



ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD



DRAFT 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 Eyerman, 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

DRAFT 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 11th and 12th, 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 4th 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:

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

Kelsey Curran, CIH date
Chair
Albuquerque – Bernalillo County Air Quality Control Board