



# Albuquerque-Bernalillo County Air Quality Control Board



Paul Rogers, Interim Director

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## MINUTES – November 21, 2023 Special Hybrid Meeting

This Albuquerque-Bernalillo County Air Quality Control Board (“Board”) meeting was conducted in a Virtual format by remote participation via Zoom video conference.

### 1. CALL TO ORDER

Chair Paul called the meeting to order at 1:02 pm. Board Liaison Anita SdeArmijo then called roll and the Chair determined a quorum was present.

Present: 6 – Dennis Armijo, Judy Calman, Elis Eberlein, Joseph Galewsky, Kitty Richards, Maxine Paul

Absent: 1- Johnnye Lewis

Vice Chair Richards attended by phone and Member Armijo joined at 1:04pm.

### 2. CONSENT AGENDA

- a. Approval of the November 21, 2023 Meeting Agenda

Chair Paul asked if any board members would like to make any changes to the agenda such as adding public comment since it was not listed on the agenda. Vice Chair Richards moved to have public comment at the beginning of the special meeting, Member Armijo seconded. The motion passed by the following vote:

For: 6 – Armijo, Calman, Eberlein, Galewsky, Richards, Paul  
Against: 0 Abstain: 0 Absent: 1 - Lewis

Chair Paul asked commenters to limit their comments to 3 minutes.

Sofia Martinez gave a comment asking the board not to go past February to hold the HEEI hearing.

### 3. REPORTS/DISCUSSION/ACTION ITEMS

- a. Discussion Decision on [150. Motion to Vacate Current Hearing Date & Re-Issue Public Notice](#) AQCB Petition No. 2022-03 In the Matter of the Petition to Amend Title 20, Chapter 11 of the New Mexico Administrative Code to Require Review and Consideration of Health, Environment and Equity Impacts (Board and Parties)

Chair Paul asked to hear from the parties and gave them each 6 minutes for their comments on this topic.

Dalva Moellenberg attorney for NNMA and NMCC stated that the issue raised in the motion is whether the notice is compliance with the State Rules Act, in particular the requirement that the public notice of the hearing identifies all of the information that would be the technical basis for the proposed rule as well as information such as links for interested people to access that information.

He also said that the lack of technical information in the notice that the State Rules Act specifies has limited the ability of the other parties to know everything that they need to address in their written testimony and have identified two ways to potentially remedy this issue. One would be to re-issue the public notice containing all the technical information required but would require the hearing to be rescheduled and the 2<sup>nd</sup> way would be to preclude technical evidence that wasn't identified in the notice.

Mr. Moellenberg also added that to his knowledge none of the parties have raised an objection to the board postponing the hearing in order issue a proper a complete public notice.

Pete Domenici representing Albuquerque Asphalt et al. concurs with the motion and stated that if the board chooses to vacate would like to bring awareness to how the rescheduling would take place as there was a concern in the pre-hearing meeting held recently that 5 days may not be enough.

Dori Richards Attorney for NNSA and DOE added on to Mr. Domenici's and Mr. Moellenberg's statements. She stated that the notices of intent and testimony were impacted and will probably need to be supplemented as there was no technical basis identified for the rule along with impacting decision regarding rebuttal testimony. She also stated that by postponing the hearing the parties will be able to supplement their NOIs and clarify rebuttal testimony.

Eric Jantz representing the petitioner's stated that the petitioners don't agree with the movant's legal premises for the motion. Mr. Jantz said that there two issues before the board today one is whether there was defective notice under the state rules act and the second whether delaying the December 4<sup>th</sup> hearing is the appropriate remedy for any alleged notice defect. He stated that the state rules act does not require every detail and that petitioners have disclosed technical information throughout the pre-hearing process that the board mandated. Also stated that if the board decides to delay the hearing to hold it no later than February 5, 2024 or to allow ample time for written closing arguments and rebuttal testimony.

Gabe Pacyniack representing Sofia Martinez and Manual Criollo stated that they concur with the petitioners' argument and response and do not agree with the movants but acknowledge that there is some legal risk.

Kari Olsen represents GCC, Western Refining et al. stated they object to the proposed remedy of allow rebuttal testimony to be submitted post hearing as it does not cure the

state rules act violation and creates additional conflict with the Air Quality Act and the board procedural rules.

Dori Richards gave a quick follow-up to her earlier comments saying that the purpose of having technical testimony identified t the rulemaking stage is to provide the entire public with notice and provides that information upfront and streamlines the process. 29:49

After hearing from all the parties who wished to speak Chair Paul asked for the opinion of counsel Sedillo Lopez.

Counsel Sedillo Lopez stated that she prepared the notice by herself, since the replacement hearing officer was not under contract at the time but is prepared to defend the notice as adequate. She stated that the issue is whether the State Rules Act applies to this situation and went on to give her reasoning as to why it does not.

Counsel Sedillo Lopez said that she contacted Matt Ortiz at the State Records office for his thoughts on the notice and that according to him, they do not verify that the facts in the notice are correct, like the links, but that if it complies with their general rules such as being linked to the record and telling people how to obtain copies. She stated that Mr. Ortiz reviewed her notice, and the records center accepted it.

Counsel Sedillo Lopez also stated that she used the model of notice used in the Advanced Clean Cars case to write her notice and that the Clean Cars notice does not contain a technical citation. She concluded that ultimately it was up to the board if the hearing was moved but that she is willing to defend the notice in the court of appeals and that a possible remedy would be to spend the first morning of the hearing addressing motions.

Chair Paul then opened up the floor for discussion and questions from the board.

After quite a bit of discussion amongst the board and questions for the parties, Chair Paul asked if any of the board members had a motion. Vice Chair Richards made a motion to deny the request to vacate the hearing and re-issue public notice, Member Calman seconded. Counsel Sedillo Lopez stated in answer to a question by Member Galewsky that a majority yes vote means the hearing will start on December 4<sup>th</sup> and a majority no vote means the board will pick a new hearing date. The motion tied by the following vote:

For: 3– Calman, Eberlein, Richards

Against: 3 - Armijo, Galewsky, Paul    Abstain: 0    Absent: 1 - Lewis

After the tied vote Chair Paul asked Counsel Sedillo Lopez how to proceed from here. She replied that if the board had a motion to grant the motion and it failed then an air board meeting would most likely have to be rescheduled at a time when the full board can attend.

After discussion Member Armijo made a motion to grant the motion to vacate the hearing date and specifically deny the exclusion of testimony as stated in the motion and Member Galewsky seconded. Chair Paul stated that a majority yes vote would accept the request to vacate the hearing date but not accept the request to exclude technical testimony and a

majority no vote would mean the hearing starts on December 4<sup>th</sup>. After a few more clarifying questions from the board the motion by Member Armijo was amended to only vote on the vacating of the hearing date and address the issue of technical testimony in a separate motion.

The motion tied by the following vote:

For: 3 – Armijo, Eberlein, Galewsky  
Against: 3 - Calman, Richards Paul    Abstain: 0    Absent: 1 - Lewis

Chair Paul stated that since both motions failed the hearing date is still set to start on December 4<sup>th</sup>. After discussion among the board on whether to include technical testimony Member Armijo made a motion to deny the exclusion of technical information as proposed as an alternative remedy in the motion. Member Eberlein seconded the motion. The motion passed by the following vote:

For: 6 – Armijo, Calman, Eberlein, Galewsky, Richards, Paul  
Against: 0    Abstain: 0    Absent: 1 - Lewis

Member Armijo stated that since there were votes that were not approved by the majority in either direction then the hearing date stands as is. Chair Paul asked Counsel Sedillo Lopez to prepare and order that recorded the votes taken at this meeting

**4. OTHER BUSINESS**

Chair Paul asked Ms. SdeArmijo if she would be sending her the transmittal forms via DocuSign for Advanced Clean Cars. Kelsea Sona, EHD added that they were wrapping up some of the language on the forms and do not need an in-person signature from Chair Paul and would be in touch with Chair Paul early the next week to get the forms to her.

**5. ADJOURNMENT**

Chair Paul adjourned the meeting at 3:10 p.m.

**NEXT SCHEDULED BOARD MEETING:** December 13, 2023 at 5:30 p.m.

SUBMITTED:

DocuSigned by:  
*Paul J. Rogers*  
1053020EDD984BF... 2/21/2024 | 2:06 PM MST

Mr. Paul Rogers  
Interim Director  
Environmental Health Department

READ AND APPROVED:

DocuSigned by:  
*Maxine Paul*  
EEDCEB0A2B1F440... 2/21/2024 | 1:28 PM PST

Ms. Maxine Paul  
Chair  
Albuquerque-Bernalillo County Air Quality  
Control Board