption should be completed by the State first or at the local level first, what would be the most efficient way to go about this. Ms. Richards said that laws could be adopted simultaneously; however, she said that if the laws were adopted at the local level they could be more easily be customized to fit the Board’s particular needs. Chair Minturn asked if there were any other states or localities that had adopted something like what is being suggested. Ms. Richards stated that there were 15 or 16 other states or municipalities with EJ Environmental Air Quality Acts or policies. The example regulation (Attachment 1 referred to above) was modeled after similar legislation in Minnesota.
 - Jens Deichmann asked if Ms. Richards looked at enabling laws in Minnesota that are parallel to the Air Quality Control Act when she looked at Minnesota regulations to see if the authorities were closely enough tracked with ours to make a comparison. Ms. Richards said it depends on how the states are operated jurisdictionally. He asked if there has been a legal opinion on this issue, and the response was no, there has not. Vice-chairman Deichmann suggested that a legal opinion on this matter would be a good thing to have.
- ❖ Routinely monitor sources to ensure that modeled emissions are reflective of actual emissions
 - Vice-Chair Deichmann expressed concerns regarding modeling and whether a historical review ever occurs to track prior modeling and its accuracy for comparisons as to the modeled output and the current output of businesses. Isreal Tavarez from Air Quality Division (AQD) stated that the division does not check the prior modeling to compare modeled outputs to current outputs; however, modeled emissions are a key method for evaluating sources and verifying assumptions, which are then transferred into permit

conditions. Permit conditions are then verified by inspectors and penalties can be collected for a violation. The true test is that we remain within attainment levels.

- Member Sharpe asked Mr. Tavaréz how much AQD relies on modeling. Mr. Tavaréz stated that air dispersion modeling is a key part of the permitting process.
- Member Campen asked Mr. Tavaréz if AQD can use an actual model taking data from the region using GPS, meteorological variables, or city plans to use as a guide for determining excess emissions, in addition to locating monitors closer to communities. Mr. Tavaréz stated that if monitors were moved closer to communities, mobile sources would not be measured accurately.

❖ Explicitly consider EJ and cumulative impacts in permitting process.

- Member Potter proposed the following list of recommendations from a report by the Governor's EJ Task Force, where listening sessions occurred in different areas in New Mexico, that were very similar to the EJ Task Force Final Report:

“Recommendations for Substantive Reform:

Consider demographics, social impacts, cumulative impacts, secondary impacts, nuisance impacts (e.g., noise, odor), impacts.

Consider impacts to vulnerable populations, such the ill, children and the elderly.

Adopt precautionary principle and consider pollution prevention and toxic reduction strategies.

Use discretion to require additional mitigation efforts for permits in impacted communities.

Require comprehensive demonstration that burden of proof is met and do not rely on permit applicant's unsupported assertions.

Deny permits that result in or exacerbate disparate impacts.

Recommendations for Procedural Reform

Make all information regarding a potential permit (including pre-application information) available to the public by posting on the internet.

Avoid negotiations with permit applicants when members of the public and affected communities are not notified, involved and present.”

- Ms. Orth from NMED stated that the recommendations Member Potter referred to were not Governor's EJ Task Force recommendations but recommendations made by citizens in a variety of listening sessions that were conducted around the state.
- Vice-Chair Deichmann asked how the Air Division addresses public concerns when there are a number of sources in a given area. Isreal Tavaréz stated that the 311-call center is essential in distributing complaints to AQD, so they can follow-up on suspected violations of air quality standards. Mr. Tavaréz stated that educating the public regarding available resources is also very important. The challenge with training the public is that an event has to be observed by a certified authority.
- Jens Deichmann asked about the status of the Public Involvement Plan (PIP), to which Mr. Tavaréz responded that it is ongoing, that the next step is to hire a facilitator when funding allows, to work with the public and the neighborhood coalitions to get community input on questions regarding public interface with the permitting process. The budget for this outreach would be approximately \$40,000 to \$45,000. Mr. Tavaréz states that AQD, at times, may accept Supplemental Environmental Projects (SEP) instead of a monetary settlement for Notices of Violation. A SEP is a proposal to pay a decreased penalty, and also to complete a community project to improve air quality.

- Mr. Deichmann asked if the local Air Division could borrow from the State's PIP, to which Ms. Orth responded that the State would like to serve as a resource.
- Dr. Margaret Menache from UNM was asked by Member Sharpe whether cumulative impacts were ever measured in communities as a whole, along with each individual permitted source, so that the broader impact could be considered before permits were issued. Dr. Manache stated the air quality is not measured cumulatively.
- Felicia Orth, hearing officer for New Mexico Environment Department (NMED), stated that the state of New Mexico has the Governor's Environmental Justice (EJ) Task Force that was established in the fall of 2005, and is required by Executive Order to issue a report by Dec. 31 of each year. Ms. Orth reported that the Task Force has a new EJ Coordinator, Tom Ruiz, who is housed in the Las Cruces area. The next meeting will be held on May 16, 2008 in Santa Fe. The Task Force will be focusing on their PIP. One of the changes that NMED has made regarding public notice is that all are now written in Spanish and English.
- Mr. Tavarez shared with the Board that by law AQD is required to give public notice by publishing in a newspaper of general circulation. AQD goes beyond this requirement by giving written notice in English and Spanish to the presidents of the neighborhood associations in the affected areas. Also, AQD is moving toward providing Spanish translators at all meetings and hearings.
- Senator Dede Feldman applauded the efforts of the Board for proactively looking at environmental justice issues.
- Mr. Deichmann asked Ms. Orth what she thought about cumulative impacts, to which she responded that local Air Quality permitting people need to talk to Air Quality permitting people in Minnesota, that there is more to be done in comparing with Minnesota, your attorney should be looking into it.

❖ Collaborate with rule making bodies to develop policies.

- Vice-Chair Deichmann spoke about collaborating with NMED and other governmental bodies regarding air quality matters. Ms. Orth mentioned that NMED was considering working with land use organizations because many air quality issues involve both organizations.

❖ Improve monitoring network to assess local air quality conditions.

- Dr. Margaret Menache from UNM stated that she would like to see the Air Quality processes be accessible to the community. She said that the EPA monitoring stations measure for (National Ambient Air Quality Standards) NAAQS-six criteria pollutants. She said that AQD might consider looking at monitoring other exposures beyond the six criteria pollutants. Dr. Menache stated validation studies may be needed, and that there are 12 monitors in Bernalillo County; however, the Mountain View monitor does not measure PM₁₀ or PM_{2.5} because there is not a location that would meet the EPA's siting criteria. She stated that something is being worked out with the EPA, so that measurements can be taken regardless of EPA's criteria. Dr. Menache spoke about the \$100,000 fines collected by AQD for violations of air quality regulations, which suggests that emissions were over the threshold projected by modeled measurements.
- Fabian Macias from AQD stated that the Division uses equivalent methods at all the monitor sites; that the Div. also looks at VOCs and metals (semivolatiles) by using a continuous analyzer. There are no ambient standards for VOCs and metals, but we have this capability because we secured a grant to do so. Regarding the monitor at Mountain View, George Schroeder from Bernalillo County and AQD are working together to create

a plan to stabilize the grounds around the monitor there. The particulate matter analyzers in the south valley work 24 hours a day, 7 days a week to collect data for air quality indexing.

- Chris Albrecht from AQD was asked by Member Campen what kind of formal monitoring on a site specific basis could be done to address compliance. Mr. Albrecht answered that when AQD completes air dispersion modeling, switch comp, and the air mod models are used for the permitting process. These models are used to predict the ambient concentration at the fence line. Modeling does not replace monitoring. If AQD feels there is a problem with a source's self-monitoring, AQD will place a monitor at the fence line. Vice-Chairman Deichman asked Mr. Albrecht if there was a business with numerous complaints, could AQD require the business to complete fence line monitoring. Mr. Albrecht states that the regulations allow discretion to require businesses to complete compliance tests. Mr. Albrecht points out that he does not like penalizing businesses for Air Quality violations; however, this is available as a last resort. Member Potter asked Mr. Albrecht if an original permit could be reopened if it were determined the provisions in the original permit were inadequate. Mr. Albrecht states that there are provisions in Title V to make adjustments in original permits.
- The question was raised about how big a budget would be needed for additional monitors, to which Ms. Orth responded that funds for monitors are provided by EPA and they involve a long time cost, not a one-time. She added that the database in Minnesota to map areas around a source was established with grant money from EPA, after which it is maintained, but the bulk of the cost is in getting it up and running.
- Member Sun stated that she would like a "crash course" on monitoring. Mr. Tavarez stated that AQD would be glad to show the Board the monitoring stations and educate them about monitoring.

❖ Strengthen enforcement of regulations and permits.

- Vice-Chair Deichmann asked Mr. Tavarez to provide the Board with a monthly report regarding enforcement actions that have been closed.
- Ms. Orth stated that some enforcement matters could be better handled by law enforcement rather than environment departments. She recommended that idling rules would be more effectively enforced as an ordinance that the police can enforce rather than air inspectors. Police offices have more resources to follow-up on violations. She also suggested that the Air Board should adopt a regulation on excess emissions, similar to the one currently proposed by NMED, as this would capture the kinds of violations that can occur during start up, shut down, and malfunctions.

* Note: the sequence of bulleted items under each recommendation was reorganized and grouped to fit under the relevant recommendation; does not reflect the sequence in which the discussions all occurred.

IV. Concluding remarks by board members

Vice-chair Deichmann summarized the meeting as follows, adding that are probably other significant points he may have missed, and thanking everyone for their patience and participation.

- The Board reviewed the Public Involvement Plan process and the opportunity to work with the State.
- There is an Excess Emissions rulemaking taking place in the near future at the State level from which we can borrow, that will assist in enforcement issues.
- There are opportunities in training, outreach, demonstrations of equipment to the community, and education of the community regarding the pollution control equipment and monitoring.

