



# ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD



**DRAFT MINUTES – October 22, 2014  
Meeting/Hearing**

**City Council Committee Room  
9<sup>th</sup> Floor, Room #9081  
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)  
Dona Upson, M.D. (CITY)  
Lenton Malry, Ph.D. (BCPC LIAISON)

**AQCB MEMBERS ABSENT**

Ms. Deborah L. Stover (COUNTY)

**EHD STAFF PRESENT**

Mr. Andrew Daffern, AQCB Liaison  
Ms. Regan Eyerman, EH Scientist  
Ms. Mary Lou Leonard, Director, 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. Cale Swanson, EH Supervisor  
Mr. Isreal Tavarez, EH Manager

**VISITORS PRESENT**

Tim Adler, Sutin, Thayer & Browne  
Larry Nieto  
Cathy Gradi

David L. Quayle  
Ruthie McGonagil  
Jeff Robb  
Andy Carrasco  
Pat Toledo  
Anna-Lena Toledo  
Andrew Burgess  
John Gallegos  
Arthur A. Gradi  
Bernice H. Ledden  
Richard Nieto  
Nancy Ellis-Hines  
Carolyn Rodriguez, Lee Acres Neighborhood  
Richard Rodriguez, Lee Acres Neighborhood  
Americo Chavez  
Barbara Chavez  
Jerri Paul-Seaborn  
Susan Kelly  
Delano Garcia  
Atalie Garcia  
Yolanda Gradi  
Kathleen McCorkell  
Lynn Mallory  
Donna Gately  
Pete Domenici, Petitioners  
Julie Vancil  
Paul Wade  
Marcie Amendolagine, Lee Acres Neighborhood  
Association  
Alex Bazan, U.S. Representative Lujan Grisham

## DRAFT MEETING/HEARING MINUTES

### CALL TO ORDER

The meeting was called to order by Chair Kelsey Curran at 5:38 P.M. on October 22, 2014 with six voting Board members present: Jens Deichmann, Augustine Grace, Dona Upson, Kelsey Curran, Jane Cudney-Black, and Robert Goldstein; and one non-voting member present: Lenton Malry. Not present was Member Deborah Stover.

Chair Curran asked that, because many pleadings related to the Smith's 4<sup>th</sup> Street Motion Hearing were filed later in the day, Wednesday, October 22, 2014, would the Board like to hold the Motion Hearing on the same evening or continue at a later date? After discussion, the Board decided to continue with the Motion Hearing as scheduled.

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

Board Attorney Felicia Orth asked Chair Curran to add a discussion of the pleading **Petitioners' Request to Air Board to Disclose Possible Conflicts of Interest and Motion to Disqualify** that was filed the morning of October 22, 2014. A motion to add a discussion of that item to the agenda as Item #2 and approve the agenda as amended was made by Member Deichmann and seconded by Vice Chair Cudney-Black. The motion was approved unanimously by a vote of 6-0.

### PUBLIC COMMENT

Everyone in attendance who signed up to offer public comment was sworn in by Hearing Officer Felicia Orth at one time.

Public comment was offered by Jeff Rob, Pete Domenici, Andy Carrasco, Pat Toledo, Andrew Burgess, Bernice Ledden, Carolyn Rodriguez, Richard Rodriguez, Americo Chavez, Jerri Paul-Seaborn, Susan Kelly, Anna-Lena Toledo, Delano Garcia, Barbara Chavez, Arthur Gradi, Julie Vancil, and Ruthie McGonagil.

#### **Item #2      Discussion of Petitioners' Request to Air Board to Disclose Possible Conflicts of Interest and Motion to Disqualify in the Matter of AQCB Petition No. 2014-3, Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3136 Issued to Smith's Food and Drug Centers, Inc. (4<sup>th</sup> Street). Petitioners: Pete Domenici, Jr. on behalf of Arthur Gradi, Ruth A. McGonagil, Jerri Paul-Seaborn, Bernice Ledden, Americo Chavez, Pat Toledo as individuals; 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 Atler, Sutin Law Firm on behalf of Smith's Food and Drug Centers, Inc.**

Attorneys for all parties presented arguments in support of and against Petitioners' motion.

Hearing Officer Orth asked the Board Members to make any disclosures they had around conflicts of interest as defined by the "Joint Air Quality Control Board Ordinance" and the "20.11.81 NMAC, *Adjudicatory Procedures—Air Quality Control Board.*" Hearing none, Hearing Officer Orth then asked the Board Members to disclose any professional or financial interest relating to Smith's gas stations in Albuquerque, or any personal bias or prejudice concerning the petitioners or counsel in this matter. Hearing none, Hearing Officer Orth denied the motion.

### ACTION ITEMS

#### Item #3

- **Smith's Food and Drug Centers, Inc.'s Motion for Summary Judgment in the Matter of AQCB Petition No. 2014-3, Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3136 Issued to Smith's Food and Drug Centers, Inc. (4<sup>th</sup> Street). Petitioners: Arthur Gradi, Ruth A. McGonagil, Jerri Paul-Seaborn, Bernice Ledden, Susan Kelly, Americo Chavez, Pat Toledo as individuals; 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.**
- **City of Albuquerque's Motion for Summary Judgment in the Matter of AQCB Petition No. 2014-3, Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3136 Issued to Smith's Food and Drug Centers, Inc. (4<sup>th</sup> Street). Petitioners: Arthur Gradi, Ruth A. McGonagil, Jerri Paul-Seaborn, Bernice Ledden, Susan Kelly, Americo Chavez, Pat Toledo as individuals; 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.**

Attorneys for all parties presented arguments in support of and against the Motions from Smith's Food and Drug, Inc. and the City of Albuquerque Environmental Health Department.

After extensive discussion, a motion to grant the Motions for Summary Judgment was made by Member Deichmann, seconded by Member Upson. The motion passed by a vote of 4-2 (For: Deichmann, Upson, Curran, Cudney-Black; Against: Grace, Goldstein).

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 12-13, 2014, will be cancelled.

**Item #4 Smith’s Food and Drug, Inc.’s Motion to Dismiss Petitioner Pat Toledo for Lack of Standing in the Matter of AQCB Petition No. 2014-3, Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3136 Issued to Smith’s Food and Drug Centers, Inc. (4<sup>th</sup> Street). Petitioners: Arthur Gradi, Ruth A. McGonagil, Jerri Paul-Seaborn, Bernice Ledden, Susan Kelly, Americo Chavez, Pat Toledo as individuals; 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 Atler, 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.

**OTHER BUSINESS**

Hearing Officer Orth asked the Board to consider rescheduling the Hearing on the Merits regarding air quality permit No. 3131 issued to Honstein Oil & Distributing, LLC. from February 11-12 to February 18-19 to ensure the attendance of as many Board Members as possible. Hearing no objections, Hearing Officer Orth stated that she would amend the Scheduling Order after discussing the changes with counsel.

**ADJOURNMENT**

Chair Kelsey Curran adjourned the meeting at 10:44 P.M.

**NEXT SCHEDULED BOARD MEETING:** 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