



# ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

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



## DRAFT MINUTES – July 8, 2015 Meeting/Hearing

### AQCB MEMBERS PRESENT

Jane Cudney-Black (CITY), Vice Chair  
Jens Deichmann, Ph.D. (COUNTY)  
Robert Goldstein, M.D. (COUNTY)  
Deborah L. Stover (COUNTY)  
Dona Upson, M.D. (CITY)  
Lenton Malry, Ph.D. (BCPC LIAISON)  
James Peck, (COA/EPC LIAISON)

### AQCB MEMBERS ABSENT

Kelsey Curran, CIH (CITY), Chair  
Augustine Grace III, P.E. (CITY)

### EHD STAFF PRESENT

Andrew Daffern, AQCB Liaison  
Regan Eyerman, EH Scientist  
Ed Merta, Air Quality Regulation  
Development Coordinator  
Mary Lou Leonard, Director, EHD  
Fabian Macias, Air Quality Official  
Danny Nevarez, Deputy Director, EHD

Margaret Nieto, EH Manager and AQCB  
Secretary  
Felicia Orth, Air Board Attorney and  
Hearing Officer  
Carol Parker, Assistant City Attorney  
Damon Reyes, EH Manager  
Dario Rocha, EH Supervisor  
Isreal Tavarez, EH Manager

### VISITORS PRESENT

Eric Ames  
Tim Adler, Sutin, Thayer & Browne Law  
Firm  
Matt Cross-Guillen, Bernalillo County Place  
Matters  
Reed Easterwood, Domenici Law Firm  
Arthur Gradi  
Frank Salazar, Sutin, Thayer & Browne Law  
Firm  
Pat Toledo

## DRAFT MEETING MINUTES

### CALL TO ORDER

The meeting was called to order by Vice Chair Jane Cudney-Black at 5:35 p.m. on July 8, 2015 with five voting Board members present: Robert Goldstein, Deborah L. Stover, Jane Cudney-Black, Jens Deichmann, and Dona Upson; and two non-voting members present: Lenton Malry and James Peck. Not present were voting members Kelsey Curran and Augustine Grace III.

#### **Item #1 Approval of Agenda (Vice 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 5-0.

#### **Item #2 Approval of June 30, 2015 Meeting Minutes (Vice Chair)**

A motion to approve the June 30, 2015 meeting minutes was made by Member Deichmann and seconded by Member Goldstein. The motion was approved unanimously by a vote of 5-0.

### **PUBLIC COMMENT**

There was no public comment.

### **HEARING**

**Item #3 Hearing Mandated by NM Court of Appeals on the Merits of whether the EHD improperly refused to hold a public hearing in the Matter of the Petition for a Hearing on the Merits Regarding Air Quality Permit No. 1677-M2 Issued to Smith's Food and Drug Centers, Inc. (Tramway), Andy Carrasco, Pat Toledo, and Dempsey Power, Petitioners-Appellants, vs. City of Albuquerque and Smith's Food & Drug Centers, Inc., respondents-Appellees (No. 33,269).**

Hearing Officer Felicia Orth opened the Remand Hearing at 5:38 p.m.

Reed Easterwood, Attorney for Petitioners Andy Carrasco, Pat Toledo, and Dempsey Power, presented a motion for the Air Quality Control Board to reconsider the Prehearing Order on Objections to Witnesses and Exhibits prepared by Hearing Officer Orth and filed with the hearing clerk on July 7, 2015, particularly with regard to technical testimony of witness Brian Sanderoff and his ability to make public comment. Attorneys for all parties presented arguments in support of and against Petitioners' motion. After some discussion, Hearing Officer Orth clarified that Mr. Sanderoff's technical testimony already exists in the record and can be readily referenced, and that the Prehearing Order allows for Mr. Sanderoff to make public comment.

Attorneys for all parties then presented arguments in support of and against the question of whether the EHD improperly refused to hold a public hearing in the matter of the Petition for a Hearing on the Merits Regarding Air Quality Permit No. 1677-M2 Issued to Smith's Food and Drug Centers, Inc. (Tramway). Witnesses Pat Toledo, Mary Lou Leonard, and Isreal Tavarez were examined by all parties.

Note: Vice Chair Cudney-Black announced that Lenton Malry left the meeting at 6:38 p.m.

Arthur Gradi presented public comment in support of Petitioners.

Hearing Officer Orth closed the Remand Hearing Record at 8:51 p.m.

### **ACTION ITEMS**

**Item #4 Decision on Hearing Mandated by NM Court of Appeals on the Merits of whether the EHD improperly refused to hold a public hearing in the Matter of the Petition for a Hearing on the Merits Regarding Air Quality Permit No.**

**1677-M2 Issued to Smith's Food and Drug Centers, Inc. (Tramway), Andy Carrasco, Pat Toledo, and Dempsey Power, Petitioners-Appellants, vs. City of Albuquerque and Smith's Food & Drug Centers, Inc., respondents-Appellees (No. 33,269).**

After discussion, a motion to uphold the EHD director's decision to deny a public hearing prior to issuing the subject permit was made by Member Deichmann, seconded by Member Upson. The motion passed unanimously by a vote of 5-0 (For: Upson, Deichmann, Cudney-Black, Stover, Goldstein).

**Item #5 Selection of Board members to serve as non-voting Advisory Member and Alternate to Mid-Region Council of Governments (MRCOG) Transportation Program Task Group (TPTG) and Transportation Coordinating Committee (TCC) (Vice Chair)**

**Nominations are as follows:**

- **Advisory Member:**
- **Alternate: Jane Cudney-Black**

Jane Cudney-Black volunteered to serve as alternate. However, hearing no further nominations and stating that her commitment to serve as alternate was tentative, the matter was tabled for further discussion without being brought to a vote.

**REPORTS Air Program Report. Staff available for questions.**

**Item #6 Vehicle Pollution Management Division report on the Oxygenated Fuels Program**

Oxygenated Fuels Program: Annual Report to the Albuquerque Bernalillo County Air Quality Control Board was presented by Dario Rocha, Environmental Health Supervisor, Vehicle Pollution Management Division (VPMD). Mr. Rocha then answered questions from the Board.

Member Goldstein asked whether the production of ethanol for fuel contributed to a net increase in greenhouse gases. Mr. Rocha replied that VPMD will research this question and inform the Board as to the results of the research.

Vice Chair Cudney-Black asked whether there are biofuels other than ethanol that could be considered in VPMD's Oxygenated Fuels Program. Mr. Rocha replied that VPMD will research this question and inform the Board as to the results of the research.

**OTHER BUSINESS**

**ADJOURNMENT**

Vice Chair Jane Cudney-Black adjourned the meeting at 9:11 p.m.

