ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

MINUTES – October 22, 2014
Meeting/Hearing

City Council Committee Room
9th 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 Atler, 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

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 4th 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. (4th 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. (4th 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.**

- **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. (4th 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.**

  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. (4th 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:

Margaret Nieto 12/4/14
Ms. Margaret Nieto date
Board Secretary/Env. Health Manager, Control Strategies Section,
Air Quality Program, Environmental Health Department

READ AND APPROVED:

Kelsey Curran 12/15/14
Kelsey Curran, CIH date
Chair
Albuquerque – Bernalillo County Air Quality Control Board