

**ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

**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,**

AQCB PETITION NO. 2022-3

**MOUNTAIN VIEW NEIGHBORHOOD
ASSOCIATION, MOUNTAIN VIEW
COMMUNITY ACTION, AND FRIENDS
OF VALLE DE ORO,**

PETITIONERS.

(Draft for May 10, 2023 AQCB meeting)

ORDER DELEGATING LIMITED AUTHORITY TO HEARING OFFICER

The Albuquerque-Bernalillo County Air Quality Control Board (“AQCB or the Board”) having voted on December 14, 2022 pursuant to NMAC 20.11.82.18 (C) to hold a hearing on the Petition filed by Mountain View Neighborhood Association, Mountain View Community Action, and Friends of Valle de Oro, may delegate some of its authority to conduct a rulemaking hearing to a Hearing Officer pursuant to NMAC 20.11.82 11 (A); 20.11.82.18 (D). On March 30, 2023, the Board assigned Mr. Richard Virtue to conduct a Rulemaking Proceeding in this matter and stated in its Order that the scope of authority the Board wished to delegate to the Hearing Officer would be decided at a forthcoming Board Meeting.

In accordance with NMAC 20.11.82.6, the Board desires this rulemaking to be efficient, timely and fair. Any rule the Board might adopt out of this proceeding should be effective and supported by substantial evidence to achieve the statutory goals of the ACQB.

(NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 30-33; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 & 9-5-1-4; NMAC 20.11.82 and Board Bylaws. To achieve these goals, the Board delegates only the following authority to the Hearing Officer:

- 1) To conduct a prehearing process following guidelines determined by the Board between the date of this order's adoption and July 30. The goal of the prehearing process is to identify points of agreement, compromise and disagreement, and agreed upon suggested language. Information should be shared among the parties during this process, with the goal of assuring an efficient hearing that can be conducted over three days. A prehearing hearing order will be prepared setting the date for the three day rulemaking hearing, and allocating time among the parties to provide evidence and testimony to support, oppose or present alternatives to the Petitioner's proposed regulations. The Board attorney will be present during the prehearing process and will keep all discussions, documents, studies, reports, and witnesses presented confidential.
- 2) During the prehearing process, the Hearing Officer will ask the parties to submit a values statement to establish the ground floor of the negotiations and serve as a reference to hold parties accountable. The parties will be asked to work collaboratively on the rulemaking. The parties attending the prehearing meetings must have authority to negotiate. The Hearing Officer will use the attached spreadsheet to keep track of points of agreement, compromise, and disagreement, and alternative language proposed. The first meeting shall be dedicated to listening to, and considering, the public's input regarding the

proposed rule using a roundtable format. Input shall be considered by the parties. The next two meetings will include only the parties to maintain confidentiality.

- 3) There will be no formal discovery but information about studies, names of experts and witnesses to be called at the formal hearing and the substance of their testimony will be shared during the prehearing process. They will be identified and will be included in the prehearing order. If information provided at the hearing was not shared during the prehearing process, the party offering the evidence will state the reason it was not shared during the prehearing process. It is not required that all information shared during the prehearing process be presented at the formal rulemaking proceeding. The Hearing Officer will make a brief report to the Board at each regularly scheduled Board meeting (about progress of the prehearing process. If there is no progress in negotiations, the Hearing Officer or Board Attorney will report the same to the Board during a Board Meeting, and the prehearing process will be terminated.
- 4) After the prehearing process is completed or terminated, the Hearing Officer shall file a prehearing order and make a report to the Board at the regularly scheduled July or August Board Meeting at which the outcome of the prehearing process, the prehearing order, and the hearing schedule will be proposed and explained to the Board.
- 5) The Board Liaison can assist with identifying dates that the Board and parties are available for the formal rulemaking hearing.
- 6) The Hearing Officer will schedule a three day formal rulemaking hearing no later than September 30th. If the Hearing Officer determines that more or

fewer than three days will be required to conduct the rulemaking hearing, the Hearing Officer should explain the reason at the July or August Board meeting.

- 7) The Hearing Officer and the Board will conduct a three day rulemaking hearing giving the Petitioners and the Opponents time to present their case efficiently with opportunity for public comment each day of the 3 day formal rulemaking hearing. The Hearing Officer and the Board will take evidence and testimony, and allow cross examination and questioning of witnesses with the goals of ensuring the Board is sufficiently informed about the proposed regulation and potential alternative language providing a full record of evidence and testimony. The Board will participate in the hearing, and may immediately vote to overrule the Hearing Officer's decisions on evidence, testimony, cross examination and questioning. Each day of the rulemaking hearing will provide an opportunity for public comment after 5:30 pm so that working individuals can participate. The Board will not require a report and recommendation because the Board will attend and participate in the formal rulemaking hearing and intends to deliberate immediately after the hearing.
- 8) In order to ensure that the Hearing Officer is solely focused on the substance of the rulemaking and to limit motions that delay proceedings, the Board intends to decide ancillary motions filed by the parties at Board meetings. Motions such as the now decided Motions to Disqualify, and the partially decided Motion for Alternative Means of Recording, and other such motions will be decided by the Board at regularly scheduled meetings or at Special Meetings called by the Chair. The Board Attorney will identify ancillary motions and give notice to the parties that the Motions will be scheduled for

hearing at a Board meeting. This will usually be the next meeting after the filing of the motion, or depending on the timing of the filing, the meeting after the next regularly scheduled meeting or at a Special Meeting called by the Chair. The motions to be decided will be listed on the agenda of the scheduled meeting.

- 9) For this rulemaking proceeding, the Board suspends the requirement under 20.11.82.16 (B) (1) of filing 15 hard copies of a pleading when filing a document with the Hearing Clerk, except for written evidence, reports, or other documents provided for the Board and Hearing Officer for review before or during the three day rulemaking hearing.
- 10) The Hearing Officer will ensure, with the Board Liaison, that the legal requirements of Notice are met and is encouraged to work with the Board Liaison to provide more notice and conduct more outreach than is legally required, including notice to neighborhood association and EHD list serve.
- 11) While the Board authorizes the Hearing Officer to conduct the hearing and see to the administrative functions, the Board retains ultimate decision making authority on all issues in this rulemaking including, but not limited to those listed in 20.11.82.11 (B).
- 12) It is further ORDERED that the approved minutes of the Special Meeting held March 30, 2023, April 12, 2023 and May 10, 2023 shall be filed as part of the record of these proceedings as required by NMAC 10.11.82.6 (T).
- 13) This Order shall be electronically served on all parties with a request to confirm receipt and filed in the record of the proceedings and a copy will be provided to the Hearing Officer forthwith.

SO ORDERED,

AQCB Chair, Maxine Paul

Date: